

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Trf. Appln. No.S- 106 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>08.04.2013.</u>	For Katcha Peshi.

Mr. Ashfauqe Ali Khaskheli, Advocate for Applicant.

Mr. Muhammad Iqbal Kalhoro, Additional Prosecutor General Sindh.

Mr. Agha Kashif Hussain, Advocate for Respondent/ Complainant.

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ORDER

AQEEL AHMED ABBASI-J. Through instant Criminal transfer Application, Applicant namely Bilal Hussain has prayed for transfer of Sessions Case No.228/2008 emanating from Crime No.101/2007 registered at P.S Hussainabad U/s 324, 147,148,149,506 PPC from the Court of 2nd additional Sessions Judge, Hyderabad to any other Court of Additional Sessions Judge Hyderabad on the ground that the conduct of the Presiding officer is not proper, who has developed bias against the Applicant and co-accused Faraz Memon.

2. Amongst other grounds, the learned Counsel for the Applicant has vehemently argued and pressed the ground as stated in Para-4 of the instant Criminal Transfer Application, wherein it has been stated that on the fateful date when the Applicant and co-accused Faraz Memon, who were on bail, were present in Court, however, since their Counsel was busy before the Honourable High Court, Circuit Court Hyderabad, requested for adjournment. Such request was declined by the learned Trial Court and the Applicant Bilal Hussain and the co-accused namely Faraz Memon were reportedly ordered to be hand cuffed and were sent to judicial lockup by the learned Judge. It has been further stated that several complaints have been filed by large number of Advocates as well against the conduct of the learned IInd Additional Sessions Judge, Hyderabad. Learned Counsel under

instructions has stated that the Applicant and co-accused have lost faith in the learned Judge, hence requests that their case may be transferred to any other Court. Learned Counsel has placed on record two photographs of the Applicant and co-accused wherein they have been shown under hand cuffs and custody of police.

3. Notices were issued pursuant to which Mr. Agha Kashif Hussain has shown appearance on behalf of Complainant and has opposed the transfer of the case from the Court of 2nd Additional Sessions Judge Hyderabad to any other Court of Additional Sessions Judge, Hyderabad. Learned Counsel has stated that since the matter is old one whereas the Applicant and co-accused Faraz are not proceeding with the matter therefore, filing of instant criminal transfer application is also an attempt to linger on the matter. Per learned Counsel, there is no valid ground which has been raised by the learned Counsel for the Applicant to seek transfer of the case.

Learned Additional Prosecutor General Sindh also supports the contention of the learned Counsel for the complainant.

4. Comments were called from the learned Presiding Officer, who has furnished the same on 13.12.2012. From the perusal of the comments, it appears that no specific denial with regard to the allegations of the Applicant, as stated in Para-4 of the instant criminal transfer application has been furnished whereas few order sheets of various dates, purportedly after the date of the alleged incident when the Applicant and co-accused Faraz were stated to be hand cuffed by the orders of the Presiding Officer, have been reproduced in the reply. Counsel for the complainant has also not filed any rebuttal with regard to the allegation as contained in the instant criminal transfer application.

5. It is not conceivable as to how and under what circumstances the learned Presiding Officer ordered for applying the hand cuffs to the Applicant and co-accused Faraz and to send them to judicial lockup,

who were present on bail and sought adjournment on the ground that their Counsel is busy before this Court.

6. In view hereinabove facts which have not been specifically disputed either by the Presiding Officer or the Counsel for the Complainant, possibility that the learned Judge might have developed some bias against the Applicant and co-accused cannot be ruled out. This Court is conscientious that this is an old case, however, it has not come on record that the delay or pendency of the case could only be attributed to the conduct of the accused persons.

7. Accordingly, instant criminal transfer application is allowed. Learned District and Sessions Judge, Hyderabad, is directed to transfer the above mentioned case from the Court of 2nd Additional Sessions Judge Hyderabad to some other Additional Sessions Judge, who shall hear and dispose it of strictly in accordance with law, preferably, within a period of two months.

It is clarified that both the parties shall proceed diligently with the matter, whereas, no unnecessary adjournment shall be sought by either party.

Criminal Transfer Application stands disposed of in the above terms.

JUDGE

H.