

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Transfer Application No.S-09 of 2024
(Wali Ahad Khan Versus Mumtaz Ali Mallah & others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing and order 24.09.2024

Mr. Nadeem Abbasi, advocate for the applicants
Mr. Aijaz Ali Rajar, advocate for respondent No.1 & 2
Mr. Dhani Bux Mari, Assistant P.G Sindh.
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ORDER

Adnan-ul-Karim Memon, J. The applicant through this Criminal Transfer Application under section 526 Cr. P.C requests the transfer of Criminal Case No.117/2024 from the Court of learned Judicial Magistrate Khipro to any other Court of District Mirpurkhas, Umerkot, Nawab Shah or any other Court having jurisdiction.

2. The learned counsel has argued that the applicant is pursuing his criminal case against the private respondents (accused in the subject case); however, the private respondents issued threats to the applicant to withdraw from the case, otherwise, to face the dire consequences; therefore he is unable to present his evidence fairly before the trial Court. He further argued that the applicant at first, approached the Police authorities against the act of private respondents, but to no avail; therefore, the subject case may be withdrawn from the file of the trial Court and be assigned to any Court of District Mirpurkhas, Nawab Shah, Umerkot or any other, having jurisdiction.

3. The learned trial court has filed comments which are reproduced as under:-

“That, the allegations mentioned in the grounds of title application are not against the undersigned but all are against accused persons namely Mumtaz Aki Mallah and Ghulam Sarwar Mallah who are nominated accused persons in instant criminal case No.117/2024 of FIR No.02/2024 of PS FIA CC SBA, U/S 409, 419, 420, 468, 470, 471, 34 and 109 PPC, lodged by complainant namely Wali Ahad S/o Muhammad Yaseen Khan and the same case is pending before this court at evidence stage.

That, the charge of instants criminal case was framed on 13.07.2024 and then summons were issued to the complainant side for evidence, and the matter was fixed to 01.08.2024 for evidence but on the said date the adjournment application was filed by the complainant, and then the date was fixed as 03.08.202, then to 10.08.2024, 24.08.2024, 31.08.024 (on this date viz: 31.08.2024, the complainant appeared along with his learned counsel and again prayed for time for recording his evidence), then the matter was fixed to 14.09.2024 and now same is fixed on 21.09.2024 for evidence.

From the perusal of the record, it reveals that seven dates of hearing have been fixed for evidence but he/complainant is not ready for same.

That, the complainant has alleged in his transfer application that he has life threats from the accused party and they/accused persons will kill him if he/complainant attends this court here at Khipro. In this regard, it is submitted that neither he/complainant has submitted any kind of application/intimation against the accused persons regarding having any kinds of threats from the accused party nor this court has realized any such situation during proceedings, conducted till today. However, the undersigned does not have any objection if the instant criminal case No.117/2024, pending before this court is transferred to another court”

4. I have heard the learned counsel for the parties on the issue of the instant transfer application and have perused the material available on record.

5. Primarily, 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. 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].

6. Prima facie the ground raised by the learned counsel for the applicant is tenable based on the reason that he has life threats from the accused party to kill him if he/complainant attends the court at Khipro, in such circumstances, he intends to seek a fair and speedy trial in the criminal case pending adjudication before another court at Sanghar or otherwise, but not at Khipro, which is only possible if the trial court proceeds with the matter. However, in the best interest of justice, coupled with the instance taken by the learned counsel for the parties, it would be appropriate for a speedy trial of the case.

7. In such circumstances, judicial propriety demand that this matter be referred to District Judge, Sanghar for transfer of criminal case No.117/2024, pending before the trial court, to another court of District Sanghar having jurisdiction for the smooth and speedy trial if he feels feasible after hearing the parties as the lives of the parties is more persious then the other material things.

8. In view of the above Criminal Transfer Application is disposed of along with the pending application(s), if any.

JUDGE

"Ali Sher"