

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRL.P.NO. 1291/2023

BETWEEN:

M/S RADICAL WORKS PVT. LTD.
HAVING ITS OFFICE AT NO.101
3RD FLOOR, WEST MINISTER
BUILDING, CUNNINGHAM ROAD
BENGALURU - 560 052
REPRESENTED BY ITS DIRECTOR
AND AUTHORIZED SIGNATORY
MR. SHARAN V MAKHIJA.

...PETITIONER

(BY SRI JAYSHAM JAYASIMHA RAO, ADV.)

AND:

SRI PADMANABH T.G

...RESPONDENT

(BY SRI SARVANA S, ADV., FOR
SRI SATYANARAYANA S CHALKE, ADV.)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO QUASH
THE ORDER DATED 13.01.2023 PASSED BY THE CMM,
BANGALORE IN CRL.MISC.NO.5901/2022 AT ANNEXURE-A.

THIS PETITION HAVING BEEN HEARD AND RESEVED ON
05.04.2024, COMING ON FOR PRONOUNCEMENT OF ORDER
ON 18.04.2024, THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

1. Petitioner is before this Court under Section 482 of Cr.P.C. with a prayer to quash the order dated 13.01.2023 passed by the Chief Metropolitan Magistrate, Bengaluru in CrI.Misc.No.5901/2022.
2. Heard the learned counsel for the parties.
3. Respondent had filed a petition under Section 410 of Cr.P.C. before the Court of Chief Metropolitan Magistrate, Bengaluru in CrI.Misc.No.5901/2022 seeking transfer of cases in CC No.17424/2020 on the file of XXVIII Additional Chief Metropolitan Magistrate Court, Bengaluru and CC No.12667/2021 on the file of IV Additional Chief Metropolitan Magistrate Court, Bengaluru, to any one of the aforesaid two Courts or to any Court of Judicial Magistrate in the Metropolitan Area. The Court of Chief Metropolitan Magistrate, Bengaluru, vide order impugned dated 13.01.2023 allowed CrI.Misc.No.5901/2022 and consequently, CC No.17424/2020 on the file of XXVIII Additional Chief

Metropolitan Magistrate Court, Bengaluru and CC No.12667/2021 on the file of IV Additional Chief Metropolitan Magistrate Court, Bengaluru, were transferred to the Court of XLI Additional Chief Metropolitan Magistrate Court, Bengaluru, for disposal in accordance with law. Being aggrieved by the same, petitioner is before this Court.

4. Learned Senior counsel for the petitioner submits that the Court of Chief Metropolitan Magistrate in exercise of powers under Section 410 of Cr.P.C. could not have transferred pending case in a Court of Additional Chief Metropolitan Magistrate to the Court of another Additional Chief Metropolitan Magistrate. He submits that said power is vested only with the jurisdictional Court of Sessions Judge under Section 408 of Cr.P.C. In support of his arguments, he has placed reliance on the judgment of High Court of Madhya Pradesh in the case of **A. K. Singh, Special Railway Magistrate, Jabalpur vs. Virendra Kumar Jain, Advocate - 2001 (4) M.P.L.J. 324** and also on the judgment of High Court of Gujarat in

the case of **Chandrkantbhai Bhaichandbhai Sharma vs. State of Gujarat and Another** in *Special Criminal Application (Quashing) No.4884/2015* disposed of on 08.10.2015.

5. Per contra, learned counsel for the respondent has argued in support of the impugned order. He submits that High Court of Bombay in the case of **Mahfooskhan Mehboob Sheikh vs. R. J. Parakh - LAWS(BOM)-1979- 11-8**, has held that the Court of Chief Metropolitan Magistrate has power to transfer pending case from the Court of one Additional Chief Metropolitan Magistrate to another Court of Additional Chief Metropolitan Magistrate. The power of withdrawal under Section 410 of Cr.P.C. includes the power to transfer. Accordingly, he prays to dismiss the petition.

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. After giving consideration and deep thought to the circumstances and background of this complaint filed against the Magistrate, it appears clear that the complaint as well as the order of taking cognizance were nothing, but, abuse of process of law against the present petitioner to humiliate him and to make him stand trial for offence which was never committed. It appears clear to this Court that the Chief Judicial Magistrate has grossly ignored the protection available to the petitioner under section 3 of the Judges Protection Act. The Chief Judicial Magistrate was expected to act independently and for the interest of justice. 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 sub-ordinate 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 CrI.Misc.No.5901/2022 is set-aside.

**Sd/-
JUDGE**