

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S – 107 of 2024
(Habibullah Mashori v. The State & another)

Date of hearing : **18.11.2024**

Date of decision : **18.11.2024**

Mr. Waqar Ali Phulpoto, Advocate for applicant.

ORDER

Zulfiqar Ahmad Khan, J. – Through this transfer application, the applicant (accused) requests for transfer of Sessions Case No.509 of 2019, arising from Crime No.42 of 2019, registered at Police Station Sobhodero under Section 376-I, PPC, from the Court of learned Additional Sessions Judge-IV, Khairpur to any other Court with proper jurisdiction.

2. Learned Counsel for the applicant has argued that there are counter-cases filed by both the accused and the complainant parties, and that the learned Presiding Judge is exerting undue pressure on the applicant to reach a compromise with the complainant. It is further contended that the learned Judge has openly stated that if the applicant does not accede to the alleged illegal demands of the complainant party, he will be convicted. Learned Counsel has further argued that, in light of such conduct, the applicant feels he cannot receive a fair trial in the said Court and has lost confidence in the impartiality of the proceedings. To support this claim of bias, learned Counsel has cited an instance where a fine was imposed upon the brother of the applicant, who is the complainant in the counter case, suggesting that the learned trial Court is showing favoritism.

3. A perusal of the case diaries of the learned trial Court, submitted by the learned Counsel, reveals that on 05.10.2024, both the complainant

and his witnesses were present, and the case was adjourned at the request of the applicant's (accused) Advocate, who is also representing the complainant in the counter-case. On the next date i.e. 22.10.2024, the learned trial Court recorded the examination-in-chief of witness Deedar Ali; however, the Advocate for the applicant (accused) again filed an adjournment application, which was granted by the learned trial Court, reserving the cross-examination of the witness. Apart from this, there is no further record submitted by the applicant, which too works against him, as it appears that he is attempting to prolong the proceedings while taking advantage of the bail granted to him.

4. There is no written proof on record regarding the imposition of a fine in the separate case involving the applicant's brother (complainant in the counter-case). Even if such an imposition did occur, it is entirely unrelated to the present case. The fine imposed in the other matter has no bearing on the proceedings here and should not be used to question the fairness of the trial or the impartiality of the learned trial Court. Each case must be evaluated on its own merits, and actions taken in an unrelated case should not influence the course of the current proceedings.

5. Moreover, the allegation made by the applicant that he has been asked by the learned Presiding Officer for compromising the matter with the complainant party in counter-case, there are mere words and without any supporting evidence. It is important to note that this case arises from an offence registered in 2019, and nearly five years have elapsed since the alleged crime occurred, but the trial has not yet been concluded.

6. It is pertinent to note that a transfer of a case from one Court to another cannot be claimed as a matter of right or granted as a routine procedure. When an application for transfer is made, the Court must carefully assess whether the mistrust of applicant(s) is based on genuine concerns or is merely speculative. While exercising the power to transfer

cases, the Court must ensure that transfers are not granted solely based on unfounded or conjectural fears. Moreover, it is crucial to protect the integrity of the Presiding Officers of the Courts from frivolous allegations. These officers perform a noble and dignified duty, and they should not be subjected to harassment or have their decisions questioned based on groundless apprehensions.

7. In light of the above, the transfer application lacks merit and is **dismissed in *limine***. Alternatively, the learned trial Court is directed to expedite the proceedings and conclude the trial in accordance with the law, preferably within three months, to ensure that justice is served without further delay in this long-pending case.

J U D G E

Abdul Basit