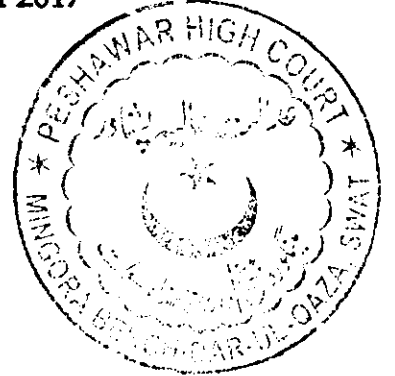


BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
(DAR-UL-QAZA) SWAT

Criminal Transfer Application No. 14 -M of 2017

Mst. Bibi Halima daughter of Gul Rahman
Resident of Loya Agra, Tehsil Batkhela,
District Malakand.



.....Applicant / Complainant

VERSUS

1. The State through Additional Advocate General.
2. Rashidullah
- ③ 3. Inayat Ullah
4. Farman Ullah
5. Raza Ullah
6. Kiramat Ullah sons of Rahmat Shah (Late) resident of
Moh: Mubarak Khel, Totakan, District Malakand.

.....Respondents

TRANSFER APPLICATION UNDER

SECTION 526 Cr. P.C OF THE ABOVE

CRIMINAL TRIAL FROM SUB DIVISION

TO TEHSIL DARGAI DISTRICT

MALAKAND.

FILED TODAY
20 MAY 2017,
[Signature]
Additions: Registrar

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Transfer Application No. 14-M/2017.

JUDGMENT

Date of hearing: **27.10.2017**

Petitioner:- (Mst. Bibi Halima) by Mr. Arshad Khan, Advocate.

Respondents: (the State & others) by Mr. Rahim Shah, Asstt: Advocate General and Muhammad Raziq, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- There are two

cases referred to by the learned counsel for the Petitioner, seeking transfer of the criminal trials pertaining to case FIR No. 344 dated 03.12.2014 under sections 506 PPC & 13 A.O. registered at Police Station Batkhela District Malakand and case FIR No. 42 dated 06.04.2015 under sections 354,506(ii),148,149 PPC registered at Police Station Khar District Malakand from Sub-Division Batkhela to Tehsil Dargai District Malakand.


2. These cases are under trial in the Court of learned Senior Civil Judge/A'ala Illaqa Qazi Batkhela District Malakand and in one of the *ibid*

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

cases bearing FIR No.344 the complainant is an Advocate Inayatullah who is practicing lawyer at Batkhela Courts. He has charged the Petitioner Mst. Bibi Halima that on 03.12.2014 the complainant was present outside the Court of learned Civil Judge-II, when the Petitioner came there, took out her pistol from her purse and aimed at the complainant and was extended threats to be killed. She was overpowered by police constables including Sepoy Shah Nazar and Lady Constable Murad Begum. The pistol was taken from her possession and the occurrence has been witnessed by many persons. The motive behind the criminal intimidation extended to the Inayatullah Advocate is because he being engaged as lawyer in civil suit titled as "Mst. Bibi Halima vs Rahmat Ali & others" and is looking for the interest of the opposite party as counsel being their close relative. Whereas in the second mentioned case, it is Mst. Bibi Halima who is the complainant and has implicated the said Advocate Inayatullah alongwith his brothers. The

ATTESTED


District Judge
Batkhela

charges as levelled would divulge that this time Mst. Bibi Halima was criminally intimidated, so much so, out of the accused Karamatullah and an Advocate Inayatullah have caught hold the complainant from her collar (گريبان), her clothes were torn, after frightened her fired in the air and thereafter decamped from the place of occurrence while seated in the motorcar. In this case the motive of occurrence is similar i.e. a dispute over the landed property.

3. After hearing learned counsel for the parties, it was learned counsel for the Applicant Mst. Bibi Halima who prayed for the transfer of both these criminal cases to any other Court outside District Malakand. Learned counsel for the Respondents is having no objection with a request that if these criminal trials are sent to Dargai Courts it will be convenient for him to defend his colleague Advocate Inayatullah in a case registered against him alongwith his brothers and also to prosecute Mst. Bibi Halima in a case registered against her.

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Mingora, P.O. Qaza, Swat.

4. Learned counsel for the Petitioner referred to PLD 1973 Supreme Court 327 “*Muhammad Nawaz vs Ghulam Kadir and 3 others*”. Accordingly having fear of injustice and when there are reasonable grounds exist which culminated into apprehension in the mind of the parties concerned that the Court would not be able to act fairly and impartially in the matter, such like cases required transfer from one Court to another. Inversely, learned counsel for the Respondents placed relied on 2016 YLR 1139 (Sindh) “*Ali Mohammad and 7 others vs the State and another*”, wherein the relevant citation speaks off:-

“Applicant sought transfer of case from one Court to another due to security risk. No legal embargo existed for transfer of any criminal case from one Court to another if any genuine case or sound reasons were placed before the Court; it was incumbent upon the Court to examine such applications with ulterior motive of delaying trial. Such applications based on flimsy grounds must be discouraged. Present application being based

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on ulterior motives was dismissed."

5. Whereas the Petitioner Mst. Bibi Halima being female is facing hardships at the hands of the Respondent No. 3 Inayat Ullah Advocate, who for all the reasons as mentioned in the application for the transfer because of his position as practicing lawyer at local Batkhela Courts may influence and use tactics including pressurizing the Courts at Batkhela alongwith his colleagues Advocates appearing before the learned Trial Court during the trial proceedings and because of the reason that even the Petitioner Mst. Bibi Halima has so far not been able to engage counsel of her choice to prosecute the Respondent No. 3/ an Advocate Inayatullah in a case registered against him, where the complainant is the lady and at the same time to obtain justice in another trial to whisk off from she being charged for similar offence when other colleagues advocates are not to offer their services against brother advocate within the jurisdiction of Batkhela Bar. Thus, this ground is also to be taken in consideration for the

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transfer of both these cases to the adjoining District Dir Lower at Timergara instead of the prayer as set in the petition for transfer of the cases from Batkhela to Dargai.

6. In addition, to get transfer the suit pending between Mst. Bibi Halima against Rahmat Ullah & others which is in-fact a bone of contention between these parties currently pending before the Court of learned Senior Civil Judge/A'ala Illaqa Qazi Malakand at Batkhela is also dire need to be transferred to the nearby District Dir Lower at Timergara so as to facilitate a fair trial by affording an opportunity to Mst. Bibi Halima to engage counsel of her choice in the civil suit.

7. In view of the above discussion, this transfer application is allowed and all these criminal

cases as referred to above including civil suit are hereby transferred to the Courts of competent jurisdiction situated at Timergara District Dir Lower for the safe administration of justice as well as

keeping in sight, interest of both the parties. The

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learned Transferor Courts shall immediately remit all record of above-referred criminal and civil cases through the Court of learned District & Sessions Judge Batkhela within a period of fortnight positively for onward sending out to the Court of learned District & Sessions Judge Timergara District Dir Lower. However, these cases be assigned to the nearby Courts at Chakdara for convenience of the parties.


8. In such terms, this transfer application is disposed of accordingly.

Announced.
Dt: 27.10.2017


JUDGE

Certified to be true copy

Office
07/11/2017


EXAMINER
Peshawar High Court, 11th Floor, Dargah Bazaar, Swat
At: Peshawar, District of Peshawar, FATA, 19000