

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Transfer App. No. S - 69 of 2022**

Date of hearing	Order with signature of Judge
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**Hearing of case**

1. For hearing of MA No.4136/2022
2. For hearing of main case

**09.12.2022**

Mr. Shabbir Ali Bozdar, Advocate for the applicant.

Mr. Abdul Shakoor Soomro, Advocate for respondents No.2 to 12.

Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General.

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1. Instant Criminal Transfer Application has been filed by the applicant (*complainant*) seeking transfer of Sessions Case No. 373 of 2016 (*Re: Muhammad Ashraf v. Qasim & others*) filed by the applicant under Sections 3, 5 & 7 of the Illegal Dispossession Act, 2005, from the Court of learned IVth Additional Sessions Judge, Mirpur Mathelo to the Court of learned Additional Sessions Judge, Ubauro or any other Court having jurisdiction.

2. Learned Counsel for the applicant contends that the aforementioned case is pending adjudication before the learned trial Court for last more than six (06) years, which Court is about 50 kilometers away from the villages of the applicant and respondents. He further contends that the behaviour of the Presiding Officer of the learned trial Court is harsh with the applicant party and very polite with the respondents/accused. He further contends that the learned trial Court has already passed a judgment against the applicant party in like nature case, whereby the accused persons have been acquitted of the charge; hence, the applicant has apprehension that the learned trial Court will acquit the respondents/accused and he will be deprived from justice. In support of his contentions, learned Counsel for the applicant relied upon the cases of *The State through Additional Collector (Preventive) v. Mir Kashif Imran and 6 others* (2013 MLD 329) and *Mst. Sahibzadi Jahan Ara v. District and Sessions Judge (South), Karachi and 2 others* (2016 MLD 376). He also contends that

the respondents have no objection regarding transfer of the case, and for that, he placed reliance upon the case of Ali Muhammad and another v. The State and another (2005 YLR 813).

3. Learned Counsel for the respondents controverts the contention of learned Counsel for the applicant regarding no objection of the respondents for transfer of the case.

4. Learned D.P.G., while placing reliance upon the cases of Haji Nasrullah Bhangoo v. The State and another (2011 Cr. L J 501) and Akhtar Ali v. The State (2020 SCMR 1243), opposes this criminal transfer application.

5. The record shows that the applicant/complainant filed subject criminal complaint in the year 2016 before the learned Sessions Judge, Ghotki, which was taken up as Sessions Case No.373 of 2016 and marked to learned trial Court on 04.07.2016 for its disposal and since then, the same is pending adjudication. It further appears that the subject case was fixed for hearing on as many as 27 dates of hearing from 21.01.2021 to 19.08.2022; however, same could not be proceeded on account of either absence of the complainant & his Counsel or seeking adjournments by them on as many as 22 dates of hearing, which shows that the applicant/complainant is in fact reluctant to proceed with the subject case and more interested in lingering on the same.

6. 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.

7. As regard earlier judgment against the applicant party in like nature case, whereby the accused persons were acquitted of the charge, suffice it to say that orders wrong in law or improper passed on disobedience of statutory provision of law or in violation of rules or procedure or against the party seeking transfer of the case in earlier matter, have never been accepted as valid basis for transfer of cases, unless circumstances attending passing of such orders are capable of raising a reasonable apprehension in the mind of a party that justice would not be done to him. Something more than a mere wrong order is required to justify such transfer so as to create a reasonable apprehension in the mind of the party concerned of not getting fair and impartial trial.

8. So far the contention of learned Counsel for the applicant regarding the respondents' no objection for transfer of the subject case is concerned, it is beyond understanding that once he has alleged that the behaviour of the Presiding Officer of the learned trial Court with respondents is very polite, then why they concede for transfer of the case from that Court. Even otherwise, the learned Counsel for the respondents has not made any such submission before this Court and this is no ground for transfer of the case. 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.

9. 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** along with listed application, with no order as to costs.

JUDGE

Abdul Basit