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Inword NO 27/14
① 14/4/14

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MST
JUDGE

IN THE HIGH COURT OF SINDH AT KARACHI.
CRL.TRANSFER APPLN.NO. 10 OF 2014.

Mst. Jesita W/o Ratno Bheel.....Applicant.
Versus.

1. The State.
 2. Ramji S/o Shamoon.
 3. Nishoo S/o Bhooro.....Respondents.
- Criminal Transfer Application under Section 526, Read With Section 561-
arising out FIR No.26/2011, U/S.302, 376, 34 PPC, registered at Police Station
Piaro Lund, with prayer to transfer the Sessions Case No.583/2011 from the
learned III-Additional Sessions Judge, Hyderabad to another competent Court of
law in Karachi.

ORDER.

7.4.2014

Mr. Muhammad Vawda, advocate for the applicant in both the applications.

Mr. Muhammad Aslam Rana, advocate for the private respondents in both the applications.

Mr. Muntazir Mehdi, A.P.G.

Through the above transfer applications, the applicant, who is complainant in Crime No. 26/2011, registered at p.s. Piaro Lund for offences under sections 302, 376, 34 PPC, and in Crime No. 48/2011 registered at p.s. Piaro Lund for offences under section 201, 297, 309, 34 PPC, has sought transfer of cases emanated from the above two crimes; being Sessions Case No. 583/2011 and Sessions Case No. 882/2011 respectively, both pending in the court of III-Additional Sessions Judge, Hyderabad, to some other competent court of law in Karachi.

Crime No. 26/2011 was registered in respect of rape and murder of the complainant's daughter by respondents No. 2 and 3, whereas Crime No. 48/2011 was registered against respondents No. 2 to 5 in Cr. Transfer Application No. 11/2014 and one Nishoo who is accused also of the rape and murder of the applicant's daughter in Crime No. 48/2011. It may be mentioned that Crime No. 48/2011 has been registered for removal of body of the victim of crime No. 26/2011 from her grave.

The first of the above FIRs was registered in pursuance of an order passed by the learned MII of this Court and at the written request of the complainant, whereas the

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DISTRICT & SES. JUDGE
KARACHI-WEST

second FIR was registered in pursuance of an order passed by this Court in C.P. No. D-1159/2011 filed by the applicant seeking protection as well as an order for registering the said FIR.

Learned counsel for the applicant submits that the accused persons in the first crime are under the protection of, and are being patronized by, the landlord of the area and it was because of their influence and clout that even for the registration of the FIR, the poor complainant, who is the mother of the victim, had to approach this Court and thereafter because of fear for her life and for the life of her son and husband, who are the eye-witnesses of the incident, was constrained to file the above noted petition before this Court, wherein firstly an order was passed for providing protection and thereafter directions were issued for registration of the said second FIR. Learned counsel submits that the entire family, amongst whom two are the eye-witnesses of the incident, on account of threats and fear for their lives, have left their village and have taken refuge in Karachi and are therefore unable to appear before the trial court for recording their evidence, and it is on account of such difficulty that both the cases are not proceeding despite the fact that challans in both the cases have been submitted as early as in the year 2011. Learned counsel submits that certain details of the threats received by the complainant party are recorded in the complainant/applicant's application to the MIT-I of this Court (page 39 of the file) and the fact that the petitioner has alleged that at the instigation of the respondents police officials are threatening and harassing the petitioner to withdraw the FIR has also been recorded in the order dated 23.6.2011 passed in the afore-noted petition (page 51 of the file). Learned counsel submits that the fact that the body of the victim was removed from her grave at the stance of accused No. 1 in the first FIR is enough to demonstrate the extent to which the accused can go to damage the case and to protect them from being convicted for the crime that they have committed.

Mr. Muntazir Mehdi, A.P.G. submits that in the facts and circumstances of the case as brought out by the learned counsel for the applicant, the transfer of the cases will be wholly justified and appropriate.

On the other hand, Mr. Muhammad Aslam Rana, learned counsel for the respondents opposes the transfer of the cases. He submits that the respondents are poor



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haries and have been falsely implicated in the cases. He submits that the applicant has herself buried the body, and in order to destroy the evidence that her daughter died of a natural cause, herself had the body removed. He submits that ^{the} post-mortem report does not show that the victim was either poisoned or died of any unnatural cause.

To this, Mr. Vawda submits that since it was after a lapse of considerable time that the body was recovered at the pointation of the three accused in the second FIR, the same was decomposed to the extent that necessary tests for determining the cause of death could not be successfully carried out and it would be wrong to say that the girl had died a natural death. In support of his contention that the body was recovered at the stance of respondents 4 and 3 in Cr. Transfer Application No. 11/2014 and that respondent No. 4 amongst them has stated that the body was removed at the stance of respondent No. 3 who is also accused No. 1 in Crime No. 26/2011. Mr. Vawda refers to a copy of the relevant mashirnama (page 81 of the file).

I have heard the learned counsels for the parties and perused the relevant record with their assistance. In the facts and circumstances, as recorded above, I find it just and appropriate to order transfer of the above two criminal cases to the learned District & Sessions Judge, Karachi-West with direction to the learned judge to proceed in the matter expeditiously and to endeavor that the evidence of the eye-witnesses is concluded within three to four dates, and the entire trial in both the cases concludes preferably within four months from today.

The above Transfer Applications alongwith the pending applications stand disposed of in the foregoing terms.



Certified to be true copy

Assistant Registrar (Criminal)

NO.CRL/TRANSFER/APPLN/10/2014.

Sd/- Maqbool Baqar,
Chief Justice.

Karachi Dated: 09.04.2014.

Forwarded for information and compliance:-

1. The learned III-Additional Sessions Judge, Hyderabad.
- ✓ 2. The learned District & Sessions Judge Karachi West.

(QAZI ASFAQ AHMED)

ASSISTANT REGISTRAR (CRIMINAL).