



UPAG010140182025

IN THE COURT OF SESSIONS JUDGE, AGRA

Presiding Officer– (Sri Sanjay Kumar Malik), (H.J.S.) – UP 01906

CRIMINAL REVISION No. 972 of 2025

Smt. Asharfi Devi W/o Shri Sobaran Singh, R/o New Krishna Colony,
Sati Nagar Road, Narayach, P.S. Trans Yamuna, District- Agra.

.....Revisionist

Vs.

1. U.P. State
2. Ashutosh Sharma S/o late Shri Sitaram Sharma, R/o Durgeshpuri
Nagla Kishan Lal, P.S. Etmadaulah, District- Agra.

.....Opposite Parties

:- Judgment :-

1. This criminal revision has been filed by revisionist against the impugned order dated 31.10.2025 passed by the learned Chief Judicial Magistrate, Agra by which the transfer application of the revisionist in Case No. 3690/2014 Smt. Asharfi Devi Vs. Ashutosh Sharma under Section 138 N.I. Act P.S. Etmadualah, Agra which was pending in the court of Additional Chief Judicial Magistrate Court No. 10, Agra has been rejected. Being aggrieved the revisionist has come up in this revision.

2. In the instant case in was incumbent upon the lower court to see whether the Chief Judicial Magistrate has been empowered to transfer a file from one court to another u/s. 410 Cr.P.C and if he has no jurisdiction of transfer then whether he can entertain/decide such transfer application.

3. Court heard the arguments of learned counsel for the revisionist and D.G.C. (Criminal) and perused the papers available on the record.

4. The grounds taken by the revisionist in the revision are that the

impugned order passed by the learned Chief Judicial Magistrate, Agra is illegal and liable to be set aside. The order has been passed without considering the merits of the case. After hearing the arguments in the above case next date fixed was 25.02.2026. When the decision was not given on the said date, the said file was again fixed for arguments. Thus since 25.02.2025, the said file has been heard about 10 times and the said file has been fixed for decision again and again. In such a situation the applicant has lost hope of justice from the concerned court. So a transfer application was moved, but the learned lower court has rejected the transfer application without considering the merits of the case. **Further it has been orally emphasized by the revisionist that the CJM has not been empowered to transfer a file from one court to another u/s. 410 Cr.P.C.** Hence on the aforesaid grounds the impugned order is liable to be quashed.

5. The learned counsel for the opposite party raised oral objection contending that impugned order passed by the learned lower court is according to law that is why there are no reasons before the Court to interfere with the order dated 31.10.2025 which was passed according to law by the learned lower court.

6. Court heard the learned counsel for the revisionist and D.G.C. (Criminal) and perused the file and found that in the instant case, the legality of the impugned order dated 31.10.2025 needs to be tested in the light of the legal provisions and the case laws.

7. It is necessary to discuss all the provisions regarding the transfer application to decide this revision. In this regard a provision has been provided in Cr.P.C. under Sections 406, 407 and 408 in which Section 406 deals with the power of the Supreme Court to transfer cases and appeals. Section 407 deals with power of High Court to transfer cases and appeals and Section 408 deals with the power of the Sessions Judge to transfer cases and appeals from one court to another.

8. In this continuation it is relevant to quote Section 410 Cr.P.C. which is as follows:-

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 require into or try such cases himself.

The scheme of powers relating to transfer of criminal cases demonstrated the legislative intent with sufficient clarity. Under these provisions, the authority to transfer criminal cases has been expressly conferred upon the Supreme Court, the High Court and the Court of Sessions. A careful reading of the statutory framework makes it evident that the Chief Judicial Magistrate has not been vested with any power to transfer criminal cases.

9. Reliance has been placed on the following case laws:-

(i). Sudesh Chhikara Vs. State (NCT of Delhi) 2025 SCC OnLine Del 1641 " The Court referred to Radical Works (P) Ltd. Vs. padmanabh T.G., in Crl.P. No. 1291 of 2023, decided on 18.04.2023, Special Railway Magistrate, Jabalpur Vs. Virendra Kumar Jain, 1999 SCC OnLine MP 357 and Chandrkantbhai Bhaichanbhai Sharma Vs. State of Gujarat, 2015 SCC OnLine Guj 2891 and stated that the Court was of firm view that since the legislature in its own wisdom had conferred the power of the transfer only to Supreme Court, High Courts and the Sessions Court, it could not be given by way of inference to the Court of Chief Judicial Magistrate. The law of interpretation did not provide interpretation of any provision which in any manner contravened the intention of the legislature. The legislature could have specifically given the power of transfer to the Chief Judicial Magistrate if it would have considered it proper to do so."

(ii). **A. K. Singh, Special Railway Magistrate, Jabalpur v. Virendra Kumar Jain, Advocate, 1999 SCC OnLine MP 357**, it has been held :- The transfer petition moved before concerned CJM 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, Cr.P.C. That power is exercised by the Sessions Judge.

In view of this scope the 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.

(iii) **Chandrkantbhai Bhaichandbhai Sharma v. State of Gujarat in Special Criminal Application (Quashing) No. 4884/2015**, it has been held that 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. 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'.

10. It is also pertinent to quote Section 192 Cr.P.C. which is as follows:

Section 192: Making over cases to Magistrates:-

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

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

In this context the circular orders of the High Court of judicature at Allahabad Volume-II (Covering Circular Letters Issued up to 31.03.2011) may also be looked upon:-

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

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

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

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

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

11. Learned D.G.C. (Criminal) has argued that under Section 410 Cr.P.C. the Chief Judicial Magistrate has no power to transfer a case from one court to another. Therefore this court has to see whether the CJM has to power to transfer a case from one court to another court and in this regard whether the CJM has the right to hear the proceedings in transfer application or not. Upon perusal of the file and after hearing the parties the court found that CJM has no power to transfer any case from one court to another. That's why it means in this regard CJM has no power of hearing the transfer application.

12. In light of the above reliance is placed on the case law of ***Nitesh Rastogi Vs. State of U.P. through Additional Chief Secy./Prin Secy. Home Lko. And 2 others, Application u/S. 482 No. 9472 of 2025*** in which the Hon'ble Allahabad High Court (Lucknow Bench) has discussed the above case laws relating to the power of the Chief Judicial Magistrate to transfer a case from one court to another and has held that the Chief Judicial Magistrate is not being empowered to transfer cases from one court to another on complaint by one of the parties.

13. In view of the foregoing discussion made herein above and the references of the case laws as well as the statutory provisions/circulars referred above, the court is of the view that CJM has no power to transfer a case from one court to another. Section 406, 407 and 408 empowers Supreme Court, High Court and Court of Sessions the authority to transfer criminal cases. A careful reading of the statutory framework makes it evident that the Chief Judicial Magistrate has not been vested with any power to transfer criminal cases. Section 410 empowers the Chief Judicial Magistrate to withdraw any case from, or recall any case.

14. In the background of such facts, circumstances and the legal position, I have closely scrutinized that the impugned order 31.10.2025 passed by the learned Chief Judicial Magistrate is not in conformity with law because as per Section 410 of Cr.P.C. he has not been vested with the power of transfer of case from one court to another. Since he has no right to transfer a case from one court to another then in such circumstances he has also no right to entertain/decide such transfer application, therefore the impugned order which was passed by the learned Chief Judicial Magistrate would amount to having been passed without jurisdiction, so it is not worthy of being sustained and it liable to be set aside and the instant revision deserves to be allowed.

ORDER

This Criminal Revision is hereby allowed. The impugned order dated 31.10.2025 passed by the learned Chief Judicial Magistrate, Agra

is hereby set aside and the matter is hereby sent back to the concerned learned Chief Judicial Magistrate for deciding afresh in accordance with law.

Let the original record alongwith a copy of this judgment be sent to the concerned court.

Thereafter, the record of this revision be duly consigned as per rules.

Parties to appear before the concerned Court on 11.06.2026 for hearing.

Dated: 04.06.2026

**(Sanjay Kumar Malik)
Sessions Judge,
Agra.**

Judgment signed, dated & pronounced in the open Court today.

Dated: 04.06.2026

**(Sanjay Kumar Malik)
Sessions Judge,
Agra.**