

Court No. - 83

Case :- TRANSFER APPLICATION (CRIMINAL) No. - 759 of 2023

Applicant :- Brijesh Kumar

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Santosh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Surendra Singh-I,J.

1. Heard Sri Santosh Kumar Tiwari, learned counsel for the applicant and learned A.G.A. for the State.

2. This application has been filed against the impugned orders dated 08.05.2023 and 12.07.2023 passed by Chief Judicial Magistrate, Shahjahanpur on the transfer application of the applicant.

3. It has been submitted by learned counsel for the applicant that the applicant had filed application for transfer of Criminal Case No. 620 of 2019 (State Vs. Harish Chand and others) arising out of Case Crime No. 93 of 2018 u/s 323, 504, 506 I.P.C., Police Station- Tilhar, District- Shahjahanpur pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Shahjahanpur to the former court i.e. court of A.C.J.M.-II, Shahjahanpur where the cross case of this case, namely, Criminal Case No. 2467 of 2020, State Vs. Brijesh and others arising out of Case Crime No. 92 of 2018 u/s 308, 504, 506 I.P.C., Police Station- Tilhar, District- Shahjahanpur is pending. The transfer application was filed on the ground that since the case pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Shahjahanpur is the cross case of above-mentioned case pending in the court of A.C.J.M.-II, Shahjahanpur, both cases should be tried by the same Magistrate. It has been further submitted that the Chief Judicial Magistrate rejected his first transfer application vide order dated 08.05.2023 on the ground that no documentary evidence has been filed that the case pending in the court of Civil Judge (Junior Division)/Judicial Magistrate, Shahjahanpur is the cross case of above-mentioned case pending in the court of A.C.J.M.-II, Shahjahanpur. It has also been submitted that the second transfer application was rejected vide order dated 12.07.2023 on the ground that he has passed the order on his first transfer application and he has no power

to review his previous order.

4. The applicant is entitled to file application u/s 408 (1) Cr.P.C. in the court of Sessions Judge, Shahjahanpur against the impugned orders passed by the learned Chief Judicial Magistrate, Shahjahanpur. Under these facts and circumstances, it is provided that if the applicant files application for transfer of aforesaid cases to the Sessions Judge, Shahjahanpur within 20 days, the learned Sessions Judge, Shahjahanpur shall dispose of the transfer application of the applicant strictly in accordance with law within 20 days.

5. The transfer application is disposed of accordingly.

Order Date :- 2.12.2023

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