

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Transfer Application No. S – 64 of 2013

Date	Order with signature of Judge
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For Katcha Peshi :

Applicant : Jumo through Mr. Amjad Ali Sahito, Advocate.
Respondent No.1 : Ahmed through Syed Madad Ali Shah, Advocate.
Respondent No.9 : The State through Mr. Muhammad Iqbal Kalhoro,
Advocate.
Date of hearing : 20.01.2014.

ORDER

Nadeem Akhtar, J. – This transfer application has been filed by the applicant / complainant under Section 526 Cr.P.C. seeking transfer of Sessions Case No.100/2013 (The State V/S Ahmed & others) in Crime No.134/2012 of Police Station Umerkot under Sections 302, 324, 147, 148, 149, 504 and 114 P.P.C., from the Court of the learned Additional Sessions Judge, Umerkot, to the Court of the learned Sessions Court, Umerkot.

2. The relevant facts of the case are that the applicant / complainant lodged the aforementioned F.I.R. on 01.09.2012 at 21:45 hours with the Police Station Umerkot, alleging that he, along with his brother Laloo and relatives Gulchand and Premchand, were attacked near link road Soofi Shakh Bridge by (1) Ahmed, (2) Khalid, (3) Diyaram, (4) Alam, (5) Velo, (6) Maansing, (7) Koombho, (8) Bhagwano Kolhi and (9) Teekmoon. Accused Ahmed was armed with a gun, and the other co-accused had hatchets and *lathis* in their hands. At the instigation of accused Ahmed, accused Khalid attacked the applicant / complainant with a hatchet, and the other co-accused caused *lathis* and hatchet blows to his brother Laloo and relatives Gulchand and Premchand on the head and other parts of their bodies. When they raised cries, his brothers Chanesar, Samto and Laloo Kolhi came running for their help. Accused Ahmed fired a straight shot from his gun at Chanesar with intention to kill him, which caused the death of Chanesar.

3. After registration of the F.I.R., investigation was started by the Investigation Officer, who arrested the co-accused Bhagwano and Koombho, produced them before the Judicial Magistrate-I Umerkot on 08.09.2012, and requested for their

police custody remand of 14 days. However, such remand was granted only for 3 days till 11.09.2012. On 11.09.2012, the above named two co-accused were produced in custody before the same Magistrate for obtaining their police custody remand, but they were sent to judicial custody remand. It has been averred that during both the said remands, co-accused Bhagwano Kolhi did not dispute his identity nor did he complain that he had been falsely implicated in the case. Thereafter, challan was submitted before the Judicial Magistrate-I Umerkot, but as the case was triable exclusively by the Sessions Court Umerkot, the same was sent to the Sessions Court Umerkot, from where the case was transferred to the Court of the Additional Sessions Court Umerkot.

4. It has also been averred that while the case was pending, co-accused Bhagwano Kolhi applied for pre-arrest bail to the Circuit Court Hyderabad, where some other Bhagwano S/O Mehro was produced before the Court. It has been alleged by the applicant / complainant that pre-arrest bail was obtained by Bhagwano through fraud and by misleading the Court as co-accused Bhagwano Kolhi was in jail. As the applicant / complainant was on notice, he appeared before the Additional Sessions Judge Umerkot, where his statement was recorded that his brother Chanaser had been killed by the persons nominated by him including co-accused Bhagwano, and co-accused Bhagwano confined in jail was the same person who had been identified by him. After recording the statement of the applicant / complainant and perusing the statement submitted by the Investigation Officer, the Additional Sessions Judge Umerkot passed an order that co-accused Bhagwano was in the District Jail Mirpurkhas and was identified by the applicant / complainant and the Investigation Officer ; and, the person claiming to be Bhagwano released on bail, was not the co-accused Bhagwano Kolhi.

5. It has been further averred that the accused party applied for re-investigation of the case, when co-accused Bhagwano Kolhi changed his version for the first time and disclosed that his name was Chander and not Bhagwano. Such plea was rejected by the Additional Sessions Judge Umerkot. Thereafter, co-accused Bhagwano Kolhi filed an application under Section 265-K Cr.P.C., which was allowed and he was acquitted by the Additional Sessions Judge Umerkot, without appreciating or realizing that his predecessor had rejected the above plea taken by co-accused Bhagwano Kolhi.

6. Learned counsel for the applicant submitted that after rejection of the plea of co-accused Bhagwano Kolhi that his real name was Chander, his acquittal by the successor Additional Sessions Judge Umerkot, was not justified. He further submitted that in view of the acquittal of co-accused Bhagwano Kolhi in such suspicious circumstances, the applicant / complainant has lost faith and confidence in the trial Court, and he seriously apprehends that not only the case of

the prosecution has been seriously affected, but also that he will not get justice from the trial Court. It was urged that it shall be in the interest of justice that this application be allowed by ordering withdrawal of the case from the Court of Additional Sessions Court Umerkot, and by transferring the same to the Court of the learned Sessions Court Umerkot.

7. The application was opposed by the learned counsel for respondent No.1 as well as the learned A.P.G. by submitting that acquittal of one of the co-accused is not a valid ground for transfer of the case ; and, the other allegations made by the applicant / complainant are mere apprehensions.

8. I have considered the respective submissions made by the learned counsel and the learned A.P.G. It must be kept in mind that this matter involves the alleged murder of the real brother of the applicant / complainant, who has lost faith and confidence in the trial Court because of the circumstances mentioned above, and who apprehends that he will not get justice from the trial Court. The circumstances in which the name sake of co-accused Bhagwano Kolhi obtained bail and the circumstances in which the co-accused Bhagwano Kolhi was acquitted by the trial Court, are sufficient to create suspicion and doubt in one's mind. The matter pertains to the alleged offence of murder which, if proved, could be followed by capital punishment, and if not proved due to any defect in the trial, could cause miscarriage in the dispensation of justice. Therefore, I am of the considered opinion that it would be in the interest of justice that the trial should proceed before a Court in which both the parties should have full faith and confidence. This transfer application is, therefore, allowed as prayed.

It may be observed that this order shall not prejudice in any way the proceedings that may have been initiated or are pending against the acquittal of co-accused Bhagwano Kolhi, which shall be decided on their own merits.

J U D G E.