

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S - 89 of 2022

Date of hearing	Order with signature of Judge
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Fresh case

1. For orders on MA No.5351/2022 (U/A)
2. For orders on office objection at Flag-A
3. For orders on MA No.5352/2022 (Ex./A)
4. For hearing of main case

28.11.2022

Mr. Yameen Ali Khoso, Advocate for the applicant/complainant.

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1. Urgency application is granted.

2 to 4. Through this Criminal Transfer Application, the applicant has sought transfer of Criminal Case No.75 of 2022 (*Re: The State v. Madad Ali & others*) arising out of Crime No.49 of 2022 of Police Station Ranipur, District Khairpur registered under Sections 506/2, 447, 337-H(2), 147, 148, 149, P.P.C. from the trial Court i.e. learned Judicial Magistrate, Sobhadero @ Ranipur. Earlier, such prayer was made by the applicant before learned Sessions Judge, Khairpur through Criminal Transfer Application No.124 of 2022, which has been dismissed vide order dated 21.11.2022.

Learned Counsel for the applicant contends that learned trial Magistrate at the initial stage was impartial as he dismissed Criminal Miscellaneous Application bearing No. Nil of 2022, filed by the respondents/accused under Section 249-A, Cr.P.C., vide order dated 08.10.2022, but thereafter, the learned trial Magistrate, by showing mercy upon the accused asked them to file another application under Section 249-A, Cr.P.C; hence, on 18.10.2022, they filed another application under Section 249-A, Cr.P.C, therefore, the applicant has apprehension that the learned trial Magistrate will acquit the accused and he will be deprived from justice. In support of his contentions, learned Counsel for the applicant has placed reliance upon the cases of *Muhammad Aslam v. The State* (1990 P Cr. L J 205) and *Mirza Mubarak Ahmed Nusrat v. The State and another* (1990 P Cr. L J 1097).

It may be observed here that transfer of case from one to another Court cannot be claimed by the applicant(s) as a matter of right or cannot be granted as a matter of routine and the Court before whom the application for transfer is moved has to see whether mistrust shown by the applicant is genuine or otherwise. Besides, while exercising jurisdiction to transfer cases from Courts, balance has to be struck in order to ensure that the cases are not transferred mainly on the basis of unfounded and conjectural apprehensions. It may also be observed here that the Presiding Officers of the Courts have to be given full protection against frivolous allegations in view of the honourous, noble and dignified duty they are performing and while deciding the cases they should not be allowed to be harassed unnecessarily by the litigants to mainly entertain groundless and baseless apprehensions.

As regard the filing of second application 249-A, Cr.P.C. by the accused, suffice it to say that mere entertaining of any successive application under Section 249-A, Cr.P.C. by the trial Court is no ground for assuming or presuming that the applicant would not get a fair and impartial trial. Moreover, the allegation made by the applicant that the said application has been filed on the instructions of the Presiding Officer, there are mere words and without any supporting evidence. Even otherwise, in case the successive application under Section 249-A, Cr.P.C. is allowed, the applicant will have remedy of filing of appeal against the acquittal order. So far the case law cited by the learned Counsel for the applicant is concerned, the same being on different footings do not advance the case of applicant for transfer of the aforesaid case.

For the foregoing facts and reasons, no reasonable apprehension exists in the instant case that the trial Court would not act fairly and impartially; therefore, this transfer application being devoid of any merit is **dismissed in limine** along with listed application, with no order as to costs.

Abdul Basit

J U D G E