

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Trans.A No.S-82 of 2017

1. For Katcha Peshi
2. For hearing of MA-3946/2017

07.07.2017

Mr. Nizamuddin N. Memon Advocate for the applicant.
Mr. Abdul Rahman Kolachi, Assistant Prosecutor General.

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Applicant/complainant Saeed Ahmed has moved this Transfer Application for transfer of the criminal case No.883/2016 re: The State v. Gada Hussain and another in crime No.86/2016 of PS, Baberloi for offence under Sections 324, 337-H (ii), 147, 139 PPC, pending before learned Sessions Judge, Khairpur. Notice of the transfer application was issued to the respondents and comments have been called for from learned Sessions Judge, Khairpur.

Learned counsel for the applicant/complainant has moved the transfer application mainly on the ground that Mr.Ali Ahmed Sahito, the brother of the accused persons, is posted as Senior Civil Judge, Moro and accused Gada Hussain is an advocate, they have influenced the Sessions Judge. Learned counsel for the applicant/complainant submits that learned Sessions Judge has pressurized complainant Saeed Ahmed to enter into compromise with respondents No.2 and 3. It is also contended that applicant/complainant has apprehension that he would not get fair trial from presiding officer.

Mr. Abdul Rahman Kolachi, learned Assistant Prosecutor General submits that apprehension in the mind of the applicant/ complainant is unfounded and it is not the ground for transfer of the case from the Court of learned Sessions Judge. It is further contended that evidence of complainant has already been recorded and transfer application is without merit.

After hearing learned counsel for the parties I have perused the comments filed by learned Sessions Judge, Khairpur,

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in which it is mentioned that charge against the accused has been framed on 03.10.2016. Thereafter, evidence of PW SIP Allah Wadhayo was recorded on 06.03.2017. Evidence of applicant Saeed Ahmed and other PWs have also been recorded and trial Court has issued warrants against remaining witnesses namely Ali Gohar and Gul Hassan. In the comments further it is mentioned that Mr.Ali Ahmed Sahito is posed as Senior Civil Judge, Moro and accused Gada Hussain is an advocate but they have never visited the Chamber of the Sessions Judge nor they have influenced upon him and presently the case is fixed for arguments on application under Section 265-K Cr.P.C.

From perusal of the comments it transpired that evidence of material witnesses including complainant Saeed Ahmed has already been recorded. Criminal case cannot be transferred from one Court to another at whims of a party. In the given circumstances, the alleged apprehension of not getting a fair trial is without substance. Complainant could not satisfy the test of reasonableness of apprehension as held by Hon'ble Supreme Court in case of Daud Iqbal Pervaiz and another vs. The State (PLD 1990 SC 705). Transfer Application is without merit and same is dismissed along with the listed application.

JUDGE

N.M.