

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S – 77 of 2024

(Muhammad Hashim Buriro v. The State & others)

Cr. Transfer App. No. S – 78 of 2024

(Muhammad Hashim Buriro v. The State & others)

Date of hearing : **11.10.2024**

Date of decision : **11.10.2024**

Mr. Muhammad Junaid Akram, Advocate for applicant.
Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

ORDER

Zulfiqar Ahmad Khan, J. – By this common order, I intend to decide both the captioned transfer applications, filed by applicant (complainant in FIRs), through which two separate orders of even date i.e. 15.08.2024, passed by learned Sessions Judge, Sukkur have been impugned, and transfer of Cr. Cases No.63 and 134 of 2024, arising out of FIRs No.03 of 2024 [u/s 148, 149, 379, 504, 506/2, 337-H(2) PPC], and No.14 of 2023 [u/s 147, 148, 149, 447, 506/2, 337-H(2) PPC] respectively of Police Station Khadheri, from the Court of learned Judicial Magistrate-II, Pano Akil to any competent Court of law having jurisdiction has been sought.

2. Learned Counsel for the applicant has contended that the applicant is worried that he would not get justice because of the accused party's influence and the trial Court's questionable behavior. It is alleged that the trial Court recorded evidence of a witness in absence of the applicant and later on called that witness hostile. The claim of the applicant is that the learned Presiding Officer of the trial Court, who previously acquitted the accused in another case, has become friendly with the accused after taking benefits from them. Moreover, it is also alleged that the respondents have approached the learned Presiding Officer of the trial

Court; hence, the applicant has lost trust in the learned Presiding Officer, and he feels that he will not be given a fair chance to present his case.

3. Conversely, learned Additional Prosecutor General has argued that the applicant's claims lack concrete evidence and are based on speculation rather than fact; therefore, these transfer applications may be dismissed.

4. Learned Sessions Judge, Sukkur, dismissing the earlier transfer applications of the applicant, has given remarks regarding the ground that the trial Court recorded evidence of a witness in absence of the applicant and later on called that witness hostile, which are more or less similar. Hence, the observations made in the order dated 15.08.2024 passed in Cr. Transfer Application No.27 of 2024 are given below:

“6. The main ground mentioned in the transfer application and agitated by the learned counsel for the applicant for transfer of the above cited criminal case was that the Presiding Officer of the learned trial Court of Civil Judge and J.M-II, Pano Aqil has recorded the evidence of PW Fareed Ahmed in absence of the complainant and according to learned counsel for the applicant/ complainant said witness was mixed-up with the accused party, therefore, he did not give true evidence and he was declared hostile, which has impaired the case of the complainant, suffice it to say that the learned Magistrate in his comments has submitted that on 22.05.2024, complainant despite being bound was absent without any intimation and on the said date i.e. 22.5.2024, witness Fareed Ahmed was present and he was ready to give his evidence, thus, his evidence was recorded in presence of learned ADPP for the State as well as learned counsel for the accused. Further, learned Magistrate has submitted that there is no legal requirement that while recording evidence of the witness, the complainant should be present in the Court.”

5. It appears that the assertion of the applicant of not receiving justice due to the alleged influence of the accused party and the purported objectionable attitude of the learned Presiding Officer of the trial Court is apprehensive, and such apprehensions must be substantiated with credible

evidence. Mere speculation does not suffice to warrant a transfer. The declaration of a witness as hostile is a procedural determination made by the Court, which is within its authority when justified by the evidence. Moreover, unfounded claims of corruption cannot serve as valid grounds for transferring a case. The reference to the previous acquittal of the accused in another case, does not, by itself, indicate bias in the current proceedings. Each case is to be determined on its own merits, and prior outcomes do not automatically reflect the learned Presiding Officer's ability to administer justice impartially in subsequent matters. The assertion that the applicant has lost faith in the learned Presiding Officer also lacks a factual basis unless supported by specific instances of judicial misconduct or unfair treatment. Regarding fair opportunity, the applicant is required to provide specific instances illustrating the denial of such an opportunity, rather than relying on general statements.

6. In the circumstances at hand, these applications for transfer seem to be meritless and are accordingly **dismissed** along with pending application(s). The trial Court is, however, directed to proceed with the cases ensuring adherence to the principles of natural justice and fair opportunities of hearing.

Office to place a signed copy of this order in the captioned connected matter.

J U D G E

Abdul Basit