

TRANSFER OF CASES
(u/s 24 CPC & u/s 192, 408 & 410 CrPC)

.... S.S. Upadhyay
Former District & Sessions Judge/
Former Legal Advisor to Governor
Uttar Pradesh, Raj Bhavan
Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com

1(A). Section 408 CrPC : 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.

1(B). Section 24 CPC : Transfer applications in civil cases are moved u/s 24 of the CPC.

1(C-1). When can a Sessions Judge transfer a case u/s 408 CrPC ? : A Sessions

Judge can transfer a criminal case u/s 408 CrPC from one court to other court in his sessions division under the following conditions :

- (i) on the report of the lower court
- (ii) on the application of a party
- (iii) on his own initiative.

1(C-2).No appeal, revision or bail application etc. can be heard and decided by an Additional or Assistant Sessions Judge unless transferred to him by the Sessions Judge : Expression "Court of Session" u/s 6 & 7 of the CrPC includes Sessions Judge and also Additional or Assistant Sessions Judge. Expression "Sessions Judge" however cannot be treated to include Additional or Assistant Sessions Judge unless the context otherwise requires. While the Sessions Judge presides over the Sessions Division, an Additional or Assistant Sessions Judge merely exercises jurisdiction in a Court of Session. The overall control of administration, in a given Sessions Division, rests in the Sessions Judge. Wherever the Code of Criminal Procedure intended that the power can be exercised only by a Sessions Judge, the Court has used the expression "Sessions Judge" and not the "Court of Session". Hearing of appeal by Additional or Assistant Sessions Judge or Judicial Magistrate shall be wholly without jurisdiction or nullity u/s 381(2) of the CrPC unless such appeal has been made over for hearing by the Sessions Judge. Power of revision u/s 397 and 400 CrPC is exercisable by the Sessions Court and the High Court and not by an Additional or Assistant Sessions Judge unless the Sessions Judge transfers the revision petition to the Additional Sessions Judge u/s 400 CrPC. Only Sessions Judge shall hear urgent bail applications u/s 438 and 439 CrPC. Only in the event of absence of the Sessions Judge or if he is unable to attend bail application for some other reason, such bail application can be taken up by the Additional or Assistant Sessions Judge. Without specific order by the Sessions Judge u/s 10(3) of the CrPC, an Additional or Assistant Sessions Judge cannot directly take up the bail application. Sessions triable case can be tried and decided by Additional or Assistant Sessions Judge on being directly committed to them by Magistrate u/s 194 CrPC if such trial is in terms of the order of the Sessions Court or High Court u/s 194 CrPC. Otherwise without any order of

the Sessions Judge or High Court, such trial by the Additional or Assistant Sessions Judge shall amount to an irregularity. Magistrate shall not commit any Sessions Triable Case u/s 193 and 194 CrPC to the Additional or Assistant Sessions Judge on his own. In case of committal of such case on his own to Additional or Assistant Sessions Judge, such error must be objected to at the earliest stages. Such error cannot be made ground for interference with the finding of guilt or otherwise recorded on the basis of trial when no failure of justice is occasioned by such error. See : **District Bar Association, Civil Court, Patna Vs. State of Bihar & Others, 2017 CrLJ 1 (Patna)(Full Bench).**

1(D). Grounds often taken in transfer applications : Following grounds are often taken by the parties and their counsel for transfer of cases from the court of one presiding officer to other :

- (i) Honesty & Integrity
- (ii) Partiality
- (iii) Misbehavior
- (iv) Cross or connected case pending in some other court
- (v) Court lying vacant
- (vi) Disclosure of mind by the P.O. during arguments or in some order.

1(E). Affidavit must in support of Transfer Application : As per Section 408 read with 407(3) CrPC, transfer application must be supported by an affidavit of the applicant.

1(F). Transfer application u/s 408 CrPC cannot be decided by Sessions Judge without inviting comments from the Presiding Officer and the complainant : Where the Sessions Judge, Meerut vide his order dated 13.06.2014 had rejected the transfer application moved by the accused applicant u/s 408 CrPC without inviting comments from the Presiding Officer and the complainant both, setting aside the said order of the Sessions

Judge, it has been held by the Hon'ble Allahabad High Court that the transfer application ought to have been decided by the Sessions Judge after inviting comments from the Presiding Officer and the complainant both. See : **Amit Vs. State of UP, 2014 (86) ACC 520 (Alld).**

1(G). Relevant considerations for transfer of case u/s 407 & 408 CrPC : For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. Justice should not only be done but it should be seen to be done. Mere allegations that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to court to be a reasonable apprehension. See : **Captain Amarinder Singh Vs. Prakash Singh Badal (2009) 6 SCC 260 (Three-Judge Bench).**

2(A-1). Part heard sessions trials to be transferred to the court of ASJ transferred to another court in a local arrangement (C.L. No. 71/53B/Admn.(A) dated 7th November, 1983) : Whenever any Additional Sessions Judge (including Additional District & Sessions Judge) is transferred from one court to another court in a local arrangement, he shall submit a list of all the part heard sessions trials in which recording of evidence has commenced to the Sessions Judge who shall record an order for transferring such trials to the file of the court to which the Additional Sessions Judge has been transferred.

2(A-2). Accused has no right to get the part heard case decided by the previous judge : As soon as the Presiding Officer is transferred from a particular court, he ceases to exercise his jurisdiction in all pending cases before him on the date of his transfer. Accused has no right to get the case decided by

the judge who had partly or wholly recorded evidence in the case. See : **Anil Kumar Agarwal Vs. State of UP, 2015 (89) ACC 723 (All)(LB).**

2(B). Sessions Judge u/s 408 CrPC can transfer part heard case or appeal from one ASJ to another ASJ : The Sessions Judge is empowered under Section 408 CrPC to transfer a part heard case or appeal from a court of an Addl. Sessions Judge to another competent court within his sessions division if it is expedient in the interest of justice and the limitations imposed under Section 409(2) CrPC are not applicable in exercise of the power of transfer conferred u/s 408 CrPC. See : **Radhey Shyam Vs. State of UP, 1984 (10) ALR 418 (All)(Full Bench)=1984(2)Crimes 50(All)(Full Bench)=1984 ALJ 666 (Full Bench).**

Note : *Vide C.L. No. 41/VIIb-116 dated 2nd, 1984, the above Full Bench decision in Radhey Shyam Vs. State of UP, 1984 ALJ 666 (Full Bench) has been circulated to all the Sessions Judges of UP for compliance.*

2(C). Administrative circulars, notices, guidelines & instructions not to override the law : In the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that the administrative instructions having no force of law cannot override statutory rules having force of law. See :

- (i) **Tata Sky Limited Vs. State of M.P., (2013) 4 SCC 656 (para 33).**
- (ii) **The Rajasthan State Industrial Development & Investment Corporation Vs. Subhash Sindhi, Co-operative Housing Society, Jaipur, AIR 2013 SC, 1226. (para 19).**
- (iii) **P.H. Paul Manoj Pandian Vs. Veldurai, 2011 (3) SCJ 925**
- (iv) **Jhunjhunwala Vs. State of UP, (2006) 8 SCC 196**
- (v) **Mangal Dev Vs. State Election Commission, 2005 (4) AWC 3127 (Allahabad)(DB).**

2(D-1). Seeking transfer of case involving pornographic material from the court of a lady judge to a male judge not to be allowed : Where the High Court in exercise of its powers u/s 407 CrPC had transferred a criminal case involving the penal section 67 of the Information Technology Act, 2000, Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986,

Sections 5 & 6 of the Immoral Traffic (Prevention) Act, 1956, Section 27 of the Arms Act, 1959 and Sections 120-B, 506, 366, 306, 376 IPC pending before a Fast Track Court presided over by a lady judge designated as "Mahila Court" on the ground to avoid embarrassment to the lady judge as the material/CD on the record of the case contained some pornographic materials and acts, the Hon'ble Supreme Court, while setting aside the order of the High Court, observed that embarrassment is a state of mind which is more individual-related than related to the sex of a person particularly when the lady judge herself had not expressed any reservation for trial of the said case nor has sought for or directed transfer of the case. See : **Fatima Riswana Vs. State (TN), (2005) 1 SCC 582.**

2(D-2).Transfer of cases involving offences against women to Fast Track Court (Special Court) for dealing with such cases imperative : Transfer of cases involving offences (u/s 365, 376 IPC) against women to Fast Track Court (Special Court) for dealing with such cases is imperative. See : **Gaurav Shukla Vs. State of UP, 2015 (89) ACC 164 (DB)(LB).**

2(E-1). ADJ or Civil Judge as In-charge District Judge can transfer a civil case only in exceptional circumstances and for reasons to be recorded by him (Rule 89-B, G.R. Civil w.e.f. 30.11.1992) : Rule 89-B as added in the General Rules Civil w.e.f. November 30, 1992 reads thus : "When exercising powers of the District Judge under **Section 10(1) of the Bengal, Agra and Assam Civil Courts Act, 1887**, the Additional Judge or the Civil Judge, as the case may be, shall only exercise such powers of the District Judge under Section 10(2) of the said Act which are necessary for the purposes of disposal of urgent applications made or pending before such Courts in the district and may also deal with the matters of routine nature. He shall, however, not make any orders for transfer or recall of the cases pending in

the Civil Court in the district, save in exceptional circumstances and for reasons recorded by him in this behalf."

2(E-2).Officiating ASJ or CJM u/s 9(5A) CrPC as inserted in UP w.e.f. 01.05.1984 can also exercise power of transfer of cases u/s 408 CrPC in the absence of the Sessions Judge : An officiating ASJ or CJM u/s 9(5A) CrPC as inserted in UP w.e.f. 01.05.1984 can also exercise power of transfer of cases u/s 408 CrPC in the absence etc of the Sessions Judge. The said Section 9(5A) CrPC reads thus : *"In the event of the death, resignation, removal or transfer of the Sessions Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the senior most among the Additional Sessions Judge, and the Assistant Sessions Judges present at the place, and in their absence the Chief Judicial Magistrate shall without relinquishing his ordinary duties assume charge of the office of the Sessions Judge and continue in charge thereof until the office is resumed by the sessions judge or assumed by an officer appointed thereto, and shall subject to the provision of this code and any rules made by the High Court in this behalf, exercise any of the powers of the Sessions Judge."*

2(E-3).Suspension of clerk by Officiating District Judge held proper : Where a clerk was suspended by the Officiating District Judge, Fatehpur for the allegations that the clerk had used unparliamentary language against the In-charge District Judge on 01.01.2016 and had misbehaved with him and appeared to be in a state of intoxication, the suspension order passed by the In-charge District Judge was held proper by the Allahabad High Court. Interpreting the provisions of Article 309 of the Constitution of India, Rule 23(2) of the Uttar Pradesh State District Court Service Rules, 2013 and Section 10 of the Bengal, Agra & Assam Civil Courts Act, 1887, it has further been observed that the Additional District Judge in the absence of the District Judge was statutory delegatee as there was no delegation of

power by the District Judge and being a statutory delegatee, the In-charge District Judge could not have further delegated his powers. But the suspension of the clerk by the In-charge District Judge pending enquiry was not penal in nature and the suspension order passed by him was proper. See : **Siddharth Pandey Vs. State of UP, 2016 (3) ALJ 316 (All).**

2(F). Notice to the opposite party mandatory when power u/s 24 CPC for transfer of case is invoked by the District Judge on the application of a party : Notice to the opposite party is mandatory when power u/s 24 CPC for transfer of case is invoked by the District Judge on the application of a party. See : **Vivekanand Nidhi Vs. Asheema Goswami (Smt.), (2000) 10 SCC 23.**

2(G-1).Litigants cannot be permitted 'choice' of 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand : No lawyer or litigant can be permitted to browbeat the Court or malign the Presiding Officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. It must always be remembered that justice must not only be done but it must also be seen to be done. See : **M/s.**

Chetak Construction Ltd Vs. Om Prakash & Others, AIR 1998 SC 1855 (paras 19 & 20).

- 2(G-2). Notice to the parties not required when power u/s 24 CPC for transfer of case is invoked by the District Judge suo motu :** Notice to the parties is not required when power u/s 24 CPC for transfer of case is invoked by the District Judge suo motu. See : **Vivekanand Nidhi Vs. Asheema Goswami (Smt.), (2000) 10 SCC 23.**
- 2(H). No objection or consent of opposite party not a ground for Transfer of a case :** A change of court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both parties combined together they can avoid a court and get a court of their own choice. Court is not disposed to give such an option to the parties. See : **Mahabir Prasad Singh Vs. M/s. Jacks Aviation Pvt. Ltd., AIR 1999 SC 287.**
- 2(I). Refusal of transfer of Ghaziabad GPF scam case involving judicial officers to Delhi :** Turning down the transfer application of the CBI under section 406 CrPC, the supreme court has held that power of transferring case u/s 406 CRPC should be sparingly and with great circumspection exercised and merely because the accused persons in Ghaziabad PF scam are judicial officers of the state of UP, it cannot be a ground for transferring the case from Ghaziabad to Delhi where subordinate judiciary is already heavily burdened. See... **Nahar Singh Yadav Vs. union of India, 2011 CrLJ 997 (SC).**
- 2(J). No transfer of case from a court u/s 24 or 151 CPC on the ground that the advocate does not want to appear in that court :** No advocate or group of advocates can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to

appear in that court. See : **Mahabir Prasad Singh Vs. M/s. Jacks Aviation Pvt. Ltd., AIR 1999 SC 287.**

2(K). Even unproved allegations may disentitle a Judicial Officer of certain benefits : Even unproved complaints may disentitle a Judicial Officer of certain benefits. It is not 'proved dishonesty' or 'proved misconduct' that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny a Judicial Officer benefit of enhancement of superannuation age to 60 years. It is in totality of the circumstances available from the entire service record and all other relevant circumstances that an opinion has to be formed whether or not the Judicial Officer deserves to be given benefit of increase of superannuation age to 60 years. See : **High Court of Judicature at Patna Vs Shiveshwar Narayan & another, 2011 (3) SLJ 392 (SC).**

2(L-1). Transfer application dismissed in default u/s 408 CrPC not to be restored : Where a transfer application is dismissed for default, there is no provision for restoration of the transfer application or for setting aside ex parte order passed on the transfer application. The applicant can file fresh transfer application if ground exists. See : **Pratibha Saxena, Re, 2006 CrLJ 4285 (All).**

2(L-2). Transfer application dismissed in default u/s 408 CrPC in the absence of counsel can be restored : Where a transfer application moved u/s 408 CrPC was dismissed by the Court in the absence of counsel, it has been held that recall of the said order could not have been refused by strictly applying the provisions of Section 362 CrPC and the same was restored to its original number. See : **Rakesh Srivastava "Nyayik" Vs. State of UP, 2015 (88) ACC 694 (All) : by Hon'ble Mohd. Tahir J.**

3. Presiding officer should not proceed further with the case and should wait for order on transfer application : When there is apprehension in the

mind of any party that he will not get justice from a particular presiding officer of the court and the presiding officer is in the knowledge of the transfer application having been moved, he must not decide the case and should wait for orders on the transfer application. It will be in the interest of justice to transfer the case to other court. See : **P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513.**

- 4(A). Presiding officer having come to know about the transfer application being moved before the District Judge must not proceed further with the case and wait for order on the transfer application :** During the pendency of a civil revision before the Addl. District Judge, Jhansi, a transfer application was moved against the Addl. District Judge on the basis of allegations and partiality and the same was pending before the District Judge, Jhansi, who passed an order on 26.10.1999 to the effect "*Heard. Register as Misc. Case. Summon the record. Put up therewith tomorrow for hearing*". The copy of the said order dated 26.10.1999 passed by the District Judge, Jhansi, was received in the office of the Addl. District Judge, at 4.00 p.m. on 26.10.1999 itself but the Addl. District Judge, Jhansi, despite knowledge of the order of the District Judge passed on the transfer application decided the revision on 27.10.1999. Severe disciplinary action was directed to be taken by the Hon'ble Allahabad High Court against the Addl. District Judge, Jhansi by relying on the decision of the Hon'ble Supreme Court reported in **P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513** by observing that "*When there is apprehension in the mind of any party that he will not get justice from a particular presiding officer of the court and the presiding officer is in the knowledge of the transfer application having been moved, he must not decide the case and should wait for orders on the transfer application. It will be in the interest of justice to transfer the case to other court.*" See : **Ram Narayana Vs. Rakesh Tandon, 2006 (63) ALR 47 (All).**

- 4(B). **Presiding Judge having come to know about the transfer application being moved must not proceed further with the case and wait for order on the transfer application** : Once it is brought to the notice of the court that transfer application has been moved, it must stay the proceedings and wait for the decision on the transfer application. See : **Lallu Prasad Vs. Lakshmi Narain, 2006 (5) ALJ (NOC) 1041 (All)**.
- 5(A). **Case of the party having apprehension in mind of not getting justice from a particular presiding officer should be transferred to other court** : Relying on the decision of the Supreme Court reported in **P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513**, the Hon'ble Allahabad High Court, in the case noted below, has held that if there is any apprehension in the mind of any party that he will not get justice from a particular presiding officer and that presiding officer comes to the knowledge of that fact, it will be in the interest of justice to transfer the case to other court. See : **Ram Narayana Vs. Rakesh Tandon, 2006 (63) ALR 47 (All)**.
- 5(B). **Apprehension or inconvenience as ground for transfer of case must be reasonable and not mere conjectures or surmises** : Convenience for purpose of transfer of case means convenience of prosecution, other accused, witnesses and larger interest of the Society. Court has to be visualize comparative inconvenience and hardships likely to be caused to the witnesses besides the burden to be borne by the State ex chequer in making of travelling and other expanses of the official and non-official witnesses for attending the court proceedings. The apprehension of the party that it will not get a fair and impartial enquiry or trial besides inconvenience in pursuing the case requires to be reasonable apprehension or inconvenience and not based on mere conjectures and surmises. See : **Harita Sunil Parab**

Vs. State (NCT of Delhi) & Others, (2018) 6 SCC 358 (Three-Judge Bench).

- 5(C). Application seeking time to move transfer application u/s 408 CrPC not to be granted :** An application moved by the accused seeking time to move transfer application if mala fide and moved with intent to delay the disposal of the case should be rejected. See : **Anil Kumar Vs. State of UP, 2014 (86) ACC 805 (All).**
- 6. Transferee Court not to proceed de novo :** Where original suit was transferred to the court having pecuniary jurisdiction, it has been held by the Hon'ble Supreme Court that it was not necessary for the transferee court to proceed de novo. Transferee court would be fully competent to proceed from the stage till which proceedings in the earlier court were held. See : **Lallu Prasad Vs. Lakshmi Narain, 2006 (5) ALJ (NOC) 1041 (All).**
- 7. Administrative Judge of the High Court has no power to transfer case :** Administrative Judge has no powers u/s 407 CrPC to transfer cases (bail applications) from one court to other court in the district of his control. Proper course for him would be to send the transfer application to the court concerned for passing appropriate orders without commenting upon the merits of the case. See : **Jasbir Singh Vs. State of Punjab, (2006) 8 SCC 294.**
- 8. Transfer order must be reasoned and speaking :** Powers u/s 24 CPC for transfer of case cannot be exercised ipse dixit. Where assertions made by the plaintiff in the transfer application were contradicted by the defendants but the High Court (Punjab & Haryana) without applying mind to those aspects and without recording any reasons and grounds allowed the transfer application by observing that it would be "appropriate" to transfer the suit pending in the court of Civil Judge (Senior Division) Roper, to other court, the said order passed by the High Court was set aside by the Supreme Court

by remitting the transfer application to the High Court for fresh disposal. See : **Kulvinder Kaur Vs. Kandi Friends Education Trust, AIR 2008 SC 1333.**

- 9(A). Transfer application moved u/s 407 & 408 CrPC against ASJ on the ground of bias and being relative of a Minister opposed to the accused rejected by the Supreme Court :** Where in the case of **Lalu Prasad Yadav, Ex-Chief Minister of Bihar**, application for transfer of the case involving fodder scam was moved u/s 407 & 408 CrPC against the ASJ on the ground of the ASJ being biased and relative of a Minister opposed to the accused, the Supreme Court rejected the transfer application and directed the ASJ to decide the sessions trial within a specified period by providing opportunity of arguments to the prosecution and defence as directed by the Supreme Court. See : **Lalu Prasad Yadav Vs. State of Jharkhand, (2013) 8 SCC 593 (Three-Judge Bench).**
- 9(B). Presiding officer can seek extension of time to ensure fair trial if the time limit fixed for trial is over :** Direction for conclusion of trial within a fixed duration does not mean mechanical conclusion of trial anyhow regardless of whether justice is miscarried. Trial court can always seek extension of time from High Court to ensure fair trial. See : **Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787.**
- 10(A). Option of accused u/s 191 CrPC to seek transfer of case where Magistrate had taken cognizance of offence u/s 190(1)(c) CrPC :** If the Magistrate had taken cognizance of the offences u/s 190(1)(c) of the CrPC, the accused has option u/s 191 CrPC to seek transfer of case to the court of other Magistrate. Section 191 CrPC reads thus : "*Transfer on application of the accused : When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of Section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings*

before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf".

10(B). Power of CJM u/s 192 CrPC to make over case to any other magistrate subordinate to him : Section 192 CrPC reads thus : "***Making over of cases to Magistrate : (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 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."

10(C). Transferee Magistrate can take cognizance of offence u/s 190(1) CrPC where the CJM had transferred the case u/s 192 CrPC without taking cognizance of the offence : Transferee Magistrate can take cognizance of offence u/s 190(1) CrPC where the CJM had transferred the case u/s 192 CrPC without taking cognizance of the offence. See : Anil Saran Vs. State of Bihar, AIR 1996 SC 204.

10(D-1). Notice by CJM to parties before transferring u/s 192 CrPC the case to other Magistrate : Normally, notice of transfer of case should be served upon the parties so as to enable them to come forward and show cause why such transfer should not be made.

10(D-2). Observance of principles of natural justice must even when rules are silent : Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See :

- (i) **Maneka Gandhi Vs. Union of India, (1978) SCC 248** (Section 10 passports Act- rule of natural justice may be followed by giving post decisional opportunity) **AIR 1978 SC 579(1), (Seven-Judge Bench)**.
- (ii) **Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552** (Censure-Rule 55B of erstwhile CCA Rules; rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976).

10(E). CJM has power to stay trial of the case during pendency of the petition for transfer of the case : CJM has power to stay trial of the case during pendency of the petition for transfer of the case. See : **Thottuvarambath Velayudhan Vs. Aboobacker Haji, 1980 CrLJ 181 (Kerala)**.

10(F). Power of CJM u/s 410(1) CrPC to withdraw or recall any case from other Magistrates subordinate to him : The power conferred on the Chief Judicial Magistrate under Section 410(1) Code of Criminal Procedure to withdraw any case from or recall any case which he has made over to any Magistrate subordinate to him and to 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; the power conferred on the judicial Magistrate under Section 410(2) Code of Criminal Procedure to recall any case made over by him under Sub-section (2) of Section 192 Code of Criminal Procedure to any other Magistrate and to inquire into or try such case himself and the power conferred on District Magistrate or Sub-Divisional Magistrate under Section 411 Code of Criminal Procedure to make over, for disposal, any proceeding which has been started before him, to any Magistrate subordinate to him and to withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and dispose of such proceeding himself or refer it for disposal to any other Magistrate are all administrative powers in connection with the distribution of business. These powers are distinct from the judicial power of transfer conferred on the High Court and the Sessions Judge to be exercised if expedient for the ends of justice. See : **Radhey Shyam Vs. State of UP, 1984 (10) ALR 418 (All)(Full Bench)=1984(2)Crimes 50(All)(Full Bench)**.

10(G).CJM u/s 410 CrPC has power to withdraw any case from any Magistrate even if such case was not made over by him to such Magistrate : Chief Judicial Magistrate u/s 410 CrPC has power to withdraw any case from any Magistrate subordinate to him even if such case was not made over by him to such Magistrate. See : **Prem Narain Singh Vs. Ramraj, 1991 (1) Crimes 4 (para 8).**

10(H).Sessions Judge u/s 408 CrPC has power to transfer cases from all criminal courts whether they are the courts of Judicial Magistrates or the Executive Magistrates : The Sessions Judge is the head of the administration of criminal justice in the District. Section 408 CrPC provides for general power regarding transfer of any case from one criminal court to another criminal court in the Sessions Division by the Sessions Judge but u/s 409 CrPC he has been given the power regarding withdrawal of the cases from the court of Assistant Sessions Judge or other Chief Judicial Magistrate who are subordinate to him. The power conferred u/s 410 CrPC with regard to the Judicial Magistrates is analogous to the power conferred u/s 409 CrPC to the Sessions Judge with regard to the Assistant Sessions Judge or the Chief Judicial Magistrate. Sessions Judge u/s 408 CrPC has power to transfer cases from all criminal courts whether they are the courts of Judicial Magistrates or the Executive Magistrates. See : **Prem Narain Singh Vs. Ramraj, 1991 (1) Crimes 4 (para 7).**

11. High Court u/s 22 to 24 CPC and u/s 407 CrPC has power to transfer cases from one family court to other family court : It has been declared by Section 7 of the Act to be a district court or subordinate civil court to which provisions of the CPC and CrPC have been applied by Section 10 of the Act. It will not cease to be a court merely because some restrictions are imposed by Section 11 to 16 of the Act. Looked at from every angle Family Court and as such, High Court has powers under Sections 22 to 24 of the CPC. I to transfer a case relating to the

matters dealt with by explanation to sub-section (I) of Section 7 of the Act and likewise has powers under Section 407 of the CrPC to transfer a case relating to Chapter IX, CrPC. See :

- (i) **Munna Lal Vs. State of UP, AIR 1991 All 189 (DB)**
- (ii) **Smt. Jyotsna Dixit Vs. Civil Judge, Khiri, 1999 (1) AWC 107 (All).**

Note : *But the District & Sessions Judge has no power of transfer of cases from Family Court to any other Court in his judgeship.*

12(A). Precautions in writing comments on Transfer Applications : Certain precautions, as noted below, should be kept in mind while writing comments upon transfer applications :

- (i) emotions not to find place in comments
- (ii) intemperate or offending words or language not to be used in comments.
- (iii) expression of ill-will etc against the party or his counsel moving the transfer application should be avoided.
- (iv) comments must not reflect that the PO is interested in the subject-matter of the dispute or towards any of the parties
- (v) quoting rulings or provisions of law in comments should be generally avoided unless there is compelling necessity for the same.
- (vi) recording of objections against transfer of the case must be avoided and in the end of the comments, the PO should indicate that he has no objections if the case is transferred from his court to any other court.
- (vii) only allegations made in the transfer application against the PO should be contradicted and denied by the PO and not the respective claims or counter claims of the parties on the merits of the case.
- (viii) comments must not be contrary to record and law.
- (ix) comments should be brief and not unnecessarily lengthy.

12(B). Judicial Officer's Prosecution for Defamatory Comments on Transfer Application & Sec. 197 CrPC : Where the appellant, a Munsif Magistrate, by a letter to the District Judge submitted his remarks against the allegations made by the respondent, an advocate, in a transfer petition for transfer of a suit pending in appellant's Court and while so doing, called the respondent 'rowdy'. "a big gambler" and "a mischievous element" and on this letter being read in open court, the respondent filed criminal complaint against the

appellant without the sanction contemplated u/s 197 CrPC, it was held that the act complained of had no connection with the discharge of official duty of the appellant. Hence Sec. 197 CrPC was not in any way attracted. See : **B.S. Sambhu Vs. T.S. Krishnaswamy, AIR 1983 SC 64.**

12(C). Model comments on transfer applications ? :

प्रेषक,

मोहन कुमार
अपर जनपद न्यायाधीश
कोर्ट संख्या 2
करनाल ।

सेवा में,

मा0 जनपद न्यायाधीश
करनाल ।

विषय : प्रकीर्ण सिविल अपील संख्या : 32/2014 को अन्य न्यायालय में अन्तरित किये जाने हेतु अपीलार्थी डॉ0 रमेश कुमार द्वारा धारा 24 सीपीसी के अन्तर्गत प्रस्तुत किये गये अन्तरण प्रार्थना-पत्र दिनांकित 20.04.2014 पर टिप्पणी ।

महोदय,

अपीलार्थी डॉ0 रमेश कुमार के उपरोक्त विषयक अन्तरण प्रार्थना-पत्र दिनांकित 20.04.2014 पर मा0 महोदय द्वारा पारित आदेश दिनांक 21.04.2014 के अनुपालन में निम्नांकित टिप्पणी मा0 महोदय के अवलोकनार्थ सादर प्रेषित है :

1. सिविल प्रकीर्ण अपील संख्या 32/2014, डॉ0 रमेश कुमार प्रति चन्द्र कुमार आदि मा0 महोदय द्वारा पारित आदेश दिनांक 18.01.2014 के अनुपालन में अन्तरित होकर न्यायालय अपर जनपद न्यायाधीश, कोर्ट संख्या 2, करनाल में दिनांक 20.01.2014 को प्राप्त हुई है । उक्त प्रकीर्ण सिविल अपील अपीलार्थी डॉ0 रमेश कुमार द्वारा न्यायालय सिविल जज (सीनियर डिवीजन), करनाल द्वारा मूलवाद संख्या 130/2013 में पारित आदेश दिनांक 28.12.2013 के विरुद्ध संस्थित की गयी है । उक्त आदेश दिनांक 28.12.2013 के द्वारा विद्वान सिविल जज (सीनियर डिवीजन) करनाल द्वारा वादी/अपीलार्थी द्वारा आदेश 39, नियम 1 व 2 सीपीसी के अन्तर्गत प्रस्तुत अन्तरिम व्यादेश प्रार्थना-पत्र निरस्त कर दिया गया था जिसके विरुद्ध वादी/अपीलार्थी डॉ0 रमेश कुमार द्वारा वर्तमान सिविल प्रकीर्ण अपील आदेश 43, नियम 1 (र) सीपीसी के अन्तर्गत संस्थित की गयी है ।
2. उपरोक्त प्रकीर्ण सिविल अपील में उभयपक्ष के अधिवक्तागण की बहस सुने जाने के उपरान्त मेरे द्वारा निर्णय/आदेश हेतु दिनांक 25.04.2014 की तिथि नियत की गयी है ।
3. अपीलार्थी/वादी डॉ0 रमेश कुमार द्वारा अपने उपरोक्त अन्तरण प्रार्थना-पत्र दिनांकित 20.04.2014 में अंकित यह कथन पूरी तरह मिथ्या, मनगढ़न्त व दुर्भावनापूर्ण है कि दिनांक 18.04.2014 को सायंकाल लगभग 8.00 बजे मेरे द्वारा डॉ0 रमेश कुमार से अपने शासकीय आवास संख्या जे-4, सिविल लाइन्स, करनाल पर उनके पक्ष में निर्णय/आदेश पारित करने के लिए रु0 1,50,000/- की मांग की गयी थी और नहीं देने पर निर्णय/आदेश उनके विरुद्ध पारित करने की धमकी दी गयी थी ।
4. प्रकरण के वास्तविक तथ्य इस प्रकार हैं कि पिछले कई दिनों से मेरी तबियत खराब चल रही है । मैंने अपने को जिला अस्पताल, करनाल के डॉक्टर को दिखाकर दिनांक 15.04.2014 को परचा लिखवाया था

जिसमें जिला अस्पताल के डॉक्टर ने किसी अच्छी पैथोलॉजी क्लीनिक से रक्त जाँच करवाने का परामर्श दिया था । करनाल सिटी में उपरोक्त सिविल प्रकीर्ण अपील के अपीलार्थी डॉ० रमेश कुमार द्वारा एक पैथोलॉजी क्लीनिक चलायी जाती है जिसके बारे में कुछ माह पूर्व मेरे न्यायालय के स्टाफ ने मुझे तब बताया था जब माह सितम्बर, 2013 में मैंने अपने ब्लड शुगर की जाँच के लिए अपना ब्लड दिया था और उस समय अपीलार्थी डॉ० रमेश कुमार का कोई केस अथवा उक्त सिविल प्रकीर्ण अपील मेरे न्यायालय में लम्बित नहीं थी । अपीलार्थी डॉ० रमेश कुमार की उपरोक्त पैथोलॉजी क्लीनिक के बारे में पहले से ही जानकारी होने के कारण जिला अस्पताल, करनाल के डॉक्टर द्वारा दिये गये परामर्श के उपरान्त मैंने अपने मोबाइल नं० 941202XXXX से दिनांक 19.04.2014 को समय लगभग 7.30 बजे सायंकाल उपरोक्त डॉ० रमेश कुमार से मेरे आवास पर अपने टेक्नीशियन को भेजकर मेरा ब्लड सैम्पल उसी दिन अथवा दूसरे दिन प्रातः ले जाने के लिए कहा परन्तु अपने टेक्नीशियन को नहीं भेजकर डॉ० रमेश कुमार स्वयं कुछ देर बाद समय लगभग 8.00 बजे सायंकाल मेरे आवास पर आ गये और उस समय मेरे आवास पर मेरा चपरासी सोहन तथा मुझ सहित मेरी कॉलोनी में अन्य न्यायिक अधिकारियों के यहां भी दूध देने वाला दूधिया बिहारी लाल व उसके साथ एक अन्य दूधिया राम किशोर भी उपस्थित थे । डॉ० रमेश कुमार ने मुझसे कहा कि कल प्रातः अपना टेक्नीशियन भेजकर आप का ब्लड सैम्पल कलेक्ट करवा लूँगा । डॉ० रमेश कुमार ने अपनी उपरोक्त सिविल प्रकीर्ण अपील में अपने पक्ष में निर्णय/आदेश पारित करने का अनुरोध करते हुए मुझ पर काफी दबाव बनाना चाहा परन्तु मैंने दृढ़तापूर्वक उनको मना कर दिया और साफ-साफ कह दिया कि वह चाहे मेरा रक्त परीक्षण करें और चाहें नहीं करें परन्तु उनके अनुरोध या दबाव में आकर मैं उनके पक्ष में कोई न्यायिक आदेश पारित करने का आश्वासन नहीं दूँगा अपितु केस के रिकार्ड और विधि के अनुसार जो आदेश उचित होगा, वहीं आदेश पारित करूँगा । डॉ० रमेश कुमार द्वारा फिर भी मुझ पर दबाव बनाना जारी रखने पर मैंने उन्हें डपट दिया और तब काफी नाराज होकर डॉ० रमेश कुमार मेरे आवास से यह कहते हुए चले गये कि आप मेरी नहीं सुन रहे हैं तो मैं भी आपको देख लूँगा । ऐसा प्रतीत होता है कि डॉ० रमेश कुमार द्वारा बनाये जा रहे दबाव पर उनके पक्ष में आदेश पारित करने का आश्वासन नहीं देने के कारण डॉ० रमेश कुमार ने दुर्भावनावश मेरे विरुद्ध मा० महोदय के समक्ष पूरी तरह मिथ्या व मनगढ़न्त आधारों पर उपरोक्त अन्तरण प्रार्थना-पत्र प्रस्तुत कर दिया है ।

5. दिनांक 19.04.2014 को सायंकाल 8.00 बजे अथवा उसके पूर्व अथवा पश्चात् मेरे द्वारा कभी भी अपीलार्थी डॉ० रमेश कुमार से अथवा किसी अन्य से भी न्यायिक आदेश पारित करने के लिए किसी धनराशि की मांग नहीं की गयी । उल्लेखनीय है कि दिनांक 19.04.2014 को सायंकाल 8.00 बजे जब डॉ० रमेश कुमार मेरे आवास पर आये थे और लगभग 15.00 मिनट तक रुककर 8.15 बजे तक वापस गये थे और उस पूरे दौरान मेरे आवास पर मेरा चपरासी सोहन तथा दोनों दूधिये बिहारी लाल व राम किशोर उपस्थित थे और डॉ० रमेश कुमार से हुई मेरी बातचीत को उक्त तीनों ने भी सुना था परन्तु मेरे द्वारा डॉ० रमेश कुमार से कोई धनराशि की मांग नहीं की गयी थी । मेरे चपरासी सोहन तथा दोनों दूधियों बिहारी लाल व राम किशोर, जो डॉ० रमेश कुमार के मेरे आवास पर आने से लेकर उनके जाने के बाद भी उपस्थित थे, ने भी अपनी-अपनी इस आशय की लिखित रिपोर्ट दिनांकित 22.04.2014 (छायाप्रतियों संलग्न) देते हुए डॉ० रमेश कुमार के द्वारा मेरे विरुद्ध उपरोक्त धनराशि मांगे जाने के आक्षेप का स्पष्ट रूप से खण्डन किया है ।
6. मेरे द्वारा उपरोक्त सिविल प्रकीर्ण अपील में अभी तक कोई निर्णय/आदेश पारित नहीं किया गया है । अपीलार्थी डॉ० रमेश कुमार द्वारा अपने उपरोक्त अन्तरण प्रार्थना-पत्र में मेरे विरुद्ध लगाये गये आरोप पूर्णतः असत्य, कल्पित व दुर्भावनापूर्ण हैं तथापि यदि उपरोक्त सिविल प्रकीर्ण अपील मेरे न्यायालय से किसी अन्य न्यायालय में अन्तरित कर दी जावे तो मुझे कोई आपत्ति नहीं है ।

उपरोक्त टिप्पणी मा० महोदय के अवलोकनार्थ सादर प्रेषित है ।

सादर,

भवदीय

(मोहन कुमार)
अपर जनपद न्यायाधीश
कोर्ट संख्या 2
करनाल ।
