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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON – 02.12.2024**% **PRONOUNCED ON – 17.03.2025.**

+ CRL.M.C. 6572/2024, CRL.M.A. 25124/2024

SUDESH CHHIKARAPetitioner

Through: Mr. Jaipal Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) AND ANRRespondents

Through: Mr. Hemant Mehla, APP for State.
Mr. Kanhaiya Singhal, Amicus Curiae
along with Mr. Ujwal Ghai, Mr. Pulkit
Jolly and Ms. Tamanna Agarwal,
Adv.

Mr. Baljit Singh, Adv. for R-2.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J :**

1. The present petition has been filed under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred as BNSS*) challenging the order dated 07.06.2024 passed by the Additional Chief Metropolitan Magistrate (ACMM), West Delhi in Case M- 17/2024 titled *Baljeet Singh vs. Sudesh Chhikara*. Learned ACMM vide the impugned order, upon a transfer application filed by Respondent no.2, transferred the complaint case bearing CC No. 6895/2019 from the



court of learned MM-07, West, Tis Hazari Court to the Court of learned MM-02 (Mahila Court), Tis Hazari Courts, Delhi wherein another connected matter bearing MC No.533/2020 was pending adjudication between the parties.

2. Shorn of the details, Respondent No.2 is the father-in-law of the Petitioner and they are locked in several litigations pertaining to matrimonial disputes between the Petitioner and son of Respondent No.2. The present petition has been filed predominantly on the ground that under Section 410 Code of Criminal Procedure 1973 (*hereinafter referred as Cr.PC*), the Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate has no power to transfer a case from one criminal Court to another criminal Court in its jurisdiction. The petitioner has submitted that as per Section 19(3) of the Cr.PC., the Chief Metropolitan Magistrate has jurisdiction only to the extent of distribution of business among the Metropolitan Magistrate. It has also been submitted that Ld. ACMM did not even issue notice before passing the impugned order.
3. The question involved in the present petition is relating to the power of the Chief Metropolitan Magistrate/Additional Chief Metropolitan Magistrate relating to transfer of case from one Court of Metropolitan Magistrate to another Court of Metropolitan Magistrate. Since the case was of importance, this Court appointed Sh. Kanhaiya Singhal, Advocate as an Amicus Curiae. The Court records appreciation for Sh. Kanhaiya Singhal, Advocate who rendered the able assistance to the Court.



4. Before proceeding further it is necessary to examine the relevant provision of the Code of Criminal Procedure, 1973 and Bhartiya Nagrik Suraksha Sanhita, 2023.

Relevant provisions of the Code of Criminal Procedure, 1973 read as under;

“Section 12 Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

1. In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

2. The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

3. (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-Divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

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 17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.

1. The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.

2. The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

Section 19. Subordination of Metropolitan Magistrates.

1. The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

2. The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

3. The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.



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.

Relevant provisions Of Bharatiya Nagarik Suraksha Sanhita, 2023

Section 10. Chief Judicial Magistrate and Additional Chief Judicial Magistrate (Pari Materia to Sec 12 Cr.p.c)

1. In every district, the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

2. The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct.

3. The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

4. Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.



Section 13. 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 Sanhita, as to the distribution of business among the Judicial Magistrates subordinate to him

Section 450. Withdrawal of cases by Judicial Magistrates.

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 212 to any other Magistrate and may inquire into or try such cases himself.”

5. Before proceeding further it is also necessary to refer to the power conferred to the Supreme Court, High Courts and Sessions Courts for transfer of the Criminal Cases under Chapter-XXXIII BNSS 2023 and under Chapter-XXXI of Cr.PC, 1973. Section 406 Cr.PC and Section 446 BNSS, 2023 confers power upon the Supreme Court to transfer any particular case or appeal from one High Court to another High Court or from Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court by an order under this section, if it is expedient for the interest of justice. Similarly, Section 407 Cr.PC and Section 447 BNSS, 2023 confers power upon High Court to transfer cases and



appeal, if (i) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or; (ii) that some question of law of unusual difficulty is likely to arise, or (iii) 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.

6. Section 408 Cr.P.C. and Section 448 BNSS 2023 confers power upon Sessions Judge to pass an order of transfer if it is expedient for the ends of justice, of any particular case from one Criminal Court to another Criminal Court in his sessions division. It is pertinent to mention here that the High Court and the Sessions Judge may exercise its jurisdiction on the report of the lower Court or on the application of a party interest or on its own initiative. Thus, the Code of Criminal Procedure has specifically conferred the power upon Supreme Court, High Court and Sessions Court of transfer of cases. Section 409 and 410 Cr.PC and Section 449 and 450 BNSS 2023 have conferred power of withdrawal of cases and appeal by the Session Judges and the Judicial Magistrates respectively. The basic question is whether the Chief Judicial Magistrate has the power to transfer the case from one Court to another Court on an application being moved or on its own.
7. Before proceeding further it is also necessary to refer to the power to be exercised by the Additional Chief Metropolitan Magistrate. It is pertinent to mention here that in the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 10 (2) provides that the High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the



powers of a Chief Judicial Magistrate under this Sanhita or under any other law for the time being in force as the High Court may direct. Thus in this regard, the High Court in its administrative side is required to pass an order under Section 10(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as to the extent of power of an Additional Chief Judicial Magistrate.

8. Section 13(2) of BNSS, 2023 also makes it clear that the Chief Judicial Magistrate has been authorised as to the distribution of business among the Judicial Magistrates subordinate to him. The legislature in its wisdom has not conferred this power on the Additional Chief Judicial Magistrate, therefore, in absence of any special order from the High Court only the Chief Judicial Magistrate has been made empowered as to the distribution of business.
9. It is pertinent to mention here that the subordination of the Additional Chief Judicial Magistrate to the Chief Judicial Magistrate is only in regard to the administrative functions. In regard to the judicial functions, Section 10(2) specifically provides that the Additional Chief Judicial Magistrate shall have all the powers of the Chief Judicial Magistrate. In this regard, reference can also be made to ***R.D. Jain & Co. vs. Capital First Ltd. & Ors.***, (2023) 1 SCC 675 wherein it was *inter alia* held that the judicial powers and powers under the Cr.PC which may be exercised by the Chief Metropolitan Magistrate, can be exercised by the Additional Chief Metropolitan Magistrate also. It is pertinent to mention here that it was further *inter alia* held that Additional Chief Metropolitan Magistrate can be said to be at par with the Chief Metropolitan Magistrate in so far as the powers to be



exercised under the Cr.PC are concerned. The Apex Court further *inter alia* stated that the Chief Metropolitan Magistrate in addition, may have administrative powers, however, for all other purposes and more particularly the powers to be exercised under the Cr.PC both are at par. The Apex court concluded that therefore the Additional Chief Metropolitan Magistrate cannot be said to be subordinate to the Chief Metropolitan Magistrate in so far as exercise of judicial powers are concerned. Thus it is no more *res integra* that as far as judicial powers are concerned Additional Chief Judicial Magistrate is not subordinate to the Chief Metropolitan Magistrate. However, in relation to the administrative functions to be exercised by the Chief Judicial Magistrate under the BNSS, 2023, the same can be exercised by Additional Chief Judicial Magistrate only to the extent, an order to this effect is passed by the High Court. In this regard reference may again be made to Section 10(2) BNSS, 2023 which *inter alia* provides that an Additional Chief Judicial Magistrate “shall have all or any of the powers of a Chief Judicial Magistrate”, “as the High Court may direct”. Thus the legislature in its wisdom has not conferred “all” powers and stated that “all or any of the powers”. Any word in the legislature cannot be considered to be superfluous ordinarily. Therefore, an order of the High Court in its administrative side is required to be passed regarding “All or any of the powers” to be exercised by the Additional Chief Judicial Magistrate.

10. Now coming to the core question that whether the Chief Judicial Magistrate has the power to transfer the case from one Court to another while exercising its power under Section 410 Cr.P.C./Section 450



BNSS, 2023. In this regard, High court of Karnataka in *M/s Radical Works Pvt. Ltd. v. Sri Padmanabh T.G.*, in CrI.P. No. 1291/2023, *A. K. Singh, Special Railway Magistrate, Jabalpur vs. Virendra Kumar Jain, Advocate-* MANU/MP/0623/1999 : 2001 (4) M.P.L.J. 324, *Chandrkantbhai Bhaichandbhai Sharma vs. State of Gujarat and Another* in Special Criminal Application (Quashing) No.4884/2015 and *Mahfooskhan Mehboob Sheikh vs. R. J. Parakh-* MANU/MH/0304/1979 : LAWS(BOM)-1979-11-8, the Court inter alia held as under:

“6. Chapter XXXI of Cr.P.C. provides for Transfer of Criminal Cases. Section 406 of Cr.P.C. in the said Chapter provides for the power of Supreme Court to transfer cases and appeals from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Section 407 of Cr.P.C. provides for power of High Court to transfer cases and appeals as provided therein. However, no application for transfer of a case from one Criminal Court to another Criminal Court in the same sessions division shall be entertained by the High Court unless an application for transfer has been made to the Sessions Judge and rejected by him. Section 408 of Cr.P.C. provides for power of the Sessions Judge to transfer cases and appeals from one Criminal Court to another Criminal Court in his sessions division. Sections 409 and 410 of Cr.P.C. deals with the powers of the Sessions Judge and Chief Judicial Magistrate or Chief Metropolitan Magistrate for withdrawal of the cases/appeals. Section 411 of Cr.P.C. provides for making over or withdrawal of cases by Executive Magistrates and Section 412 of Cr.P.C. provides that a Sessions Judge or Magistrate making an order under Sections 408, 409, 410 or Section 411 of Cr.P.C. shall record his reasons for making it.



7. In the present case, an application has been filed by respondent herein before the Court of Chief Metropolitan Magistrate, Bengaluru, for transfer of two cases which were pending before two different Courts of Additional Chief Metropolitan Magistrate. The Court of Chief Metropolitan Magistrate in exercise of his power under Section 410 of Cr.P.C. has allowed the prayer made by the respondent herein and has ordered transfer of the two criminal cases pending before two different Courts of Additional Chief Metropolitan Magistrates to another Court of Additional Chief Metropolitan Magistrate.

8. The power of Chief Judicial Magistrate/ Chief Metropolitan Magistrate under Section 410 of Cr.P.C. for transferring of pending criminal cases from one Court of Additional Chief Metropolitan Magistrate to another Court of Additional Chief Metropolitan Magistrate was considered by the High Court of Madhya Pradesh in the case of A. K. Singh (*supra*) and in paragraphs No.10 and 11, it is observed as follows:-

“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."

9. The High Court of Gujarat in the case of Chandrkantbhai Bhaichandbhai Sharma (supra) in paragraphs No.16 and 21, has observed as follows:-

"16. Sections 406, 407 and 408 respectively relate to the power of the Supreme Court, High Court and Sessions Judge to transfer cases and appeals. On the other hand, Sections 409, 410(1) and (2) and 411 relate to withdrawal of cases or recalling of cases which had been made over by the Sessions Judge, Chief Judicial Magistrate, Judicial Magistrate and the Executive Magistrate, for being thereafter tried either by himself or being made over to another Court for trial. 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.

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 state 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.

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21. In view of the above discussion, the position may be summarized thus:

(a) A Sessions Judge in exercise of judicial power under Section 408 of the Code may transfer any case pending before any Criminal Court in his Sessions Division to any other Criminal Court in his Sessions Division. That would mean that he can transfer even those cases where the trial has commenced from one Additional Sessions Judge in his



Sessions Division. The transfer of a case under Section 408 of the Code being in exercise of a judicial power, it should be preceded by a hearing to the parties interested. Further, the reason or why it is expedient for the ends of justice to transfer the case, has to be recorded.

(b) The judicial power under Section 408(1) and the administrative power under Section 409(1) and (2) are distinct and different and Section 408 is not controlled by Section 409(2). A sessions Judge in exercise of his administrative power under Section 409 may:

(i) withdraw any case or appeal from any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him;

(ii) recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him;

(iii) recall any case or appeal which he has made over to any Additional Sessions Judge, before trial of such case or hearing of such appeal has commenced before such Judge and try the case or hear the appeal himself or make it over to another Court for trial or hearing in accordance with the provisions of the Code. NO hearing need be granted to any one before exercising such power. But the reason therefore shall have to be recorded having regard to Section 412."

10. The judgment in the case of Mahfooskhan Mehboob Sheikh (supra) rendered by the High Court of Bombay cannot be made applicable to the facts of the present case as the said judgment was rendered in the background that a Notification under Section 19(2) of Cr.P.C. was issued by the High Court of Bombay defining the extent of subordination of the Courts of Additional Chief Metropolitan Magistrates to the Court of Chief Metropolitan Magistrate. However, the same is not the position in the present case as no such Notification is issued



by this Court. In addition to the same, I am not in agreement with the reasoning assigned by the High Court of Bombay holding that the Court of Chief Metropolitan Magistrate is empowered under Section 410 of Cr.P.C. to entertain an application seeking transfer not only on the administrative ground but also on the judicial ground.

11. The High Court of Madhya Pradesh and High Court of Gujarat in the case of A. K. Singh (supra) and Chandrkantbhai Bhaichandbhai Sharma (supra) have laid down the correct position of law and I am in complete agreement with the same. Under the circumstances, I am of the opinion that the Court of Chief Metropolitan Magistrate, Bengaluru, in exercise of his power under Section 410 of Cr.P.C. could not have passed the order impugned. Therefore, the said order cannot be sustained. Accordingly, the petition is allowed. The impugned order dated 13.01.2023 passed by the Chief Metropolitan Magistrate, Bengaluru in Crl. Misc. No.5901/2022 is set-aside.”

11. This Court considers that the view taken by the High Court of Karnataka in ***M/s Radical Works Pvt. Ltd. (Supra)*** and the view taken by the High Court of Madhya Pradesh in ***A. K. Singh, Special Railway Magistrate, Jabalpur (Supra)*** and the High Court of Gujarat in ***Chandrkantbhai Bhaichandbhai Sharma (Supra)*** is in sync with the provisions of the Code of Criminal Procedure, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023. The Court is of the firm view that since the legislature in its own wisdom has conferred the power of the transfer only to Supreme Court, High Courts and the Sessions Court, it cannot be given by way of inference to the Court of Chief Judicial Magistrate. The law of interpretation does not provide interpretation of any provision which in any manner



contravenes 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. Thus, the Court finds itself to be fully in agreement with the view taken by the High Court of Madhya Pradesh in **A. K. Singh, Special Railway Magistrate, Jabalpur** (*Supra*) followed by the High Court of Gujarat in **Chandrkantbhai Bhaichandbhai Sharma** (*Supra*) and the High Court of Karnataka in **M/s Radical Works Pvt. Ltd.** (*Supra*). Even otherwise, the present impugned order has to go as the learned Additional Chief Metropolitan Magistrate did not even consider it necessary to issue the notice before passing the impugned order.

12. In these facts and circumstances, on the basis of the discussions made herein above, the Court passes the following directions:
- (i) under Section 410 Cr.PC. and Section 450 BNSS the power conferred upon the Chief Judicial Magistrate is only administrative in nature. The Court of Chief Judicial Magistrate cannot “transfer” a case from one Court or another upon an application being moved or *suo moto*.
 - (ii) the Additional Chief Judicial Magistrate cannot exercise the administrative power of transfer of case from one Court to another within its jurisdiction unless an order is passed by the High Court under Section 10(2) BNSS, 2023.
 - (iii) the Respondent No.2 shall be at liberty to move a proper application before Ld. Principal District and Sessions Judge under Section 448 BNSS, 2023 for transfer of case from one Court to



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- another. Learned Principal District and Sessions Judge may exercise the jurisdiction without being influenced by the order of this Court in accordance with law.
- (vi) The copy of the order be sent to Ld. Registrar General for appropriate action and circulation of copy of judgment to the judicial officers subject to the directions of Hon'ble the Chief Justice.
13. The present petition along with pending application(s), if any, stands disposed of.

MARCH 17, 2025
Ankit/KR

DINESH KUMAR SHARMA, J