

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Transfer Application No. 22 of 2023

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Date

Order with signature of Judge

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1. For hearing of main case.
2. For hearing of M.A No. 2197/2023

**10.11.2023**

Mr. Jehangir Ahmed Qureshi advocate for the applicant  
Mr. Salim Raza Jakhar advocate for respondent No.1  
Mr. Abrar Kitchi, APG.

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Through this application, the applicant has prayed for the transfer of Illegal Dispossession Complaint No. 1/2021 (*re-Glulam Husain v Hussain & others*) from the Court of Learned VIth Additional Sessions Judge Karachi West, to another competent court of District West Karachi, inter alia on the ground that the applicant has lost faith in the trial Court.

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 documents attached with the Memo of Transfer Application and argued that in such circumstances judicial propriety demands that the Illegal Dispossession Complaint No. 1/2021 may be transferred to another Court having jurisdiction for smooth trial of the case. He prayed for allowing the transfer application.

3. Learned Assistant Prosecutor General, Sindh, assisted by the learned counsel for respondent No.1, 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 parties on the issue of maintainability of the instant transfer application and have perused the material available on record including the comments made by the learned trial Court vide letter dated 19.10.2023. It appears from the report that the case is fixed for evidence.

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 VIth Additional Sessions Judge Karachi West, 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. Guidance in this regard is sought from a salutary judgment of the Supreme Court handed down in the case of MUHAMMAD NAWAZ vs. GHULAM KADIR (PLD 1973 SC 327).

7. 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.

8. 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.

9. 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.

10. In view of the above facts, I am of the opinion that the applicant has not mentioned any reasonable ground for seeking a transfer of the case from the learned trial Court. Accordingly, the instant Transfer Application, being devoid of merits, is dismissed with no order as to costs. Before parting with this order I expect from the learned Vith Additional Sessions Judge Karachi West, for swift disposal of the aforesaid Illegal Dispossession Complaint No. 1/2021 within one month and in the meanwhile ensure that the witnesses depose their testimony with ease and that too, in a stress-free environment.

JUDGE