

Reserved on : 25.08.2026
Pronounced on : 02.09.2026



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.21332 OF 2026 (GM - RES)

BETWEEN:

KRISHNA MURTHY @ MURTHY
 S/O VENKATESH
 AGED ABOUT 49 YEARS
 RESIDING AT NO. 817,
 8TH 'C' MAIN ROAD, 3RD BLOCK,
 3RD STAGE, BASAVESHWARA NAGAR,
 BENGALURU.

... PETITIONER

(BY SRI HASHMATH PASHA, SR.ADVOCATE FOR
 SRI KARIAPPA N., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
 BY KAMAKSHIPALYA POLICE STATION,
 BENGALURU
 (REPRESENTED BY LD SPP
 HIGH COURT OF KARNATAKA)
- 2 . THE REGISTRAR GENERAL
 HIGH COURT OF KARNATAKA,
 BENGALURU.
- 3 . DEPUTY REGISTRAR
 CITY CIVIL AND SESSIONS COURT
 BENGALURU CITY.

... RESPONDENTS



(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI M.A.SUBRAMANI, ADVOCATE FOR R-2 AND R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, PRAYING TO QUASH THE NOTIFICATION DATED 20-5-2026 UNDER REFERENCE NO.ADM-1 (A) 340/2026 AS PER ANNEXURE-A ISSUED BY R-3, AS ILLEGAL AND ABUSE OF POWER; 2. CONSEQUENTLY, ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO RE-TRANSFER THE SESSIONS CASE NO.824/2013 NOW PENDING ON THE FILE OF HON'BLE LVIII ADDITIONAL CITY CIVIL AND SESSIONS CASE, BANGALORE CITY TO ORIGINAL COURT OF HON'BLE LXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY, WHERE TRIAL WAS CONDUCTED, AS PER ANNEXURE-'B' AND THEN TO DISPOSE OF THE CASE IN ACCORDANCE WITH LAW IN THE INTEREST OF JUSTICE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner - accused is before this Court seeking the following prayer:

- (1) "Quash the Notification dated 20-05-2026 under reference No.ADM-1 (A) 340/2026 as per Annexure-A issued by respondent No.3 as illegal and abuse of power.
- (2) Consequently, issue writ of mandamus directing the respondents to re-transfer the Sessions Case No.824/2013 now pending on the file of Hon'ble LVIII Additional City Civil and Sessions Judge, Bangalore City to original Court of Hon'ble LXI Additional City Civil and Sessions Judge, Bangalore City where trial was conducted, as per Annexure-B and then to dispose of the case in accordance with law in the interest of justice.
- (3) And to grant such other relief or reliefs as this Hon'ble Court deems fit to grant in the facts and circumstances of the case in the interest of justice."

2. Heard Sri Hasmath Pasha, learned senior counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned State Public Prosecutor-1 appearing for respondent No.1 and Sri M.A. Subramani, learned counsel appearing for respondent Nos.2 and 3.

3. Facts, in brief, germane are as follows: -

The petitioner/accused is prosecuted for an offence punishable under Section 302 of the IPC – murder in S.C.No.824 of 2013 and was facing trial before the LXI Additional City Civil and Sessions

Judge, Bengaluru City. During the trial, the prosecution had examined in all 20 witnesses - PW-1 to PW-20; PW-20 being the Investigating Officer. His evidence also stood completed in the said proceedings.

4. When things stood thus, a Notification comes to be issued on 20-05-2026 transferring the trial from the Court of LXI Additional City Civil and Sessions Judge, Bengaluru City to the Court of LVIII Additional City Civil and Sessions Judge, Bengaluru City. The transfer of pending trial in S.C.No.824 of 2013 by the subject Notification is what has driven the petitioner to this Court in the subject petition.

5. The learned senior counsel Sri Hasmath Pasha, submits that the entire trial of recording evidence is conducted before the Court of LXI Additional City Civil and Sessions Judge, Bengaluru City and the learned Judge who recorded evidence is still in the same Court. It is his contention that the learned Judge who recorded the evidence is the only person who can dispose of the subject case as the learned Judge had the opportunity of observing the demeanour of witnesses. The case is at the fag end of trial and was to be posted for recording of statement under Section 313 of the Cr.P.C. The impugned notification causes serious prejudice to the petitioner

as trial was at its fag end and it would result in violation of justice. He would contend that the Notification is issued without considering the mandate of Sections 326, 408 and 409 of the Cr.P.C. Therefore, the notification is illegal. Learned senior counsel would further submit that in terms of Section 326 of the Cr.P.C., a Judge or a Magistrate who has heard and recorded whole or part of the evidence should dispose of the same and if he ceased to be in office, the succeeding Judge/Magistrate has to continue the trial. Transfer of a case from one Court to another is not permissible. He would further contend that under Section 409(2) of the Cr.P.C, the Sessions Judge has no authority to withdraw the case from the Additional Sessions Judge as is done in the impugned Notification when trial has begun. Learned senior counsel would seek to place reliance on the judgment of the Division Bench of this Court in the case of **AMRITHAPPA v. STATE OF KARNATAKA** reported in **1981 SCC OnLine Kar 197**.

6. The learned State Public Prosecutor – 1 on the other hand would contend that administrative action of transfer of cases or bifurcation of cases cannot be challenged by an accused. There is no prejudice caused. The entire material will be analyzed by the Court to which it is assigned and proceed with the case from the stage at which it stands. It is not a case where the trial would

commence from the beginning. Therefore, no prejudice is caused in assignment of case to a particular Court on certain administrative reasons.

7. The learned counsel Sri M.A. Subramani appearing for 2nd and 3rd respondents would vehemently refute the submissions of the learned senior counsel for the petitioner by seeking to place reliance upon what went into the decision making for transfer of cases within the Courts at Bangalore and re-allocation of police stations to the District and Sessions Judge to transfer cases between the Courts. The learned counsel would submit that power is exercised in accordance with law and the accused who is facing trial cannot choose a particular Court that it should be tried only before the said Court. He would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts lie in a narrow compass. What drives the petitioner to this Court is the impugned Notification dated 20-05-2026 issued by the Principal City Civil and Sessions Judge, Bengaluru. The notification reads as follows:

"No.ADM-I(A) 340/2026

Office of the
City Civil Court, Bengaluru

Dated: 20-05-2026.

NOTIFICATION

Sub: Re-allocation of Police Stations to District & Sessions Judge Courts in Bengaluru City – reg.

- Ref: 1. Letter No.ಅಪರ-ಸಿಬಿ/ಅಪರಾಧ/ಸಿಬಿ/2025 dated 05-05-2025 of the Commissioner of Police No.1, Infantry Road, Bengaluru City.
2. Letter No.ROC.GOB-II 64(2)/2025 dated 13-05-2025 of the Hon'ble High Court of Karnataka, Bengaluru.
3. Letter No.PPS(CCC)613/2025 dated 26-09-2025 of the Hon'ble Principal City Civil and Sessions Judge, Bengaluru.
4. Letter No.ROC GOBII 64(2)/2025 dated 05-01-2026 of the Hon'ble High Court of Karnataka.
5. Letter No.PPS(CCC)17/2026 dated 12-01-2026 of the Hon'ble Principal City Civil and Sessions Judge, Bengaluru.
6. Letter No.ROC GOBII 64(2)/2025 dated 31-01-2026 of the Hon'ble High Court of Karnataka, Bengaluru Letter No.ROC GOBII 64(2)/2025 dated 31-01-2026 of the Hon'ble High Court of Karnataka, Bengaluru.
7. Letter No.PPS(CCC) 181/2026 dated 02-05-2026 of the Hon'ble Principal City Civil and Sessions Judge, Bengaluru.
8. Letter No.ROC GOBII 64(2)/2025 dated 11-05-2026 of the Hon'ble High Court of Karnataka, Bengaluru.

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As per the direction of the Hon'ble High Court of Karnataka, Bengaluru vide letter cited at reference No.8, and in exercise of powers conferred under Section 408, 409 of CrPC/448, 449 of BNSS, the Notification with regard to Re-allocation of Police Stations and Sub-Divisions to the District & Sessions Judge Courts as per Revised Annexure-A is issued in the best interest of Advocate community, Police and litigant public which helps in proper administration and dispensation of justice.

This Notification shall come into effect from **01.06.2026** and this Notification itself shall be construed to be the notice to the litigant public and their advocates and Senior PP/PP with respect to transfer of cases. The transferor Courts shall notify the next date of hearing in respect of the cases transferred.

Further all the Criminal Miscellaneous Petitions arising out of the Sessions cases as on 01-06-2026 pertaining to said Police Stations shall stand transferred to the newly allocated courts as per Revised Annexure-A.

Further, it is hereby informed that the Re-allocation of Police Stations to District and Sessions Judge Courts in Bengaluru City as per revised Annexure-A is enclosed herewith.

It is also clarified that permission is also accorded to the concerned courts to retain and dispose of the matters in accordance with law, wherever the cases are already posted for recording the statement of the accused under Section 313 of Cr.P.C/Section 351 of BNSS, Final Arguments or Reserved for Judgment and it is further informed that Re-allocation of Police Stations are restricted to the trial of sessions cases.

By order of the Prl. City Civil & Sessions Judge,
Sd/- Deputy Registrar,
City Civil Court, Bengaluru."

(Emphasis added)

The Notification was ordained to come into effect from **01-06-2026**. Its mandate is unequivocal. The notification is restricted to the trial of sessions cases. The re-allocation, however, did not operate with an unyielding sweep. It carved out a specific window of retention by according permission to the concerned Courts to retain and dispose of those matters which had travelled to an advanced stage of trial, namely, where the cases were already posted for recording the statement of the accused under Section

313 of the Cr.P.C./Section 351 of the BNSS, for final arguments, or where the matters had been reserved for judgment. The unmistakable intendment of the Notification, therefore, is that transfer is the rule and retention, in the circumstances expressly delineated therein, is the exception.

10. It therefore becomes imperative to ascertain the precise stage at which the proceedings against the petitioner stood when the Notification became operative. The answer need not be gathered by conjecture, for the order sheet maintained by the concerned Court speaks for itself. The relevant order sheet maintained as on the date of the notification reads as follows:

"19-06-2026

State by P.P.

Accused – H.P.

For W/S to PW-20

In view of the Notification No. ADM-i(A)340/2026 dated 20-05-2026 of Registrar, City Civil Court, Bengaluru as per the re-allocation of Police stations to the District and Sessions Judge Courts, this case re-allotted to CCH-59 for disposal in accordance with law.

Sd/- C/C LIX ACC&SJ,
BENGALURU

19-06-2026

... ..

As per the Notification No. ADM-i(A)340/2026 dated 20-05-2026 relating to Re-allocation of Police Stations to District & Sessions

Judge Courts in Bangalore City,
this case is transferred to this
Court.

Case called out.

Accused present

Evidence by 14-07-2026.

Sd/- 19/6

LVIII Addl.C.C. & SJ,
Bengaluru"

The afore-quoted order sheet leaves little room for ambiguity. The trial was still at the stage of securing the presence of **PW-20, the Investigating Officer**, for recording his evidence. The evidentiary curtain had, therefore, not yet fallen. The proceedings had not even reached the statutory stage of examination of the accused under Section 313 of the Cr.P.C., much less crossed it and proceeded to final arguments or reserved for judgment. Thus, on the date when the Notification took effect, the case of the petitioner did not fall within any of the carefully carved-out exceptions permitting retention by the erstwhile Court.

11. Before considering the law on the issue, I deem it appropriate to notice the relevant provisions. They read as follows:

"365. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.—(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in any inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so

recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Sanhita from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 361 or in which proceedings have been submitted to a superior Magistrate under Section 364.

....

448. 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 447 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 447, except that sub-section (7) of that section shall so apply as if for the word "sum" occurring therein, the words "sum not exceeding ten thousand rupees" were substituted.

449. Withdrawal of cases and appeals by Sessions Judges.—(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to a Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls case or appeal under sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Sanhita to another Court for trial or hearing, as the case may be."

11.1. Section 365 of the BNSS is the statutory successor to Section 326 of the Cr.P.C. The provision assumes significance in the controversy at hand, for it deals with the consequence that follows when a criminal proceeding passes from the hands of one Presiding Officer to another. It mandates that where a case is transferred under the provisions of the BNSS from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to have ceased to exercise jurisdiction therein and to have been succeeded by the latter within the meaning of sub-section (1). The statutory fiction is thus complete: **once a lawful transfer takes place, the transferee Judge steps into the shoes of the transferor Judge and the proceeding does not perish merely because the hand that commenced the trial is not the hand that would conclude it.** The law ensures continuity of the proceeding notwithstanding change of the Presiding Officer.

11.2. Section 448 of the BNSS, the statutory successor to Section 408 of the Cr.P.C., clothes the Sessions Judge with the power of transfer of cases and appeals. The power may be exercised whenever it is made to appear that an order of transfer is expedient for the ends of justice. It may be invoked on the report of the lower Court, on an application by an interested party, or on the Sessions Judge's own initiative.

11.3. Section 449 of the BNSS, corresponding to Section 409 of the Cr.P.C., operates in a different but cognate field. It confers power upon the Sessions Judge to withdraw any case or appeal from, or recall any case or appeal which has been made over by him to, the appropriate subordinate Court and thereafter deal with it in the manner contemplated by law. Sub-section (2) of Section 449 of the BNSS would hold that the case may be transferred prior to the commencement of trial.

12. What assumes importance is that **Section 448 of the BNSS does not, in terms, erect a statutory embargo against transfer merely because the trial has commenced.** Commencement of trial is not employed by the provision as a point beyond which the power of transfer evaporates. The power undoubtedly has to be exercised with circumspection, for an indiscriminate shifting of trials from Court to Court after evidence

has commenced may occasion inconvenience to witnesses, delay adjudication and unsettle the orderly administration of criminal justice. It is for this reason that Courts, in several circumstances, have frowned upon transfer of proceedings after a trial has substantially progressed. But judicial circumspection in the exercise of a power cannot be readily elevated into a statutory prohibition against its very existence.

13. The scheme of the BNSS, in fact, points in the opposite direction. If every transfer after commencement of trial were impermissible, the Legislature would scarcely have found it necessary to enact Section 365 of the BNSS or its statutory predecessor – Section 326 of the Cr.P.C. and expressly declare the consequence of a transfer from one Judge to another. **Section 365 of the BNSS is the legislative bridge between the Court which begins the trial and the Court which, upon a lawful transfer, may be called upon to carry it forward.** The change of forum does not wipe the slate clean; nor does it compel the criminal process to retrace every step already lawfully taken, which is subject, of course, to the limitations engrafted in the statute. The successor Court inherits the proceeding at the stage at which its predecessor leaves it.

14. Section 449 of the BNSS reinforces this statutory architecture by recognising the authority of the Sessions Judge, for reasons germane to the administration of criminal justice, to recall a case made over to a subordinate Court and to place it before another competent Court. Therefore, **the mere fact that evidence has commenced cannot, by itself, become an impregnable wall against transfer**, unless such a prohibition is demonstrable either from the text of the statute or from a binding exposition of law.

15. It therefore becomes necessary to examine the precedents which have considered the contours of these powers, particularly those which have dealt with transfer or recall after commencement or substantial progress of trial, to discern whether the principle emerging therefrom is one of **absence of jurisdiction to transfer**, or merely one of **restraint in the exercise of an otherwise available jurisdiction**. The distinction is subtle, but decisive. It becomes apposite to notice the law laid down in this regard.

15.1. The Apex Court in the case of **NITINBHAI SAEVATILAL SHAH v. MANUBHAI MANJIBHAI PANCHAL**¹, has held as follows:

"....

10. Section 326 of the Code deals with the procedure to be followed when any Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Magistrate who exercises such jurisdiction.

11. Section 326 of the Code reads as under:

"326.Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.—(1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may resummon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 322 or in which proceedings have been submitted to a superior Magistrate under Section 325."

¹ (2011) 9 SCC 638.

12. Section 326 is part of the general provisions as to inquiries and trials contained in Chapter XXIV of the Code. **It is one of the important principles of criminal law that the Judge who hears and records the entire evidence must give judgment. Section 326 is an exception to the rule that only a person who has heard the evidence in the case is competent to decide whether the accused is innocent or guilty.** The section is intended to meet the case of transfers of Magistrates from one place to another and to prevent the necessity of trying from the beginning all cases which may be part-heard at the time of such transfer. Section 326 empowers the succeeding Magistrate to pass sentence or to proceed with the case from the stage it was stopped by his preceding Magistrate. Under Section 326(1), the successor Magistrate can act on the evidence recorded by his predecessor either in whole or in part. If he is of the opinion that any further examination is required, he may recall that witness and examine him, but there is no need of a retrial.

13. In fact, **Section 326 deals with part-heard cases, when one Magistrate who has partly heard the case is succeeded by another Magistrate either because the first Magistrate is transferred and is succeeded by another, or because the case is transferred from one Magistrate to another Magistrate. The rule mentioned in Section 326 is that the second Magistrate need not rehear the whole case and he can start from the stage the first Magistrate left it."**

The Apex Court holds that Section 326 of the Cr.P.C. constitutes a statutory exception to the ordinarily accepted rule that the Judge who hears the evidence should be the Judge who pronounces upon the guilt or innocence of the accused. The *raison d'être* of the provision is equally unmistakable. It was engrafted to meet situations where a Magistrate or a Sessions Judge, after recording the whole or part of the evidence, is transferred or otherwise ceases to exercise jurisdiction over the proceeding, and to obviate the wholly unnecessary ritual of commencing the trial *de novo* merely

because the Presiding Officer has changed. **The statute thus preserves the continuity of the trial notwithstanding discontinuity in the person presiding over the Court.**

15.2. The High Court of Allahabad in the case of **JITENDRA SINGH v. STATE OF UTTAR PRADESH**², has held as follows:

"....

5. I do not think, the administrative order could be challenged before this Court. However, I think, this ground in itself is sufficient for the District Judge to transfer the case from the Court because 47 dates were given for arguments and ten dates were given for the defence from 10.10.2013 to 12.2.2014.

6. Learned Counsel for the applicant has placed reliance in the case of *Malik Ram v. State of U.P.*¹, wherein it has been decided that if the Additional Sessions judge, who has heard the case in part, remains in the same district, he should hear and decide the part heard case and section 407 Cr. P.C. could not be invoked by the High Court in such cases, but in the case of *Radhey Shyam Agarwal v. State of U.P.*², it has been, laid down that the Sessions Judge is empowered under section 408 Cr. P.C. to transfer a part heard case from the Court of Additional 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) Cr. P.C. are not applicable in exercise of powers of transfer conferred under section 408 Cr. P.C.

7. Thus, the powers of the Sessions Judge to transfer a part heard case from one Judge to another does not confer by virtue of any provisions of Code of Criminal Procedure. By no stretch of imagination, it can be said that the Sessions Judge has no power to transfer a part heard case. The word "trial" is not defined in the Code of Criminal Procedure, but trial would suppose as the proceedings. taken in the Court after charges have been drawn up including the punishment of the offender although, in the 1973 Code, the word "inquiry" has been defined under section 2(g).

²2016 SCC OnLine All 3352

8. The limitations imposed under section 409(2) of the Code are applicable in exercise of power of transfer conferred under section 408 of the Code, which is thus independent judicial power, which is not subject to the bar imposed by 409(2) Cr. P.C. on the administrative ground while exercising administrative powers by the Sessions Judge of recalling the Sessions Trial after the trial of the case has commenced.

9. In *Anil Kumar Agarwal v. State of U.P.*³, it has been observed that under section 326 Cr. P.C. conviction of commitment can be done on evidence partly recorded by one Magistrate and partly by another.

10. Section 326 Cr. P.C. reads as follow:—

"326. Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.—

(1) Whenever any [Judge or Magistrate], after having heard and recorded the whole or any part of the evidence in an inquiry" or a trial, ceases to exercise jurisdiction therein and is succeeded by another [Judge or Magistrate] who has and who exercises such jurisdiction, the [Judge or Magistrate] so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding [Judge or Magistrate] is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may resummon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged:

(2) When a case is transferred under the provisions of this Code [from one Judge to another Judge or from one Magistrate to another Magistrate], the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325."

11. Learned Counsel for the applicant has submitted that the learned 1st Additional Sessions Judge must have observed

the demeanour of the witnesses, hence he would be in a better position to decide the matter.

12. I think, the demeanour of a witness cannot be kept in the mind by a Judge, but it has to be noted on the statement itself, which can very well be looked into by the Judge presently trying the trial. Under section 326 Cr. P.C., the succeeding Judge can act on the evidence recorded by his predecessor either in whole or in part.

13. The sole ground in the transfer application is that the case was part heard by the 1st Additional Sessions Judge.

14. Learned Additional Government Advocate while opposing the transfer application has stated that judicial discipline demands that for a fair trial of the case, the party cannot be permitted to pick and choose the Court of his choice.

15. I have no hesitation in stating that the 1st Additional Sessions Judge, Baghpat kept the case unnecessarily pending for years. Hence, the Sessions Judge in his wisdom was perfectly justified in transferring the case from his Court to the Court of Fast Track Court-II, Baghpat. The Fast Track Court in the State and even in country are expected to dispose of case very expeditiously. This is a ripe case and it is expected that the Court concerned shall dispose of this case on the date fixed without granting any unnecessary adjournments to either of the parties."

(Emphasis supplied at each instance)

The High Court of Allahabad in terms of the afore-quoted judgment holds that when a part-heard case is transferred from one Sessions Judge to another Sessions Judge under Section 408 of the Cr.P.C., the limitation under Section 409(2) of the Cr.P.C. would not become applicable.

16. The aforesaid exposition of law by the Apex Court and the High Court of Allahabad leaves little room for acceptance of the

contention that a part-heard criminal case acquires an immutable attachment to the Presiding Officer who commenced its trial. The inevitable conclusion is that the power conferred upon the Principal District and Sessions Judge to transfer or re-allocate cases, exercised for manifold administrative reasons germane to the orderly administration of justice, cannot be interdicted merely on the apprehension that a change of Presiding Officer would, by itself, occasion prejudice to an accused. **There is no immutable principle of criminal jurisprudence that the Judge who commences hearing a case must, at all costs and in all circumstances, be the Judge who concludes it.** If that were the law, the statutory architecture permitting transfer, withdrawal, recall and succession of criminal proceedings would be rendered otiose.

17. The Notification itself displays sufficient sensitivity to the possibility of prejudice. It does not wield the power of re-allocation with an indiscriminate brush. It consciously carves out three stages at which a pending proceeding is permitted to remain before the existing Court: first, where the matter has reached the stage of recording the statement of the accused under Section 313 of the Cr.P.C./Section 351 of the BNSS; second, where that stage stands concluded and the matter has progressed to final arguments; and

third, where arguments have concluded and the matter stands reserved for judgment or order. These exceptions are plainly intended to ensure that proceedings which have crossed the evidentiary stage and entered the final decisional corridor are not unnecessarily uprooted from the Court before which they have substantially matured. The Notification thus strikes a balance between administrative necessity on the one hand and continuity at the advanced stages of adjudication on the other.

18. The submission founded upon the maxim **"he who hears must decide"** cannot carry the petitioner any further. The principle has its familiar roots in administrative law and in the requirements of procedural fairness governing decision-making by administrative or quasi-judicial authorities. It cannot be bodily transplanted into criminal adjudication so as to efface an express statutory regime which recognises succession of Judges and authorises transfer of proceedings from one competent criminal Court to another. **A principle of administrative law cannot be employed to defeat an express command of criminal procedure.** When the statute itself contemplates that one Judge may record evidence and another may, upon lawful succession or transfer, proceed with the case, the maxim must necessarily yield to the legislative mandate.

To hold otherwise would be to permit a general principle to devour a specific statutory provision.

19. In the case at hand, the facts make the position even clearer. When the re-allocation took effect, the proceeding was at the stage of securing the presence of PW-20, the Investigating Officer, and recording his evidence. The evidentiary exercise itself was yet to conclude. The case had not reached the stage of examination of the accused under Section 313 of the Cr.P.C.; it had not travelled to final arguments; and, a *fortiori*, it had not been reserved for judgment or order. The petitioner's case, therefore, falls outside every one of the three protective exceptions expressly carved out by the Notification. What the petitioner seeks, in substance, is the creation of a **fourth exception**—that every part-heard matter must continue before the same Presiding Officer. Such an exception is neither found in the Notification nor borne out by the statutory scheme, and this Court cannot judicially engraft into an administrative Notification that which its author has consciously chosen not to incorporate.

20. There is yet another circumstance which cannot be lost sight of. The petitioner's case has not been singled out, plucked from one Court and planted before another. The Notification embodies a general administrative exercise of **re-allocation of**

Police Stations amongst the Sessions Courts in Bengaluru City. The transfer of the petitioner's proceeding is merely a consequence of that larger re-organisation. There is neither allegation nor material to demonstrate that the administrative exercise was designed against the petitioner or that his case was selectively transferred for any collateral purpose. On the contrary, rational allocation of cases Police Station-wise amongst competent Sessions Courts is plainly intended to secure an orderly distribution of judicial work and, ultimately, expedition in disposal.

21. Administrative decisions concerning distribution, allocation and re-allocation of judicial business are best left within the domain of those entrusted with the administration of Courts. Judicial review undoubtedly remains available, but it does not sit as an appellate authority over every administrative arrangement concerning distribution of judicial work. **Unless such an exercise is shown to be infected by arbitrariness, caprice, *mala fides*, manifest unreasonableness or demonstrable prejudice forbidden by law, constitutional jurisdiction cannot be invoked merely because one litigant would prefer that his proceeding continue before a particular Presiding Officer.**

22. An accused has a right to a fair trial before a competent and impartial Court; he does not possess a vested

right to insist upon trial before a particular Judge. The administrative decision in the case at hand is not shown to be shrouded in any such vice. It is a general re-allocation founded upon territorial distribution of Police Stations; it preserves advanced-stage matters through specifically crafted exceptions; and the petitioner's proceeding had not reached any of those protected stages.

23. In that light, neither the transfer nor the Notification can be tinkered with in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C. **The challenge must, therefore, necessarily fail.** It is thus dismissed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

NVJ