

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Transfer Application No.83 of 2023

Date	Order with signature of Judge
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For hearing of main case

22.11.2023

Mr. Zahid Hussain Soomro advocate for the applicant
Ms. Rubina Qadir, Deputy PG

The applicant Shahjahan is seeking transfer of Session Case No. 1993 of 2018 (re-Shahjahan v The State & others) from the Court of Ist Additional Sessions Judge Karachi (MCTC) West to any other Court having jurisdiction, inter-alia on the ground that the applicant has lost faith in the learned Presiding Officer of the Court on the premise that during the hearing, he expressed adverse inference against the applicant and his counsel.

2. I have heard the learned counsel for the parties present in Court and have perused the material available on record.

3. The learned trial Court has also filed comments with the narration that the charge was framed on December 3, 2008, and some witnesses were examined. On October 4, 2003, the matter was scheduled for the recording of the evidence of P-3. The examination chief of said witness was smoothly conducted however, during the cross-examination, the learned defense counsel persistently posed unnecessary and irrelevant questions, which prompted the intervention of the learned trial Court in terms of Articles 18, 19, and 113 of Qanoon-e-Shahadat Order. However, he denied the allegations of having expressed annoyance or made derogatory remarks against the applicant and or his counsel. Furthermore, he refuted that he demonstrated religious extremism and bias against the accused, throughout the proceedings; and, he has expressed his opinion that if the subject case is transferred to another Court, he will have no objection.

4. 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 trial Court further.

5. At the outset, I inquired from the learned counsel as to how this transfer application is maintainable. Learned counsel states at the bar that the learned Presiding Officer is not providing a fair trial to the applicant 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.

6. I have heard the learned counsel for the parties on the issue 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.

7. 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.

8. 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**.

9. Prima facie the ground raised by the learned counsel for the applicant is tenable based on certain reservations; in such circumstances, he intends to seek a fair trial in the criminal case pending adjudication, which is only possible if he reposes confidence in the trial court. However, in the best interest of justice, coupled with the instance taken by the learned trial Court through comments dated 17.11.2023. It would be appropriate for the trial Court not to express its view so that the parties may have confidence. In such circumstances, without prejudice to the instance of the learned trial Court, judicial propriety demand that the Sessions Case No. 1993 of 2018 pending adjudication before the learned Ist Additional Sessions Judge (MTCT) West Karachi needs to be transferred to the Court of learned Sessions Judge West Karachi for the smooth trial of the applicant.

10. Before parting with this order I expect from the learned Sessions Judge West Karachi for swift disposal of the aforesaid sessions case

within a reasonable time and in the meanwhile ensure that the trial is fair in all respects.

11. In view of the above Criminal Miscellaneous Application is disposed of along with pending application(s).

JUDGE