

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT LARKANA

Cr. Transfer Appln. No. S-71 of 2017

Date	Order with signature of Judge
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1. For order on office objection.
2. For hearing of main case.

04-12-2017

Mr. Abid Hussain Qadri, advocate for the applicant.

Mr. Saeed Ahmed B. Bijarani, advocate for the complainant.

Syed Sardar Ali Shah, D.P.G. for the State.

Through this criminal transfer application U/S 526 Cr.P.C. the applicant/complainant seeks withdrawal of Criminal Case No.91/2017, arising out of Crime No.46/2017 registered at P.S. Jamal District Kashmore @ Kandhkot U/S 431,434,427 P.P.C and 62 of Irrigation Act, from the file of learned Judicial magistrate, Tangwani to any other Judicial Magistrate of another District.

2. Learned counsel for the applicant states that the applicant had filed on constitutional petition before this court bearing C.P. No. D-1394/2016, alleging therein that their source of water for irrigation was closed by the influential persons and sought directions to Irrigation Department for the reconstruction/repair of the damage caused to water course, the said petition was disposed of by this Court, vide order dated 09.02.2017, directing the applicant to make a written complaint mentioning the names of assailants to the concerned Executive Engineer, who shall get registered an F.I.R against them and thereafter F.I.R in this case was lodged by the Executive Engineer Irrigation, Begari Division Thull. He further states that the accused are influential persons of the area and they have full support of their relatives and

well wishers, while the applicant is residing at Karachi and whenever he along with his brother and mashir goes to attend the trial court at Tangwani, accused party issues threats of dire consequences. He further states that even the accused party openly stated at many times that they would be acquitted of the charge as no one can dare to come and depose against them in the court.

3. On the other hand, learned counsel for the private respondents vehemently opposed this application and stated that no cogent reason has been assigned by the applicant for the transfer of the case from District Kashmore @ Kandhkot to any other District and the case cannot be transferred from one District to any other District on the basis of apprehension for the danger to the life of a person.

4. Learned D.P.G. for the State has however, records his no objection for the grand of this application on the ground that since the applicant and his witnesses are coming from Karachi for recording evidence and they feel insecure hence case may be withdrawn from the board of the trial court and be transferred to any other Judicial Magistrate in District Shikarpur in the interest of justice and fair play.

5. In a normal situation simply on the apprehension of the applicant for danger to his life, a criminal case cannot be transferred, however, such ground is to be adjudged by applying the objectives test, taking into account totality of the circumstances of a case and not the subjective visualization. In the instant case, both parties are on inimical terms due to dispute over supplying of water to irrigate their lands and it is an admitted fact that F.I.R has been lodged in this case upon the directions of this Court through the concerned officials of Irrigation Department, therefore, it is apparent that there exist hostility between the parties, hence apprehension alleged by the applicant is not unfounded baseless or unjustified, therefore, in the peculiar circumstances of the case, I allow this criminal transfer application. Resultantly criminal case No 91/2017 is

withdrawn from the board of Judicial Magistrate, Tangwani (District Kashmir @ Kandhkot) and entrusted to Sessions Judge Shikarpur, for assigning the same to any Judicial Magistrate of his district, who shall proceed with the matter expeditiously and preferably decide the same within a period of three months.

Abdul Salam P.A