

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer Application No.S-108 of 2015

Syeda Rukiya Shah and another

v/s

Abdul Shakooab and others

Date of hearing	06-03-2017
Date of Order	08-03-2017
Applicants	Through Mr. Shabbir Ali Bozdar, advocate.
Respondents No.1 & 2	Through Mr.Mehfooz Ahmed Awan, advocate
Respondent No.3/ complainant	Through Mr.Abdul Mujeeb Shaikh, advocate
Respondent	State Through Mr. Zulfiqar Ali Jatoi, D.P.G

ORDER

Mohammad Karim Khan Agha, J: By this order I propose to dispose of Cr.Tr.Application No.108 of 2015 filed by Syed Rukiya Shah and Syed Ghulam Hussain Shah (the applicants) seeking the transfer of sessions case No.395/2004 "State v/s Abdul Qayoom and others" from the court of learned IInd Additional Sessions Judge Ghotki to any other competent court of law having jurisdiction of district Ghotki to try and decide the same on merits.



The Respondents 1 and 2 were booked in crime No.224/2004 at PS Daharki under section 302, 324, 34 PPC. In essence they have been charged in a double murder case. The incident took place in 2004 and the respondents 1 and 2 remained absconders for about eleven years. The charge has now been framed but as of today no evidence has been recorded. According to the applicants they have

lost confidence in the Presiding Officer (PO) trying the case and have therefore sought transfer of the same.

3. Learned counsel for the applicants submitted that the main ground for the applicants losing confidence in the PO is that the PO had granted post-arrest bail to respondent No.1 and 2 by order dated 04.01.2016 despite them being formerly absconders and their being sufficient evidence to connect them with the most serious offence of double murder. The applicants also contended that the PO further showed his leniency in favour of respondents No.1 and 2 by attempting to pressurize the applicants in making a compromise with the respondents. He also alleged that trial dates would be given by the PO on the wishes of the respondents and for all the above reasons the applicants had lost confidence in the PO and had therefore requested the transfer of the case to another PO.

4. In support of his contentions learned counsel for the applicants placed reliance on the cases of **Bilal Hussain vs. 2nd Additional Sessions Judge, Hyderabad and 2 others** (2015 MLD 1593), **Surraya Begum vs. The State and another** (PLD 1996 Lahore 189) and **Amir Altas Khan and another vs. The State and 2 others** (2002 SCMR 709).

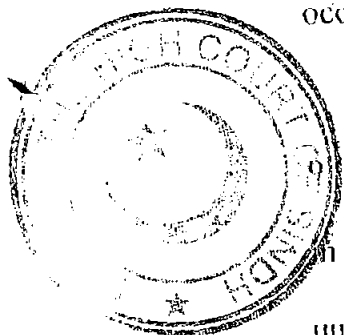
5. Learned counsel for the State also supported the transfer application on the basis of paragraphs 7, 8 and 9 of the transfer application which in essence stated that the PO was giving dates at the wishes of the respondents, that relatives of the respondents have won over the PO and that the applicant No.2 had moved a written application before the trial court stating that he had no confidence in the PO.



6. On the other hand, the complainant opposed the transfer application and submitted that the PO had shown no bias or favoritism towards the respondents and that this application was simply a tactic by the applicants to further delay the trial of the respondents.

7. I have heard learned counsel for applicants, the State and complainant and perused the record and considered the case law cited by them at the bar.

8. In my view the case of **Bilal Hussain** (supra) is distinguishable from the present case. In that case the learned judge seems to have ordered that the applicants, who were on bail and present in court who had requested an adjournment as their counsel was busy before the High Court and on refusing the adjournment the learned judge had ordered the applicants to be **handcuffed** and sent to judicial lockup. This harsh action prima-facie tended to show some animosity by the learned trial judge towards the accused. No such incident occurred in the instant case. **The Surraya Begum case** (Supra) does not seem to be relevant to the instant case since it mainly concerns the locus-standi to move an application under section 526 Cr.P.C. **The Amir Altas Khan case** (Supra) is also distinguishable from the instant case as it concerned the issue of non-bailable warrants being issued against the accused who was a practicing advocate which led to apprehension that applicant may not get a fair trial. No such like incident occurred in this case.



It appears in this case that the main ground for the applicants losing faith in the PO is that he allowed post-arrest bail to the respondents which was totally unjustified based on the facts and circumstances of the case. It is notable however,

that the applicants have not appealed the grant of post-arrest bail to the respondents which in my view does not fully fit in with the contention that the learned PO was biased or against them. Had they made such appeal any such bias or favoritism shown by the PO to the respondents in granting such a blatant unjustifiable bail order would most likely have become apparent and the matter could have been rectified at this stage.

10. In the case of **Mian Muhammad Rafiq Saigol vs BCCI and others** (1996 CLC 1930) it has been held that merely because an adverse judicial order had been passed against a party it would not serve to be a sufficient ground to justify the transfer of the case from one trial court to another because the aggrieved person had the remedy of fully challenging that adverse order before the higher forum. I am in full agreement with this line of reasoning since to proceed contrary to the same would mean that in each and every case in which a party receives an order which it considers adverse to it he could apply to transfer the case without needing to pursue its other remedies under the law against such order. To allow such a proposition in my view would in effect be an open invitation for unscrupulous applicants to seek to transfer a case if they felt that the decision was going against them and thereby not only aim to derail the decision but also unnecessarily prolong the case which would not equate with the concepts of ensuring either the efficient administration of justice or the right to an expeditious trial. It would be akin, in my view, to allowing a party on flimsy uncalled for grounds to seek to keep on changing the judge in his trial until he was of the view that the judge was favorable to him which is contrary to our system of justice where the accused has no right to pick the judge of his choice. Such conduct would also undermine the PO's in the performance of their functions. In this case the applicants have only



leveled bald allegations against the PO which have not been substantiated by any material on record.

11. Even in the **Amir Altas Khan case** (supra) it was held that a party cannot claim the transfer of the case as a matter of routine or at his wishes **unless** it is shown from the record that in the circumstances a free and fair trial is not apparent from the face of the record. In my view the applicants have not been able to show from the record that a free and fair trial would not be possible.

12. Furthermore it was also held in the case of **Sameer Ehsanullah Makhzan and 3 other vs. Muhammad Asif Zaman and 3 others** (PLD 1993 Lahore 554) at page 557 paragraph-4 as under:-

“4. I have considered the arguments addressed by the learned counsel for the petitioners and have also perused the comments submitted by the learned Civil Judge. There is no cavil with the proposition that justice is not only to be done but it should appear to have been done and further that any genuine apprehension in the mind of the litigant which is based on valid and reasonable grounds that he shall not get justice at the hands of the Presiding Officers, will be a valid ground for transfer of a case from that Court. **However it is equally important that the Courts should not be unnecessarily harassed merely on the basis of baseless apprehension, of reckless litigant, which is result of whims, surmises and conjectures. Learned Judicial Officers who preside the Court, have to be given a full protection against frivolous allegations in view of the onerous, noble and dignified duty they are performing while deciding the cases, and for performance whereof they are directly responsible to the Almighty Allah. They should not be allowed to be harassed and maligned unnecessarily by the litigants merely because they pass judicial orders against the said litigants.**”(bold added)



13. The above view has recently been endorsed by a Divisional Bench of this court in Cr.Transfer Application No.D-160 of 2016 in the case of **Adul Latif and another V The State** (unreported) dated 14-01-2017.

14. It also appears in the instant case that the charge has only been framed so there has been little, if any, opportunity for the PO to display any kind of bias or favoritism towards any party and as such the learned counsel for the applicants has not been able to point to any corroborative material from the record in support of his claim that the PO unfairly and unjustifiably allowed the respondents post-arrest bail.

15. In my view based on the facts and circumstance of this particular case the applicants have not been able to make out a case for the transfer of their case on account of any bias or unfairness or favoritism on the part of the PO as would justify the transfer of their case and as such the criminal transfer application is dismissed. However, the learned trial court hearing this case is directed to decide the case on merits within four months of the date of this order. The office shall provide a copy of this order immediately to the learned PO of the trial court for its compliance.

Sd/-

MO HAMMAD KARIM KHAN AGHA,
JUDGE.

Sukkur

Dated: 08-03-2017

Announced by me

Sd/-

MUHAMMAD HUMAYON KHAN,
JUDGE.

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COMPARED BY

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ASSISTANT REGISTRAR.

