

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Transfer Application No. 36 of 2023

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| Date | Order with signature of Judge |
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Priority cases

1. For orders on MA No. 13040/2023 (Urgency)
2. For orders as to maintainability of the instant Transfer application as per Court order dated 13.09.2023

**01.11.2023**

Mr. Mansoor Ali Ghanghro advocate for the applicants

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The applicants Muhammad Jawed, Muhammad Ijaz, and Muhammad Salman are seeking transfer of Special Case No. 75 of 2021 (*re-Muhammad Jawed and others v The State*) from the Court of CNS II to CNS I, Karachi, inter-alia on the ground that they have lost faith upon the learned Presiding Officer of the CNS-II Court on the premise that during the hearing, he expressed adverse inference against the applicants/accused.

The learned trial Court has also made reference to the fact that the aforesaid case may be transferred to another Court, however, his earlier reference was declined by this Court. The learned counsel insisted on the premise that since reference has been made as such there is no need to keep the case with the CNS-II Court.

At the outset, I inquired from the learned counsel as to how this second transfer application is maintainable as his earlier transfer application was dismissed vide order dated 19.04.2023. An excerpt whereof is reproduced as under:-

***I have been informed that the Hon'ble Chief Justice has declined the Reference made by the learned trial Judge.***

***In view of the above, the transfer application is dismissed along with listed application.***

Learned counsel states at the bar that the learned Presiding Officer is not providing a fair trial to the applicants as embodied in Article 10-A of the Constitution. He referred to the statement in support of the application for transfer of the case and argued that when the trial Court has no intention to proceed with the matter in that Court in such circumstances judicial propriety demands that the aforesaid case may be transferred to another Court having jurisdiction for smooth trial of the accused. He prayed for allowing the transfer application.

I have heard the learned counsel for the applicants on the issue of maintainability of the instant transfer application and have perused the material available on record including the reference made by the learned trial Court vide letter dated 27.09.2023.

Primarily, the court should practice without discrimination and bias. Justice should be given in such a manner that a clear image of the judiciary has to be maintained in the minds of litigants.

To have good faith in the court, the court should maintain high moral standards among the members of the judiciary under the Code of Criminal Procedure. Justice can be achieved only when the court deals in the presence of both parties and the court has the power to move cases from one court to another. But the rights of the parties cannot be curtailed, controlled, or interfered with subject to exceptions provided under the law.

The concept of impartiality or bias of a judge has been discussed exhaustively by the Supreme Court in its judgment in the case of *the Government of NWFP & Another vs. Dr. Hussain Ahmed Haroon & Others*, **2003 SCMR 104**. It is well-settled law that the transfer of a matter from one court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interest of justice. Reliance is placed upon the judgment in the case of *All Pakistan Newspapers Society & Others vs. Federation of Pakistan & Others* **PLD 2012 Supreme Court 1**.

Prima facie the ground raised by the learned counsel for the applicants is not tenable based on mere presumption; in such circumstances, they intend to seek a fair trial in the criminal case pending adjudication, which is only possible, if they repose confidence in trial court. However, in the best interest of justice, coupled with the instance taken by the learned trial Court through reference dated 27.09.2023 it would be appropriate for the trial Court not to express his view so that the parties may have confidence.

Before parting with this order I expect from the learned Judge CNS- II Karachi for swift disposal of the aforesaid Special No. 75 of 2021 within a reasonable time i.e. within one month and in the meanwhile ensure that the trial should be fair in all respects.

In view of the above Criminal Miscellaneous Application is dismissed in limine along with pending application(s).

JUDGE