

ORDER SHEET

IN THE HIGH COURT OF SIND, CIRCUIT COURT HYDERABAD

Criminal Transfer Application No. S – 67 of 2013

Date	Order with signature of Judge
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24.02.2014.

Mr. Rana Muhammad Siddique Khan advocate for the applicant.

Mr. Shahid Ahmed Shaikh APG for the State.

ORDER

NADEEM AKHTAR, J. – The applicant has filed this transfer application seeking transfer of Criminal Appeal No. 03 of 2012 (Altaf Hussain V/S The State) from the court of 1st Additional Sessions Judge Shaheed Benazirabad to any other court. The said appeal has been filed by the applicant against his conviction by the trial court whereby he was sentenced under Section 245(2) Cr.P.C. to suffer rigorous imprisonment of one year and to pay Rs.20,000.00 to injured Muhammad Bux as *Daman*.

2. The main ground on which the applicant is seeking transfer of his appeal is that, according to him, the learned appellate court on 31.08.2013 asked him in open court to oblige the complainant by paying him the amount of *Daman*, or else his appeal would be dismissed. The other ground urged by the applicant is that the learned appellate court is under the influence of the complainant, who is an advocate. It was urged on behalf of the applicant that the applicant does not expect justice from the learned appellate court in the above circumstances. In support of his submissions, learned counsel for the applicant cited and relied upon the case of *Bakhtawar V/S Muhammad Ali and 3 others*, **1982 P.Cr.L.J. 136**.

3. Comments have been filed by the learned appellate court, wherein while denying the allegations levelled by the applicant, it has been stated that the said court has no objection if the applicant's appeal is transferred to any other court. However, this transfer application was opposed by the learned Assistant Prosecutor General by submitting that it has now become a habit of litigants to file such frivolous applications without any basis or justification.

4. In my humble opinion, the above grounds urged on behalf of the applicant have no force. The applicant has not placed any material on record that may indicate that the learned appellate court has acted in a partial or biased manner in proceeding with his appeal. It is to be noted that no material, procedural or other irregularity in the proceedings has been pointed out by the applicant, which shows that the case is being proceeded with in accordance with law. The allegations made by the applicant against the learned appellate court and the complainant are mere allegations without any basis or cogent reasons. It is now well-settled that a case should not be transferred from the court of competent jurisdiction unless the allegations / grounds seeking transfer of the case are supported by strong cogent reasons or convincing evidence.

5. In the case of Bakhtawar supra relied upon by the learned counsel for the applicant, it was urged that the trial court had acted illegally and to the prejudice of the petitioner as an order of re-summoning a witness was passed on an application filed by the accused without issuing any notice to the complainant and without hearing ; and, one of the parties was forced to give a written undertaking to produce the said witness. The cited case, which even otherwise does not have a binding effect on me, is of no help to the applicant as a material and serious irregularity was pointed out therein on the basis of which transfer was sought. As already observed above, no material, procedural or other irregularity in the proceedings has been pointed out by the applicant in the instant case, which shows that the case is being proceeded with in accordance with law.

6. Before parting with this case, it may be observed that in case a transfer application containing allegations against the presiding Judge is allowed, it would impliedly mean that such allegations against the presiding Judge have been deemed to be correct. Such a situation would certainly lower the image, dignity and honour of judiciary in the eyes of public at large. It is only because of this reason that withdrawal or transfer of a case from the court proceeding therewith, is allowed only in exceptional circumstances where the grounds urged in support of withdrawal or transfer are supported by strong cogent reasons and evidence. If such practice is not followed strictly, the parties are likely to take undue advantage by filing applications for transfer of their cases on flimsy, frivolous and baseless grounds. While considering a transfer application, it must be kept in mind that the parties should not be allowed to pick and choose the court of their own choice or liking.

For the foregoing reasons, this transfer application is dismissed. It is, however, expected that the learned appellate court shall decide the applicant's appeal strictly in accordance with law.

J U D G E