

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Transfer Application No.S-78 of 2024

Date of hearing	Order with signature of Judge
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1. For orders on M.A No.6429/2024 (U/A)
2. For orders on office objection at Flag "A"
3. For orders on M.A No.6430/2024 (E/A)
4. For hearing of main case

06.11.2024

Mr.Zafar Ali Malghani, Advocate for the applicant.

1. Urgency is granted.

2-4. Through this Criminal Transfer Application, the applicant has impugned the Order dated 21.10.2024, rendered by the learned Sessions Judge, Jacobabad, in Criminal Transfer Application No.17/2024, whereby the applicant's entreaty for the transfer of Criminal Case No.186/2024, emanating from Crime No.07/2024, registered at Police Station: Civil Line Jacobabad, from the Court of the Civil Judge and Judicial Magistrate-II, Jacobabad, to any other Court possessing jurisdiction, was declined.

The learned counsel contends that the applicant has lost faith in the Presiding Officer due to his harsh behaviour and adverse comments against the applicant. It was further asserted that on 21.09.2024 while recording the evidence of the complainant, the objections raised by the counsel for the applicant/accused were not considered. Hence, the applicant apprehends that the trial may not be concluded in accordance with the law. Therefore, the instant Criminal Transfer Application may be allowed.

Upon meticulous scrutiny of the record, it transpires that the learned Sessions Judge, Jacobabad, subsequent to soliciting comments from the trial Judge, repudiated Criminal Transfer Application No.17 of 2024 via Order dated 21.10.2024. The pertinent observations are reproduced hereinbelow:

“I have heard arguments of learned counsel for parties and perused comments received from learned trial Magistrate, who has denied the allegations on the contrary he has alleged that during evidence learned counsel for applicant/accused was interrupting by raising unjustified objections with intention to cause hindrance in process of evidence, such note as per comments about conduct of learned counsel was put in bottom of evidence of complainant, there exists no such fault from part of the P.O of the trial court, as at most a counsel for party can make request to the Court in respectful manner to record his reasonable objection, but no one can dictate the Court, even during arguments learned counsel for applicant/accused failed to satisfy this Court that how he has lost faith from P.O of the Court and how he was favoring the complainant party, if such type of transfer applications are frequently allowed, it will encourage the parties to get their cases transferred from one Court to other as per own choice, therefore I am of the considered view that reason shown in transfer application requires no consideration, which being devoid of merits is hereby dismissed. However it is expected that learned P.O of the trial court shall decide the matter purely on merits after providing full and fair opportunity to the prosecution and defence under scheme of law absolutely uninfluenced from any party or the counsel.”

Upon reviewing the above Order, it is evident that the learned Sessions Judge dismissed the transfer application after receiving comments from the learned Presiding Officer of the trial court, who denied the allegations levelled in the application. A perusal of the record reveals that the learned Presiding Officer of the trial Court has not declined his ability to administer justice in the given situation. The record does not support the contention of the learned counsel for the applicant/accused that the learned trial judge is biased against the applicant/accused. It is crucial to note that the transfer of a case is deemed necessary whenever it is observed or apprehended that the attitude and conduct of the Presiding Officer are prejudicial. However, to substantiate bias against the judge, it must be demonstrated that some tangible act or expression of the judge is evident on record. Mere suspicion or artificial apprehension is insufficient to warrant the transfer of the case. The applicant has not presented any substantial evidence on record to support the allegation. A mere bald statement containing the allegation is not sufficient to justify the transfer. The transfer of a case from one Court to another indirectly casts doubt on the competence and integrity of the judge from whom the transfer is sought. Mere presumptions or possible apprehensions are not sufficient. Only substantial and sufficient grounds, clearly set out in the transfer application, may justify the transfer of the case. In the present transfer application, there is

an allegation against the Presiding Officer, but it is without material or evidence. No grounds for the transfer of the case are made out; therefore, the present criminal transfer application is **dismissed** in limine. However, it is expected that the trial Court will adjudicate the matter with utmost impartiality and earn the trust of both parties.

Manzoor

J U D G E