

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 1020 of 2026

Reserved on: 17.9.2026

Date of Decision: 28.9.2026.

Nidhi Rawat

.... Petitioner

Versus

State of H.P. & ors.

.... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Petitioner : Mr Nishant Khidtta, Advocate.

For the Respondent/State : Mr Jitender Sharma, Additional
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for transfer of the case titled State versus Pradeep Bhardwaj and another, pending before the Court of learned Chief Judicial Magistrate, Solan, arising out of FIR No. 1 dated 06.01.2026.

2. It has been asserted that the petitioner was married to the respondent No.2 as per Hindu rites and customs on 12.07.2016. She was working as a Horticulture Development Officer at Rajgarh at the time of her marriage. The respondent

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

and his family members were residing at Solan. The respondent and his family members treated the petitioner with cruelty, and the petitioner lodged an FIR, which was registered as FIR No. 1 of 2026 at Women Police Station, Solan. The petitioner was transferred to Chamba and is working as Subject Matter Specialist in the office of Deputy Director of Horticulture, Chamba, at Sarol. The police completed the investigations and filed the charge-sheet before the Court of the learned Chief Judicial Magistrate, Solan. The petitioner is residing at Chamba and is not medically fit to travel to Solan. She has a daughter aged 09 years who requires extra care, which makes it difficult to pursue the matter at Solan. Therefore, it has been prayed that the present petition be allowed and the matter pending before the learned Chief Judicial Magistrate, Solan, be transferred to the learned Chief Judicial Magistrate, Chamba.

3. I have heard Mr Nishant Khidtta, learned counsel for the petitioner, and Mr Jitender Sharma, learned Additional Advocate General, for the respondent No.1-State.

4. Mr Nishant Khidtta, learned counsel for the petitioner, submitted that the petitioner is serving at Chamba,

which is at some distance from Solan. It is difficult for the petitioner to visit Solan from Chamba due to her medical ailment. She has a young child and cannot travel with the child to Solan. The Court at Solan does not have any territorial jurisdiction to hear and entertain the present matter. Hence, he prayed that the present petition be allowed and the proceedings pending before the learned Chief Judicial Magistrate, Solan, be transferred to the Court at Chamba.

5. Mr Jitender Sharma, learned Additional Advocate General for respondent No.1-State, submitted that the petitioner is only a witness and she can appear before the Court by way of video conferencing. There is no need for her to appear personally before the Court, and there is no reasonable cause for the transfer of the matter. The petitioner's interest would be taken care of by the State. Hence, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

7. Hon'ble Supreme Court laid down the guidelines for transferring a criminal case from one Court to another in *Shri*

Sendhur Agro & Oil Industries v. Kotak Mahindra Bank Ltd., 2025

SCC OnLine SC 508 and observed as under:

49. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not the power under Section 406 Cr. P.C. should be exercised, yet it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine and more particularly on the plea of lack of territorial jurisdiction of the court to try the offence under Section 138 of the N.I. Act. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

- (i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;
- (ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;
- (iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;
- (iv) a communally surcharged atmosphere, indicating some proof of inability in holding a fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere, either directly or indirectly, with the course of justice. [See: *Nahar Singh Yadav v. Union of India*, (2011) 1 SCC 307]

8. It was submitted that it is very difficult for the petitioner to travel from Chamba to Solan. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in *Shri Sendhur Agro & Oil Industries* (supra) that mere inconvenience or hardship faced by a person from travelling from one place to another is no ground for transfer. It was observed:-

“65. For the purpose of transfer of any case or proceedings under Section 406 of the Cr. P.C., the case must fall within the ambit of the expression “*expedient for the ends of justice*”. Mere inconvenience or hardship that the accused may have to face in travelling from Coimbatore to Chandigarh would not fall within the expression “*expedient for the ends of justice*”. The case must fall within any of the five situations as narrated in para 49 of this judgment. It is always open for the petitioner accused to pray for exemption from personal appearance or request that the Court that him may be permitted to join the proceedings online.”

9. It was further held that mere inconvenience of the parties is no ground to transfer. It was observed:-

“47. It follows from the above-mentioned exposition of law that transfer of cases under Section 406 Cr. P.C. may be allowed when there is a reasonable apprehension backed

by evidence that justice may not be done, and mere convenience or inconvenience of the parties may not by itself be sufficient enough to pray for transfer. The court has to appropriately balance the grounds raised in the facts and circumstances of each case and exercise its discretion in a circumspect manner while ordering a transfer under Section 406.”

10. Moreover, there is force in the submission of Mr Jitender Sharma, learned Additional Advocate General, that the State is prosecuting the matter and the petitioner has to appear only as a witness. She can do so by video conferencing, and there is no necessity for her to appear personally before the Court.

11. It was submitted that the matter should have been tried at Chamba and was wrongly transferred to Solan. This submission will not help the petitioner. It was laid down by the Hon’ble Supreme Court in *M/s Kamal Enterprises and another Vs. A.K. Construction Company* 2025 LiveLaw (SC) 289 that the plea regarding the lack of jurisdiction is no ground for transfer, as this plea can be raised before the Court that can return the complaint for its presentation to the appropriate Court. It was observed:-

“2. The petitioners are the accused in the complaints filed under Section 138 of the Negotiable Instruments Act, 1881. The contention of the petitioners is that the Trial Court before which the complaints have been filed by the

respondent has no jurisdiction to entertain the complaints. The petitioners are entitled to raise the said contention before the learned Magistrate, who is empowered to return the complaint for presentation to the proper Court, if the learned Magistrate is satisfied that the Court has no territorial jurisdiction.

3. Therefore, this ground of lack of territorial jurisdiction cannot be considered in these Transfer Petitions.”

12. Hence, the petitioner cannot seek transfer on this ground as well.

13. No other point was urged.

14. In view of the above, there is no reason justifying the transfer of the petition from District Solan, H.P., to District Chamba, H.P. Hence, the present petition fails, and it is dismissed.

15. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

28th September, 2026
(Chander)