

Order Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Transfer App. No. S - 27 of 2023

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

15.05.2023

Mr. Munawar Alam Khan, Advocate for the applicant.
Mr. Imran Mobeen Khan, Assistant Prosecutor General.

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1. Mr. Wajid Ali Abro, Advocate files power on behalf of respondents No.2 to 5, which is taken on record.

2. Through instant Criminal Transfer Application, the applicant seeks transfer of Sessions Case No.306 of 2018 (*Re: The State v. Abid Hussain and others*), arisen out of Crime No.03 of 2018 registered at Police Station Tamachani, District Sukkur under Sections 506/2, 337-H(2), 504, 381-A, 147, 148, 149, P.P.C., from the Court of learned Vth Additional Sessions Judge, Sukkur to any other Court having jurisdiction.

3. Learned counsel for the applicant contends that the learned Presiding Officer gave the applicant notices of three applications on the same day; one for staying the proceedings and the two others under Section 265-K, Cr.P.C. and under Article 163 of the Qanun-e-Shahadat Order, 1984, respectively, though earlier two applications under Section 265-K, Cr.P.C. have been dismissed; that the learned Presiding Officer has pressurized the applicant for compromise with the accused persons; that the attitude of the learned Presiding Officer is very harsh with the applicant; that the applicant has apprehension that the learned Presiding Officer will acquit the accused and he will be deprived from justice.

4. On the other hand, learned counsel for the respondents, denying the allegations leveled against the learned Presiding Officer, contends that the applicant avoids proceeding with the matter before the trial Court and instant transfer application has been filed only to linger on the matter; hence, the same may be dismissed.

5. Learned Assistant Prosecutor General, while relying upon the case of *Akhtar Ali versus The State* (2020 SCMR 1243), also opposes grant of this transfer application on the ground that the same is based upon frivolous allegations against the learned Presiding Officer.

6. The perusal of the record shows that the sole ground agitated by the learned counsel for the applicant is based upon lack of confidence upon the learned Presiding Officer. In this regard, learned counsel for the petitioner has made sub-grounds of entertaining successive applications, wherein only notices have been issued to the petitioner, allegation of pressurizing the applicant by the learned Presiding Officer with harsh attitude for compromise with accused persons and apprehension of injustice. As regards the filing of application under Section 265-K, Cr.P.C. by the accused, suffice it to say that mere entertaining of any successive application under Section 265-K, Cr.P.C. by the trial Court is no ground for assuming or presuming that the applicant would not get a fair and impartial trial. Even otherwise, in case the successive application under Section 265-K, Cr.P.C. is allowed, the applicant will have remedy of filing of appeal against the acquittal order. Moreover, the allegation made by the applicant that he has been asked by the learned Presiding Officer for compromising the matter with the accused persons, there are mere words and without any supporting evidence. It may be observed that the

applicant/complainant is a senior practicing advocate and it is not expected that he would be pressurized by the Presiding Officer of the trial Court to enter into compromise with respondents/accused.

7. It may be observed here that transfer of case from one to another Court cannot be claimed by the applicant(s) as a matter of right or cannot be granted as a matter of routine and the Court before whom the application for transfer is moved has to see whether mistrust shown by the applicant is genuine or otherwise. Besides, while exercising jurisdiction to transfer cases from Courts, balance has to be struck in order to ensure that the cases are not transferred mainly on the basis of unfounded and conjectural apprehensions. It may also be observed here that the Presiding Officers of the Courts have to be given full protection against frivolous allegations in view of the honourous, noble and dignified duty they are performing and while deciding the cases they should not be allowed to be harassed unnecessarily by the litigants to mainly entertain groundless and baseless apprehensions.

8. In view of above, no case for transfer of the case is made out; therefore, this criminal transfer application being devoid of any merit is **dismissed**, with no order as to costs.

Abdul Basit

JUDGE