

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Judicial Department.

CRIMINAL REVISION NO. 09 OF 2011.

Malik Zaheer Ahmed

Versus

The State, etc

Petitioner by: Qazi Adil Aziz, Advocate.

Respondent No. 1 by: Raja Muhammad Yasin, Standing Counsel.

Respondent No. 2 by: Syed Muhammad Ali Bokhari, Advocate

Date of hearing: 14-03-2011.

JUDGMENT.

Riaz Ahmad Khan J: This order is directed to dispose of Criminal Revision No. 09 of 2011.

2. Brief facts of the case are that on the complaint of Zameer-ul-Hassan respondent No. 2, case FIR No. 256 Police Station Tarnol was registered on 20-12-2007. On the basis of said FIR, three persons namely Saeed Akhtar, Muhammad Hanif and Muhammad Zaheer were charged for murder of Puma Shah. One Abdul Aziz was charged for instigation, as according to FIR on his instigation the murder had been committed. Accused Abdul Aziz was granted bail on the basis of plea of alibi. According to the petitioner in order to establish plea of alibi the said Abdul Aziz had prepared a fake and fictitious document, so another FIR under Sections 420,468,471 PPC was registered against him as well as other accused. The case FIR under Section 302 PPC was pending trial in

the court of Additional Sessions Judge, Islamabad whereas the second case regarding subsequent FIR under Sections 420,468,471 PPC was pending trial before the Illaqa Magistrate police Station Tarnol. Respondent No. 2 Zameer-ul-Hassan, complainant in first FIR regarding murder, submitted application before the learned Sessions Judge, Islamabad for consolidation of two cases and trial of two cases by one Court. The said application was accepted by the learned Sessions Judge, Islamabad vide order dated 03-12-2010. The case pending before the Illaqa Magistrate was withdrawn and sent to the Court of Additional Sessions Judge, Islamabad for disposal. Feeling aggrieved of the said order, the present revision petition under Sections 435/439-A read with section 561-A, Cr.P.C has been filed.

3. I have heard learned counsel for the parties and have also perused the record.

4. There is no cavil to the proposition that Sessions Judge has power to withdraw the case from the court of one Magistrate and transfer it to the court of another Magistrate. However, this power is available to the Sessions Judge under Section 528(1)(C) of Criminal Procedure Code. In exercise of this power, the Sessions Judge cannot withdraw the case from the court of Magistrate and entrust it to the court of Additional Sessions Judge. If the case is withdrawn from the court of one Magistrate; it can be entrusted to another Magistrate. In the present case, the case pending before the Illaqa

Magistrate has been entrusted to the Additional Sessions Judge; therefore, order is against the law. This revision petition is accordingly accepted and the impugned order is set aside. The case FIR No. 132, police station Tarnol under Sections 420/468/471 PPC be withdrawn from the Court of Additional Sessions Judge, Islamabad and sent back to the Court of Illaqa Magistrate for further proceedings in accordance with law.

(RIAZ AHMAD KHAN)
JUDGE

Announced in open Court on 21.3.11.

JUDGE

Saeed*

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