

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc.Appln. No. S - 398 of 2019.

Applicant: Nawab Ali Bhatti
Through Mr. Fayazuddin Rajper
Advocate.

Respondent: The State
Through Mr. A.R. Kolachi
DPG.

Date of Hearing 24th June, 2019.

ORDER

ADNAN-UL-KARIM MEMON, J: Basically, through the captioned Misc. Application, the Applicant has called in question the order dated 01.06.2019 passed by learned 2nd Civil Judge & Judicial Magistrate, Moro, whereby he issued NBWs of the Applicant on the premise that he failed to appear before the Court. Prima-facie the conduct of the applicant is not above board. The learned trial court has reservation and observed as under:-

“Advocate for accused submitted condonation application of accused Nawab Ali, who has been given last chance two times for his appearance but today also he failed to appear before the Court. It is matter of record that accused was released on bail on 26.1.19 and challan was submitted before the learned Court on 10.4.2019 and after that accused failed to appear on each hearing and every times his learned counsel submitted condonation application on different grounds. Prima facie it shows lack of respect for the Court from the accused side and he is deliberately and intentionally avoided to appear before the Court. Therefore condonation application stands dismissed. Office is directed to issue NBWs against

accused through SHO PS Moro and also issued notice to his surety”.

2. During the course of arguments, I queried from the learned Counsel to justify the action of the applicant in the light of observation made by the learned trial court. In reply to the query, Mr. Fayazuddin Rajper learned Counsel for the Applicant has briefed that on 01.06.2019 the matter was fixed before the learned trial Court but the applicant could not appear therefore his counsel moved an application for adjournment and condonation of absence of applicant but the learned trial Court declined the request and issued NBWs against him without assigning any cogent reason; that the learned court was not justified in issuing NBWs against the applicant, when the counsel for applicant moved an application for condonation of his absence; that the applicant is ready and willing to appear before the learned trial Court to face the agony of trial if the impugned NBWs issued against him by the learned trial Court are suspended. I am of the tentative view that this is hardly a ground to ask for relief in such circumstances.

3. Mr. Abdul Rehman Kolachi learned DPG is present in Court in some other matters, waives notice of this application and states that in order to enable the applicant to appear before the trial Court and furnish his bond, an appropriate order may be passed in order to secure the ends of justice.

4. I have heard learned counsel for the applicant, and learned DPG and perused the material available on record minutely with their assistance as well as impugned order passed by the learned trial Court and the reasoning given by him while issuing NBWs against the applicant.

5. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the Parties, the basic primordial question requires my determination is whether this Court can convert and or convert one kind of proceeding into another?

6. To address the above proposition of law with regard to the Power to convert and or convert one kind of proceeding into another is always existed and can be exercised by the High Court not only at an advance stage in order to prevent injustice. No fetters or bar could be placed on the powers of High Court to convert one kind of proceeding into another and to decide the matter either itself in exercise of its jurisdiction or to order its transfer to another Court having jurisdiction or may remit it to Court/forum/authority having jurisdiction on merits. The High Court in number of cases converted appeals into revisions or vice versa or Constitution Petitions into appeals or revision and vice versa. Reference is made to the following case law. The Honorable Supreme Court has already settled the aforesaid proposition in the cases of Jane Margret William v. Abdul Hamid Mian (1994 SCMR 1555), Capital Development Authority v. KhudaBaksh and 5 others (1994 SCMR 771), Shams-ul-Haq and others v. Mst. Ghoti and 8 others. (1991) SCMR 1135), Muhammad Anis and others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539, Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others (2015 PLC (C.S)215), The Thal Engineering Industries.Ltd. v. The Bank of Bahawalpur Ltd and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139), and in the

case of MianAsghar Ali v. Government of Punjab and others (2017SCMR 118).

7. To sum up the matter in hand and after seeking guidance from the decision rendered by the Hon'ble Supreme Court in the case of Muhammad Akram Vs. DCO RahimYar Khan and others (2017 SCMR 56).

I am of the considered view that the Courts are sanctuaries of justice and in exercise of authority to do ex-debito justitiae, that is to say remedy a wrong and to suppress a mischief to which a litigant is entitled. No fetters or bar could be placed on the High Court to convert and treat one kind of proceedings into another kind and proceed to decide the matter either itself as provided in the constitution or transfer to any other Court having jurisdiction or remit to the competent authority/forum or Court for decision on merits.

8. In view of above, in order to secure the ends of justice, operation of NBWs issued against the applicant by the learned trial Court is converted into BWs enabling the applicant to furnish appropriate bond before the learned trial Court. However, Applicant is directed to appear before the trial Court on the next date of hearing and in case of failure the order passed by the learned Court on 01.06.2019 shall be operative.

9. The aforesaid Misc. Application stands disposed of in above terms.

JUDGE

Akber.