

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Transfer Application No. 89 of 2023

Date	Order with signature of Judge
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1. For hearing of main case.

06.11.2023

Mr. Ehsanullah Khan advocate for the applicant
Mr. Abdul Hamid Yousufi advocate for respondent No.1
Mr. Sharfuddin Jamali, AAG.

Through this Criminal Transfer Application, the applicant seeks to call the R& P and also request for transfer of the Complaint No. 104/2022 (re-*Muhammad Rafique v Faraz Ahmed & others*) from the Court of Learned IVth Additional Sessions Judge Karachi East, to another competent court of District East Karachi, inter alia on the ground that the trial Court without considering the application of the applicant issued his non-bailable warrant and failed to proceed and decide the Criminal Illegal Dispossession Complaint under law, as such he has lost faith in the trial Court. He prayed for the transfer of his Illegal Dispossession Complaint to another Court having jurisdiction.

2. At this juncture, I asked the learned counsel how he was prejudiced by the act of the learned Trial Court. Learned counsel states at the bar that the learned trial Court is not providing a fair trial to the applicant as embodied in Article 10-A of the Constitution. He emphasized that there is apprehension that the Presiding Officer would not be able to act fairly and impartially in the matter; and that the applicant has lost his confidence or faith in the learned Presiding officer, therefore, there is no hope that the Presiding Officer would provide fair and impartial justice to the applicant. He referred to the statement in support of the application for transfer of the case and argued that when the trial Court has no intention to proceed with the matter in that Court in such circumstances judicial propriety demands that the aforesaid case may be transferred to another Court having jurisdiction for smooth trial of the accused. He prayed for allowing the transfer application.

3. Learned Assistant Prosecutor General, Sindh, assisted by the learned counsel for the respondent, at the outset, contended that there is no reasonable ground or plausible cause has been mentioned for the transfer of the criminal case to one Court from the others; that nowadays it is a general practice that one of the party would think that he will not get

justice and hurriedly believed upon the rumors raised by the defending party as the defending party just to cause harassment or pressurize the contesting party raised such kind of rumors; that at the stage of the trial, it cannot be justified that the Presiding Officer will not act fairly or impartially but it is upon the Presiding Officer to decide the matter on its own merits; that this application, being meritless, may be dismissed.

4. I have heard the learned counsel for the applicant on the issue of maintainability of the instant transfer application and have perused the material available on record including the reference made by the learned trial Court vide letter dated 31.03.2022.

5. In the present matter, the question arises whether this Court can order for transfer of complaint under the Illegal Dispossession Act pending before the Court of learned IVth Additional Sessions Judge Karachi East, to any other Court under Section 526 Cr.P.C.

6. To answer the aforesaid proposition, it is well-settled law that any aggrieved person can file a petition before this Court under Section 526, Cr.P.C. if there appears reasonable apprehension of injustice being done due to the conduct of the court subordinate to the High Court. The said grievances must be agitated before this Court but should be supported by legal requirements of law.

7. On the issue of transferring the case from one Additional Sessions Judge to another, the learned full Bench of Lahore High Court vide order dated 29.04.2019 passed in the case of Naveed Hussain vs. the State, etc. has held as follows:

“In the sequel to what has been discussed above, we are of the considered view that the learned District & Sessions Judge has no authority to transfer the case from one Additional Sessions Judge to another except entrustment of fresh cases in an administrative capacity. Any subsequent transfer of the case from one court to another exclusively lies with the High Court to entertain and decide if at all compelling reasons justiciable within four corners of law are available, in the safe administration of justice.”

8. The learned trial Court has also made reference to the fact that the aforesaid case may be transferred to another Court, however, his earlier reference was declined by this Court. The learned counsel insisted on the premise that since reference has been made as such there is no need to keep the case with that Court. An excerpt of the reference is as under:-

“ On 14.10.2023 at 10.00 a.m. Matter could not be taken up due to other evidence and it was taken up at 11.45a.m where the counsel produced one person namely Ahsan as a witness which was objected by Mr. Asad Ali Kalwar advocate that he

is not listed in witness and his statement is not provided. Thus on this, the counsel for the complainant misbehaved and he shown his no trust on this Court and instead of filing the application for adjournment he filed application under Section 7 of the Illegal Dispossession Act, 2005 but its copy was not supplied for notice to other side.

8. *Since then the matter adjourned on account of intimation given by counsel for the complainant that he has filed transfer application No. 89/2023 before further proceedings.*

The report is submitted as desired and same may be accepted since the delayed reply is not on account of any conduct of this Court but due to delay receiving of notice.”

9. The trial Court has also passed the order on 14.10.2023 which reads as under:-

Under such circumstance it is not desirable for Court to proceed with the matter when allegations have been levelled in the Court to malign and humiliate the Court. I am not deliberately issuing notice under Section 476 Cr. P.C for contempt of Court as the counsel had already shown mistrust. Therefore this matter is adjourned and 15 days time is granted to the complainant to move the application before the competent Court and if he failed to do so, the proceeding shall proceed in accordance with law and notice under Section 476 Cr. P.C shall be issued.

10. Primarily, the court should practice without discrimination and bias. Justice should be given in such a manner that a clear image of the judiciary has to be maintained in the minds of litigants.

11. To have good faith in the court, the court should maintain high moral standards among the members of the judiciary under the Code of Criminal Procedure. Justice can be achieved only when the court deals in the presence of both parties and the court has the power to move cases from one court to another. But the rights of the parties cannot be curtailed, controlled, or interfered with subject to exceptions provided under the law.

12. The concept of impartiality or bias of a judge has been discussed exhaustively by the Supreme Court in its judgment in the case of *the Government of NWFP & Another vs. Dr. Hussain Ahmed Haroon & Others*, **2003 SCMR 104**. It is well-settled law that the transfer of a matter from one court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interest of justice. Reliance is placed upon the judgment in the case of *All Pakistan Newspapers Society & Others vs. Federation of Pakistan & Others* **PLD 2012 Supreme Court 1**.

13. Prima facie the ground raised by the learned counsel for the applicant is not tenable based on mere presumption; in such circumstances, they intend to seek a fair trial in the criminal case pending adjudication, which is only possible if he reposes confidence in the trial court. However, in the best interest of justice, coupled with the stance taken by the learned trial Court through reference dated 11.09.2023, it would be appropriate for the trial Court not to express his view so that the parties may have confidence.

14. Prima facie in the present matters both the parties have certain reservations against each other and one of the parties has strong reservations so far as the partiality of the presiding officer of the concerned Court; in such circumstances, they intend to seek a fair trial in the criminal case pending adjudication.

15. Before parting with this order I expect from the learned Sessions Judge East Karachi for swift disposal of the aforesaid I.D complaint No.104 of 2022 within a reasonable time i.e. within one month and in the meanwhile ensure the safety of the Complainant and his witnesses in the case at the time of hearing of the case through all modes of security as provided under the law so that the witnesses depose their testimony with ease, and that too, in a stress-free environment.

16. In view of the above, the Criminal Transfer Application is allowed with directions to learned Sessions Judge East to withdraw I.D Complaint No. 104/2022 (re-*Muhammad Rafique v Faraz Ahmed & others*) from the Court of Learned IVth Additional Sessions Judge Karachi East, and record evidence of the parties and decide the matter on merits within one month positively.

JUDGE