

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Transfer Application No. 95 of 2023

Date	Order with signature of Judge
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Fresh Case:

1. For order on M.A. No.14014/2023 (U/A)
2. For order on M.A. No.14015/2023 (Ex/A)
3. For hearing of Main Case.

22-11-2023

Ms. Zahrah Sehr Advocate for the Applicant

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.
3. The learned 4th Additional Sessions Judge, Karachi East, is seized of a complaint arising from the Illegal Dispossession legislation (31 of 2022). This application has been filed seeking transfer of the complaint from the court hearing it to any other court.

I have heard the learned counsel for the applicant. The grievance seems to be that on 22.07.2023, the learned judge, in the absence of the counsel of the accused, asked the accused to cross-examine the complainant. Hence, the transfer is sought.

I am not satisfied that the ground urged by the learned counsel justifies transferring the complaint from one court to another. It would be appropriate, however, to refer to a judgment of the Supreme Court of Pakistan reported as **Abdul Ghafoor vs The State (2011 SCMR 23)** wherein in a similar situation, it was held as follows:

“With immense respect to the learned Judges of the High Court, we are persuaded to hold that it is the primary responsibility of the court seized of a matter to ensure that the truth is discovered and the accused are brought to justice. If the learned trial Court found that the counsel engaged by the appellant had sought too many adjournments, even then he was not appearing, the court could either have directed that a defence counsel be provided to the appellant at State

expense or could have given last opportunity to the appellant to make alternate arrangements failing which the court would proceed to decide the matter. This course was not adopted by the learned trial Court and instead on 2-12-1999 gave a total surprise to the appellant by asking him to cross-examine those witnesses for which obviously' neither the appellant had the requisite expertise nor he was prepared to do so. In these circumstances and in view of the fair concession given by the State, we find that the procedure adopted by the learned trial Court is reflective of a miscarriage of justice and the appellant be provided one opportunity to have the afore-referred witnesses cross-examined."

The learned trial judge is a professional and capable person who, I have no doubt, will ensure that the ends of justice are met and will keep in mind the view taken by the Supreme Court and the High Courts of the country in the above-mentioned and other cases.

Regarding the request of the learned counsel that the complainant be re-summoned so the counsel for the accused can cross-examine him, the appropriate path to follow would be for the requisite application being filed before the learned trial court, which will decide on the merits of the application.

The application stands disposed of in the above terms.

JUDGE