

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Misc. Application No. 100 of 2024

[Millat Industrial Products Ltd. & another v. The State & another]

Applicants : Millat Industrial Products Ltd. & Sikandar Mustafa Khan, through M/s. Mayhar Kazi and Zahid Ali Sahito, Advocates.

Date of hearing : 03-10-2024

Date of order : 03-10-2024

ORDER

Adnan Iqbal Chaudhry J. - Urgency granted. This is an application under section 37-G of the Sales Tax Act, 1990 read with section 526 Cr.P.C. seeking transfer of Case No. 113/2022 arising from FIR No. 01/2022 from the court of the Special Judge-I (Customs, Taxation, Anti-Smuggling) Karachi to the court of the Special Judge-II at Karachi.

2. The provisions of section 526 Cr.P.C. do not appear to be inconsistent with section 37-F of the Sales Tax Act, and therefore, by virtue of the latter the former will continue to apply.

3. That being said, the transfer is sought essentially on the ground of sub-section (1)(a) of section 526 Cr.P.C. *i.e.* a fair and impartial trial cannot be had. This apprehension arises from an order dated 06-09-2024 passed by the Special Judge-I whereby the exemption from personal appearance granted earlier to the Applicant No.2 was recalled, and complaints made against the Applicants by certain private persons were referred to the Commissioner Income Tax for a preliminary inquiry under sub-section (3) of section 37-D of the Sales Tax Act. Against such order, the Applicants have also preferred an appeal before this Court under section 37-I of the Sales Tax Act, 1990.

4. It had been settled by the Supreme Court as far back as *Muhammad Nawaz v. Ghulam Kadir* (PLD 1973 SC 327), reiterated in *Daud Iqbal Pervaiz v. The State* (PLD 1990 SC 705), that the transfer of a case from a Court of competent jurisdiction is justified only if there is a 'reasonable' apprehension in the mind of the party that the Court would not be able to act fairly and impartially; that it is not every incident regarded as unfavorable by the applicant which would justify the transfer of the case; and that the apprehension must be such as a reasonable man might justifiably be expected to have. Further, in *Khawar Saleem v. The State* (2001 SCMR 905) it was observed that the transfer of a case could not be claimed as matter of routine or at the wish of a party unless it was apparent on the face of the record that party seeking transfer could not get a fair trial.

5. To convince this Court to transfer the case, learned counsel seeks to demonstrate that the order passed by the Special Judge-I was unwarranted in the circumstances of the case. While that may be sufficient for an appeal, it is not for seeking transfer of a case under sub-section (1)(a) of section 526 Cr.P.C. As discussed above, an unfavorable order by itself does not indicate that the Applicants will not get a fair trial. Learned counsel is unable to align any other circumstance that could satisfy this Court that the apprehension of the Applicants is reasonable. Therefore, the transfer application is dismissed *in limine*.

JUDGE