

A.F.R.

Reserved on 15.11.2025

Delivered on 05.02.2026



2026:AHCLKO:8945

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 9472 of 2025

Nitesh Rastogi

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy./Prin. Secy. Home Lko. and 2 others

.....Opposite Party(s)

Counsel for Applicant(s) : Amit Jaiswal Ojus Law, Ambrish Singh Yadav

Counsel for Opposite Party(s) : G.A., Durgesh Kumar Shukla, Pt. S. Chandra, Arvind K. Tripathi, AGA-I

Court No. - 30

HON'BLE TEJ PRATAP TIWARI, J.

1. The present petition has been filed under section 528 BNSS to quash/set aside impugned Transfer Order dated 10.10.2025 passed by learned court of Chief Judicial Magistrate, Lucknow whereby, trial of the Criminal case no. 6148/2022 "State vs. Bijendra Pal Singh and other" has been transferred from the court of Judicial Magistrate 1st (A.T.S.), Lucknow to the court of Additional Chief Judicial Magistrate 1st, Lucknow.

Factual Matrix

2. Shorn of the details, an FIR lodged against opposite party no.2 Bijendra Pal Singh and opposite party no.3 Rajiv Singh

alleging fraudulent misappropriation of gold jewellery worth approximately 3,20,00,000/- on 02.09.2021, registered as Case Crime No. 219 of 2021 under Sections 406, 419, 420, 506 IPC, with Sections 170, 467, 468, 471 and 411 IPC added during investigation. On 03.09.2021, the police arrested opposite party no.3 Rajiv Singh and recovered 5 kg 743 gm 90 mg of gold jewellery belonging to the informant firm M/s Mohan Shyam Kalyan Das Jewellers (MJK), along with a forged identity card purporting to be that of an IPS officer. The seized jewellery was released in favour of the informant on 05.10.2021. Subsequent applications moved by opposite party no.3 for recall of the release order were rejected on 29.01.2022, against which he filed Application U/s 482 Cr.P.C. No. 1667 of 2022 before this Court challenging the orders dated 05.10.2021 and 29.01.2022. Meanwhile, the police filed charge sheet on 22.01.2022 and cognizance was taken by the trial court on 08.02.2022.

3. During the pendency of the aforesaid proceedings, opposite party no.2 and 3 moved an application for transfer of the case from the court of Judicial Magistrate First class (ATS) Lucknow to any other court before the Chief Judicial Magistrate Lucknow, which was rejected by the learned court of Session Judge Lucknow. The opposite party no. 3 preferred an application thereupon the learned trial court which was partially allowed in favour of the accused person and directed to take back the jewellery from the applicant and deposit the same in Malkhana Police Station. Another transfer application was submitted by opposite party no. 2 and 3 before CJM. The learned CJM Lucknow sought a report from the learned Judicial Magistrate First Class (ATS) Lucknow where, the trial of the criminal case no. 6148/2022 was pending. On 09.10.2025, learned Judicial Magistrate First Class (ATS) Lucknow had submitted the report. After considering the report, the learned CJM Lucknow passed

the order dated 10.10.2025 by which the trial of the criminal case was transferred.

Submission on Behalf of the Applicant

4. At the very outset, Learned Counsel for the applicant submitted that the power of transfer of cases from one Judicial Magistrate to another Judicial Magistrate vest with Sessions Judge only. Section 408 of the Code of Criminal Procedure, 1973 (corresponding Section 448 of the Bharatiya Nagarik Suraksha Sanhita, 2023) exclusively deals with the transfer of criminal cases on the request of an interested party. The said provision confers such power only upon the Sessions Judge, and no equivalent power of transfer is vested in the Chief Judicial Magistrate under the law.

5. Learned Counsel for the applicant submitted that the learned Chief Judicial Magistrate, Lucknow, acted beyond the scope of jurisdiction in entertaining and allowing the transfer application, rendering the impugned order wholly illegal and unsustainable. The applicant relied upon the judgement of case **Radhey Shyam and Another versus State of U.P.** 1984 SCC OnLine All 365, **Sudesh Chhikara versus State (Govt. Of NCT of Delhi) and Another,** 2025 SCC OnLine Del 1641, **Chhandrkantbhai Bhaichandhari Sharma versus State of Gujarat** 2015 SCC OnLine Guj 2891, **A. K. Singh, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, Advocate,** 1999 SCC OnLine MP 357, **M/S Radical Works Pvt. Ltd. Versus Sri Padmanabh T.G. C.R.L.P. No. 1291/2023.**

6. Learned Counsel for the applicant further submitted that the application preferred by opposite party nos. 2 and 3 was not supported by any affidavit. It is a statutory mandate that every application seeking transfer of a case from one court to another must be supported by a duly sworn affidavit. On this ground

alone, the said application was liable to be dismissed at the very inception. However, the learned Chief Judicial Magistrate, Lucknow, failed to appreciate this mandatory requirement and proceeded to pass the impugned transfer order dated 10.10.2025, despite the application being unsupported by an affidavit. The impugned order is, therefore, without jurisdiction, bad in law, and has no legs to stand in the eyes of law. The applicant relied upon the judgment of case **Dipak Babaria and Another versus State of Gujarat and Others** (2014) 3 SCC 502.

Submission on Behalf of the Opposite party.

7. Learned A.G.A. and learned counsel for opposite party nos. 2 & 3 submitted that a plain and harmonious reading of the relevant provisions of the Code clearly shows that the Chief Judicial Magistrate is empowered to withdraw any case from any Magistrate subordinate to him, and such power cannot be narrowly construed as being limited only to cases earlier made over by him. The scheme of the Code, particularly Section 15 Cr.P.C., makes it evident that all Judicial Magistrates are subordinate to the Chief Judicial Magistrate, subject to the general control of the Sessions Judge, and the Chief Judicial Magistrate is vested with administrative and supervisory authority to regulate and distribute judicial business among subordinate Magistrates. Therefore, the power to withdraw and reassign cases flows from such statutory control and supervision, and the exercise of such power cannot be termed without jurisdiction or illegal. Learned A.G.A. relied upon the judgment of the case **Prem Narayan Singh versus Ramraj Singh and Others**, 1990 (27) ACC 430, Para 6 and 13.

8. Learned A.G.A. and learned counsel for opposite party no. 2 & 3 also submitted that the impugned order dated 10.10.2025 has been passed in the interest of justice to ensure fair and proper adjudication of the proceedings. It is contended that non-filing of

an affidavit along with the transfer application is a curable irregularity and does not vitiate the proceedings, particularly when no prejudice has been caused to the applicant. It is further submitted that the learned Chief Judicial Magistrate, Lucknow, exercised supervisory and administrative control to facilitate proper conduct of the case and the impugned order cannot be termed as without jurisdiction merely on technical grounds.

9. Learned A.G.A. and learned counsel for opposite party further argued that the power exercised by the learned Chief Judicial Magistrate was incidental and ancillary in nature and was invoked to prevent abuse of process of court. Therefore, the impugned transfer order does not suffer from any illegality or perversity and does not call for interference by this Hon'ble Court.

Observation

10. Heard Sri Amit Jaiswal along with Sri Ambrish Singh Yadav, learned counsel for the appellant, Pt. S. Chandra, Sri Durgesh Kumar Shukla as well as Sri Ravi Kant Mishra, learned counsel for the opposite party nos. 2 and 3, learned AGA for the State of U.P. and perused the record.

11. At the first instance, it would be appropriate to reproduce the provisions of law under which the present criminal misc. application has been preferred i.e Section 528 B.N.S.S.- Saving of inherent powers of High Court.

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. In the light of legal provision mentioned above, upon careful consideration of the submissions advanced by learned counsel for the parties and perusal of the record, this Court finds that the question involved in present petition is relating to the power of

Chief Judicial Magistrate to transfer the case by passing an order from one court to another.

13. Before proceeding further it is necessary to examine the relevant provision of Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after referred as BNSS, 2023) or Criminal Procedure Code, 1973 (herein after referred as CrPC, 1973), which relates to the issue in contention.

Relevant provisions of CrPC, 1973 read as under:-

“Section 15. Subordination of Judicial Magistrates.—(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.”

Section 410. Withdrawal of cases by Judicial Magistrate.—(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may inquire into or try such cases himself.

192. Making over of cases to Magistrates.—(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

407. Power of High Court to transfer cases and appeals.—(1) Whenever it is made to appear to the High Court— (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or (b) that some question of law of unusual difficulty is likely to arise, or (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative: Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when

the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the applications unless at least twenty-our hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interest of Justice, order that, pending the disposal of the application the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the Subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred. (9) Nothing in this section shall be deemed to affect any order of Government under section 197.

408. Power of Sessions Judge to transfer cases and appeals.— 1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words “one thousand rupees” occurring therein, the words “two hundred and fifty rupees” were substituted.”

It is relevant to note that Section 15, 192, 410 of the Code of Criminal Procedure, 1973 corresponds to Section 13, 212, 450 of the Bharatiya Nagarik Suraksha Sanhita, 2023, respectively. Further, Sections 407 and 408 of the CrPC correspond respectively to Sections 447 and 448 of the B NSS, 2023 with some changes, there is no mean to quote the same provisions twice”.

14. The scheme of powers relating to transfer of criminal cases demonstrates the legislative intent with sufficient clarity. Under these provisions, the authority to transfer criminal cases has been expressly conferred upon the Supreme Court, the High Court, and the Court of Session. A careful reading of the statutory framework makes it evident that the Chief Judicial Magistrate (CJM) has not been vested with any power to transfer criminal cases. The hierarchy and subordination prescribed under the Code clearly establish that the CJM is subordinate to the Sessions Judge. Had the Legislature intended to empower the CJM with the authority to

transfer cases, such power would have been explicitly provided for in the statute.

15. This court choose to rely on the judgment of **Sudesh Chhikara v. State (NCT of Delhi), 2025 SCC OnLine Del 1641**

"The Court referred to Radical Works (P) Ltd. v. Padmanabh T.G., in Crl.P. No. 1291 of 2023, decided on 18-04-2023, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, 1999 SCC OnLine MP 357 and Chandrkantbhai Bhaichandbhai Sharma v. State of Gujarat, 2015 SCC OnLine Guj 2891 and stated that the Court was of firm view that since the legislature in its own wisdom had conferred the power of the transfer only to Supreme Court, High Courts and the Sessions Court, it could not be given by way of inference to the Court of Chief Judicial Magistrate. The law of interpretation did not provide interpretation of any provision which in any manner contravened the intention of the legislature. The legislature could have specifically given the power of transfer to the Chief Judicial Magistrate if it would have considered it proper to do so."

16. Likewise, in the case of **A. K. Singh, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, Advocate, 1999 SCC OnLine MP 357**, it has been held :-

10.The Chief Judicial Magistrate appears to have committed severe illegalities; firstly, the transfer petition moved before him was under section 410, Criminal Procedure Code, Under that provision the jurisdiction of the Chief Judicial Magistrate is administrative in nature. It is to keep equilibrium of cases amongst the various Magistrates working under him in the district. He can withdraw cases from one Magistrate and send them to another. This provision does not empower a Chief Judicial Magistrate to exercise power of transfer on complaint by one of the parties. For that, the remedy to the aggrieved party is under section 408, Criminal Procedure Code. That power is exercised by the Sessions Judge. He can transfer cases from one criminal Court to another in his Session Division 'when

he considers it expedient to do so for the ends of Justice'. He can transfer a particular case from one court to another. He may act either on the report of the lower court or on the application of the party interested or on his own initiative. So, this is the provision which provides remedy to an aggrieved person, who feels to have lost faith in a particular criminal court for one or other reason. His remedy is not under section 410, Criminal Procedure Code.

11. In view of this scope of provisions of sections 408 and 410, Criminal Procedure Code the Chief Judicial Magistrate should not have acted on a transfer petition based on grievances against the trying Magistrate. The best course was to leave the complainant to move the Sessions Court under section 408, Criminal Procedure Code.

17. In *Chandrakantbhai Bhaichandbhai Sharma v. State of Gujarat in Special Criminal Application (Quashing) No. 4884/2015*, it has been held :-

"16.The clear contrast in the language employed by the Legislature in the two sets of section is indicative of the difference in the nature of the power conferred thereunder. I note below the differences:

(i) Sections 406, 407 and 408 use the words "whenever it is made to appear" while referring to the power of the Supreme Court, High Court or the Sessions Judge to transfer cases. Sections 409, 410 and 411 significantly do not use these words.

(ii) The captions of Sections 406, 407 and 408 speak of exercise of 'power' to transfer, Sections 409, 410 and 411 do not speak of 'power' but merely refer to 'withdrawal' or 'recalling'.

*(iii) Sections 406, 407 and 408 contemplate the 'power to transfer' being exercised on an application by a 'party interested' (Sections 407 and 408 also contemplate the 'power to transfer' being used on a report of the Lower Court or *suo motu*; and Section 406 contemplate the power of transfer being used on an application by the Attorney General). These*

Sections clearly imply a need for hearing before transfer. On the other hand, Sections 409, 410 and 411 contemplate exercise of the power of withdrawal/recalling cases in a routine manner in the day to day administration. They do not contemplate any hearing to the parties interested.

26. It is clear from the above that the power to be exercised under Sections 406, 407 and 408 is a judicial power to be invoked and exercised in the manner stated therein. On the other hand, the power of withdrawing or recalling of cases under Sections 409, 410 and 411 is an administrative power, complementary to the administrative power of making over cases vested in the Chief Judicial Magistrate/Magistrate and the Sessions Judge under Sections 192 and 194 of the Code.”

18. In this context the Circular Orders of the High court of judicature at Allahabad Volume-II (Covering Circular Letters Issued Up to 31.03.2011) may also be looked upon :-

“DISTRIBUTION OF WORK BY C.J.Ms.

(i) Amongst Judicial Magistrates

C.L. No. 3/Admn.(B) dated 18th March, 1971

Under section 190 Criminal Procedure Code distribution of work among the Judicial Magistrates should be done by the Chief Judicial Magistrate who may, in his turn, consult the Sessions Judge in this behalf.

C.L. No. 124/Admn. (B) dated 30th September, 1975

The Chief Judicial Magistrates are required to act under the general supervision of the District and Sessions Judges even for the purposes of sub-section (2) of section 15 of Criminal Procedure Code.

C.L. No. 73/Admn. (A) dated 19th May, 1976

The Chief Judicial Magistrates should take necessary steps for transferring cases under special and local Acts to the Executive Magistrates, if not already done.

C.L. No. 4/Admn. (A) dated 21" January, 1987

The District Judges are requested to issue suitable directions to the Chief Judicial Magistrates with regard to distribution of work under local and special Acts amongst Executive Magistrates conferred with powers of Special Judicial Magistrates 1st Class, by the Court.

(ii) Distribution between C.J.M. and A.C.J.M.

C.L. No. 198/Admn. (A) dated 10th December, 1976

The Chief Judicial Magistrates will as far as possible, assign half the officers to be inspected by him and the rest by the Additional Chief Judicial Magistrates. The inspection notes of the District Judges/Chief Judicial Magistrates/Additional Chief Judicial Magistrates will be sent to the successor inspecting officer. Henceforth all the District Judges will also inspect the criminal work of the Judicial Magistrates and Munsif-Magistrates in addition to civil work.

Jail inspections will be made by the Additional Chief Judicial Magistrates only.

Correspondence work, compliance of High Court orders etc. and collection of statements will remain with the Chief Judicial Magistrates.

Any distribution of work among the Judicial Magistrates and the Additional Chief Judicial Magistrates or any change made therein by the Chief Judicial Magistrates will have the prior approval of the District Judge.”

19. Although Section 13(2) of the BNSS authorises the CJM to make rules or give special orders, such powers must be exercised strictly in conformity with the Sanhita. These administrative powers cannot override or supplement the explicit statutory framework governing transfer of cases. Any attempt by the CJM to order a transfer, in the absence of statutory authorization, would amount to an excess of jurisdiction.

20. In the instant case, the legality of the impugned order dated 10.10.2025 needs to be tested in the light of the legal provisions and circulars discussed above. If the said order is taken to be an administrative in nature, as it distributes the work among the Judicial Magistrate and Additional Chief Judicial Magistrate then learned C.J.M., Lucknow should have taken prior approval of the District Judge as it is mentioned in the Circular No. 198/Admn. (A) dated 10th December, 1976 of the High Court of Judicature at Allahabad (mentioned above) but as per the instructions sought from the learned C.J.M. Lucknow, it is clear that neither prior approval has been taken nor information was given to the learned Session Judge. On the other hand, if the impugned order is said to be passed on judicial side (as said by learned C.J.M. in his report dated 14.11.2025), on the transfer application in Criminal Case No. 6148/2022, then this would be clearly in the absence of statutory authorization and thus, would amount to be passed without having jurisdiction, which does not stand. It is further pertinent to take note that prior to the passing of the impugned order, the transfer application had earlier been filed, considered and rejected by the learned Session Judge, ignoring which the impugned order has been passed.

21. In view of the discussions made herein above and the references of the case laws as well as the statutory provisions / circulars referred above, this Court is of the considered view, that the impugned Transfer Order dated 10.10.2025 passed by the learned Chief Judicial Magistrate Lucknow under Section 406, 419, 420, 506, 467, 468, 471, 411, 170 IPC, is not in conformity with law, therefore, the said impugned Transfer Order is liable to be set aside and the instant petition deserves to be allowed.

22. Accordingly, the impugned order dated 10.10.2025 is hereby set aside and the instant petition is **allowed**.

23. Delving into the importance of the issue raised in the instant matter and taking note of the grave fact that such practice is being followed by most of the District Courts across the State of Uttar Pradesh, the learned Registrar General of this Court is directed to issue an appropriate circular in this regard.

(Tej Pratap Tiwari,J.)

February 05, 2026

Manoj