

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S - 38 of 2023

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objections at Flag-A
2. For hearing of MA No.3011/2023
3. For hearing of main case

29.05.2023

Syed Ali Murtaza Shah, Advocate for the applicants/accused.
Ms. Shabana Naheed, Assistant Prosecutor General.

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1. Mr. Ubedullah Ghoto, Advocate files power on behalf of respondent No.3/complainant, which is taken on record.

2. This criminal transfer application has been filed by the applicants seeking transfer of Sessions Case No.218 of 2007 (*Re: The State versus Nazir Ahmed and others*), arisen out of Crime No.43 of 2005 registered at Police Station Sarhad, District Ghotki for offences under Sections 302, 324, 337-H(2), 148, 149, P.P.C. and 13-D of Arms Ordinance, 1965, from the Court of learned 1st Additional Sessions Judge, Sukkur to any other Court having jurisdiction except Ghotki.

3. It is contention of learned counsel for the applicants that on 18.05.2023, applicants No.2, 3 & 5/accused saw the respondent No.3/complainant entering the chamber of learned Presiding Officer of the trial Court, which created apprehension in their minds that they will not get the justice at the hands of the learned Presiding Officer. In this regard, he submits that such apprehension has been established in view of the statements of two persons, namely, Allah Wadhayo and Mir Muhammad, who themselves heard the words of respondent No.3 regarding settling the matter with the learned 1st Additional Sessions Judge (MCTC), Sukkur for passing death sentence against Nazir Lakhan and others in lieu of settled amount. The applicants have, therefore, lost their confidence upon the learned Presiding Officer and pray for transfer of the case to any other Court having jurisdiction except Ghotki. In support of his contentions,

learned counsel for the applicants places reliance upon the cases of Muhammad Nawaz versus Ghulam Kadir and 3 others (PLD 1973 Supreme Court 327), Akhtiar Ali versus The State (PLD 2001 Karachi 14), Alam Khan and 4 others versus The State (2005 YLR 1848), Mohabat versus The State (1999 P Cr. L J 206), Haji Khawar Saleem versus The State (2001 SCMR 905), Muhammad Aslam versus The State (1990 P Cr. L J 205), Muhammad Ismail and 2 others versus The State (1970 P Cr. L J 567), Mst. Rachel Joseph versus Aftabuddin Qureshi, etc. (1998 CrLJ 503) and Mirza Jaffar Beg versus Emperor (A.I.R. 1940 Lahore 354).

4. On the other hand, learned counsel for respondent No.3/complainant contends that the applicants deliberately avoid proceeding with the matter before the trial Court and instant transfer application, based upon serious allegations against the learned Presiding Officer, is without any substance. In fact, it has been filed just to linger on the matter; hence, the same may be dismissed. He relies upon the case of Abdul Razzaq versus The State and 2 others (2002 P Cr. L J 741).

5. Learned Assistant Prosecutor General, by relying upon the case of Abdul Raheem versus The State (2012 YLR 2629), vehemently opposes grant of this transfer application on the ground that the same is based upon vague and frivolous allegations against the learned Presiding Officer.

6. Heard and record perused.

7. Admittedly, the subject FIR was registered at Police Sarhad within the territorial jurisdiction of District Ghotki and earlier the applicant No.1 filed Criminal Transfer Application No. S-22 of 2007 before this Court seeking transfer of the instant case from District Ghotki on the ground that he had been declared KARO by the complainant and he was facing serious threats to his life. Such application was allowed vide order dated 20.08.2007 and it was ordered that the subject case be transferred to any Additional Sessions Judge, Sukkur through learned Sessions Judge, Sukkur. The case was tried by the learned 1st Additional Sessions Judge/MCTC, Sukkur and the applicants were acquitted vide judgment dated 21.05.2019. Such judgment was set aside by this Court in Criminal Acquittal Appeal No. D-98 of 2019, vide judgment dated 01.02.2023, with

direction to learned trial Court to rewrite the judgment after recording statements of private respondents under Section 342, Cr.P.C. afresh and such exercise be completed within two months after receipt of copy of the judgment. Now, when the matter has become ripe for arguments/passing of judgment, the instant transfer application has been filed.

8. Perusal of the case diary of the trial Court dated 18.05.2023 reflects that applicants No.1 and 4 were called absent and the matter was adjourned to 25.05.2023 for further arguments. It is the case of the applicants that sister of applicant No.1 was admitted in NICVD Hospital, Sukkur and mother of applicant No.4 was admitted in GIMS Hospital, Gambat; hence, they both were unable to attend the trial Court on that day. The first and foremost allegation of the applicants is that they saw the respondent No.3/complainant entering the chamber of the learned Presiding Officer, which is not astonishing as on that day the case was fixed and both counsel for the parties were called absent; hence, visiting of chamber by the respondent No.3/complainant does not establish that whether he was called for proceeding with the matter or otherwise. The second ground of allegations against the learned Presiding Officer seems to be a concocted story that two persons, namely, Allah Wadhayo and Mir Muhammad arrived for condolence to applicant No.1, on account of demise of his sister, told the applicant that they themselves heard the respondent No.3/complainant, when he was sitting with some other persons, that *“he has settled the deal with the learned 1st Additional Sessions Judge (MCTC), Sukkur for passing death sentence against Nazir Lakhan and others, so also, he has delivered the settled amount to him, but unfortunately yesterday (18.05.2023) Nazir and Wali Muhammad had not appeared before him, hence, were saved otherwise, they would have been sentenced to death but on the next date the learned Presiding Officer definitely will sentence them to death according to our deal.”*

9. Even if this Court presumes that the respondent No.3/complainant was using the aforesaid words during chitchat in a hotel i.e. public place, the credibility of a Judge cannot be questioned/doubted on these kinds of vague and frivolous allegations, when no such proof is available. It is obvious that one party must suffer either complainant side or accused side

as per facts of the case. I am afraid that if such vague and frivolous allegations of the parties are taken into consideration and are deemed to be true in all the cases, everyone starts using this practice by blemishing the character of Judges, which is very alarming. However, if a party is aggrieved by any judgment/order, the same can be assailed before the appellate forum or as the case may be.

10. 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.

11. For the foregoing facts and reasons, no reasonable ground is made out for transfer of the case; therefore, this transfer application being devoid of any merits is **dismissed** along with listed application.

Abdul Basit

JUDGE