

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S – 33 of 2021

Date of hearing	Order with signature of Judge
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For hearing of main case

05-11-2021

Mr. Naeemuddin Z. Kasimi, Advocate for the Applicant.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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Through this Transfer Application, the Applicant seeks transfer of Crime No.28 of 2019 of Police Station Pano Aqil under Sections 489, 506/2, 34, PPC, pending before the Court of 2nd Civil Judge / Judicial Magistrate, Pano Aqil.

2. Learned Counsel submits that by way of judgment dated 12-11-2019, the Applicant was convicted by the said Trial Court, against which Criminal Appeal No.18 of 2019 was filed. He submits that vide judgment dated 19-10-2020, the conviction was though set aside, however, it was only done on one ground that there was some confusion regarding the name of the Applicant from Ahmed Hussain to Ahmed Ali, and now the matter is pending before the same Judge who had earlier awarded conviction, hence, the matter be transferred.

3. On the other hand, learned Additional P.G submits that this alone is no ground for transferring the case. Insofar as the Complainant is concerned, on the last date of hearing, Zameer Hussain was in attendance and submitted that he will not engage the Counsel and the matter be proceeded by learned Additional P.G.

4. I have heard the learned Counsel for the Applicant as well as learned Additional P.G and perused the record.

5. As to the facts narrated herein above, the contention of the Applicant's Counsel to the extent that the Appellate Court had set aside the judgment of the Trial Court only to the extent of confusion in the name is an admitted position. The learned Appellate Court had not dilated upon merits of the case in any manner and apparently the apprehension of the Applicant seems to be justified. It further appears that when the Applicant approached the Sessions Judge for transfer of the case, the same was rejected vide order dated 08-04-2021, and in Para-5 thereof, the learned Sessions Judge observed that "*Appellant did not raise such plea before appellate Court that on remand of case, Presiding Officer of same Court would not change his earlier view.*" As to this observation, it may be observed that the Applicant / Appellant could not have foreseen that the Appellate Court would remand the matter merely on some confusion in the name of the Applicant, and therefore, such plea could not have been raised by him.

6. In view of hereinabove facts and circumstances, this Application merits consideration and is accordingly **allowed**. Crime No.28 of 2019 of Police Station Pano Aqil shall be transferred from the Court of 2nd Civil Judge / Judicial Magistrate to any other appropriate Court by the learned Sessions Judge, Sukkur.

Abdul Basit

J U D G E