

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.R.R. 3560 of 2025

Integrated Project Management & Services and Anr.

Vs.

The State of West Bengal and Anr.

For the petitioners : Mr. Arindam Jana, Adv.
Mr. Yuvraj Chatterjee, Adv.
Mr. Akash Sarkar, Adv.
Mr. Rahul Surtori, Adv.

For the Opposite Party : Mr. Ujjal Roy, Adv.

Heard on : 17.09.2025

Judgment on : 25.09.2025

Md. Shabbar Rashidi, J.:-

1. The instant revisional application under Section 482 read with Sections 401/407 of the Code of Criminal Procedure, 1973 corresponding to Section 528 read with 442/447 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeking transfer of Complaint Case being C. Case No. 55 of 2013 pending before the learned 2nd Judicial

Magistrate, Diamond Harbour, South 24-Parganas to the Court of learned 12th Metropolitan Magistrate, Kolkata.

2. It was submitted on behalf of the learned advocate for the petitioner that the order passed in CRR No. 2822 of 2011 was passed on the basis of erroneous facts. The order in such case was passed on a belief that the other cases pending before learned 2nd Judicial Magistrate, Diamond Harbour, South 24 Parganas emanated out of the same incident and were of similar nature. However, according to learned advocate for the petitioner, C. Case No. 55 of 2013, C. Case No. 56 of 2013, C. Case No. 69 of 2021 and C. Case No. 70 of 2021 are the cases which have emanated out of the incident involved in Regent Park Police Station Case No. 173 of 2009 concerning the theft of four cheques out of 20 cheques reported to be stolen.

3. Learned advocate for the petitioner also submitted that the interest of justice would be subserved if the trial Court in seisin of the criminal proceeding concerning the stolen cheques also adjudicates the complaint case being C. Case No. 55 of 2013, since, the cheques involved in such case is also the subject matter in the criminal case. It is on appreciation of such facts, it was directed by an order dated April 9, 2013 passed in CRR 2822 of 2011 that the learned 12th Metropolitan Magistrate, Kolkata, would hear the complaint case filed before it together with the criminal case arising out of Regent Park PS Case No. 173 of 2009.

4. Learned advocate for the petitioner also submits that the trial of the criminal case is at the verge of completion. It was also contended that the High Court has ample powers to transfer a case, in terms of Section 407 of the Code of Criminal Procedure, upon an application made in this regard or in consideration of the convenience of the parties and witnesses or for better end of justice. In support of his contention, learned advocate for the petitioner cited the authorities reported in **(2007) 7 Supreme Court Cases 454 (B. R. Gupta and Another vs Rohit Jain)** and **2025 SCC OnLine SC 508 (Shri Sendhur Agro & Oil Industries vs Kotak Mahindra Bank Ltd.)**.

5. Learned advocate for the petitioner also submitted that the petitioner is a resident of Kolkata and attending the Court of learned 2nd Judicial Magistrate, Diamond Harbour, South 24-Parganas is causing great inconvenience to his health and finances.

6. On the other hand, learned advocate for the opposite party submits that there are numerous cases pending between the parties. In fact as many as eight complaint cases are pending in the Court at Diamond Harbour, whereas, only two cases are pending in the Court of Metropolitan Magistrate. In that view of the facts, it would be more convenient if the cases pending before the learned Metropolitan Magistrate are transferred to the Court at Diamond Harbour. Learned advocate for the opposite party submitted that an order appreciating such circumstance was passed on November 27, 2019 in connection

with CRR 2104 of 2018 with CRR 3678 of 2018 and CRR 3679 of 2018. The parties to such proceedings were granted liberty to take appropriate steps in this regard. No steps whatsoever have been taken by the parties till date. As such selfsame prayer by way of a fresh application for transfer cannot be allowed.

7. Upon hearing the rival submissions and on consideration of the materials placed with the record it transpires that petitioner No. 2 is a partner of petitioner No. 1 Partnership firm. The opposite party No. 2 is the proprietor of a firm and partner of one sister concern of such firm. Several cheques were issued by and between the parties with condition not to present the cheque for encashment till happening of certain event. There were business disputes between the two parties. Certain cheques issued by the petitioner were also asked by the petitioner to be returned without such presentation. It was also alleged that the opposite party also committed theft of 20 numbers of cheque leaves. The brother of the petitioner submitted a complaint over such theft of cheque leaves which was registered as Regent Park PS Case No. 173 of 2009 dated September 16, 2009 under Sections 380/467/468/471 of the Indian Penal Code. The case was investigated which ended in a charge sheet.

8. According to the allegations made by the petitioners, the opposite party No. 2 filed false complaint against the petitioner which was registered as Regent Park PS Case No. 107 of 2007 dated June

23, 2007 under Section 420/506 of the Indian Penal Code. The opposite party also filed several cases, more specifically eight complaint cases against the petitioner which are pending before the Courts at Diamond Harbour. Out of such eight cases, four cases are in respect of cheques involved in Regent Park PS Case No. 173 of 2009, which is pending before learned 12th Metropolitan Magistrate.

9. The materials on record demonstrate that Regent Park PS Case No. 173 of 2009 was originally pending before learned Chief Judicial Magistrate, Alipore, South 24-Parganas as A. C. Case No. 1721 of 2009. The present petitioner approached this Court under Section 482 of the Code of Criminal Procedure Code by filing CRR No. 2822 of 2011 seeking quashing of the proceeding under Section 138 of the Negotiable Instruments Act being C. Case No. 51317 of 2009 pending before learned 12th Metropolitan Magistrate, Kolkata which was filed at the behest of opposite party No. 2. By an order passed on April 9, 2013 in CRR 2822 of 2011, a Coordinate Bench directed transfer of A. C. Case No 1721 of 2009 from the Court of learned Chief Judicial Magistrate, Alipore to the Court of learned 12th Metropolitan Magistrate, Kolkata.

10. By the instant application, the petitioner has sought transfer of C. Case No. 55 of 2013 from the Court of learned 2nd Judicial Magistrate, Diamond Harbour to the Court of learned 12th Metropolitan Magistrate, Kolkata. Records demonstrate that the

petitioner had earlier approached this Court with prayer for the selfsame relief by filing CRR No. 2104 of 2018 along with CRR No. 3678 of 2018 and CRR No. 3679 of 2018. Such prayer of the petitioner was refused by a coordinate bench by a common judgment and order passed on November 27, 2019. The learned Bench specifically held that,

“6. Since as many as six similar complaint cases are pending between the parties before the Court of the learned Judicial Magistrate, 2nd Court, Diamond Harbour, 24- Parganas (South), and only a case and a counter case are pending before the learned Metropolitan Magistrate, 12th Court, Kolkata, it will be expedient and in the interest of justice that the learned Court at Diamond Harbour should hear all the related cases.

7. In view of the above, I do not find any merit in the applications for transfer made in CRR 3679 of 2018 and CRR 2104 of 2018. Accordingly, the said revisional applications are dismissed.

8. However, the parties or any of them may take appropriate steps in having the case and the counter case pending before the learned Metropolitan Magistrate, 12th Court, Kolkata transferred to the Court of the learned Judicial Magistrate, 2nd Court, Diamond Harbour, in accordance with law.”

11. The materials on record reveals that the number of pending cases before the Courts at Diamond Harbour between the petitioner and the opposite party, has since been increased to eight as compared to six pending cases at the time of disposal of CRR 2104 of 2018. The order passed in CRR 2104 of 2018 is still subsisting and has not been

challenged by the parties. Moreover, no steps appear to have been taken by either of the parties in view of the liberty granted in the order dated November 27, 2019. As noted, as many as eight cases are pending between the parties before the Courts of learned Judicial Magistrate at Diamond Harbour whereas, only two cases are pending before learned 12th Metropolitan Magistrate, Kolkata.

12. In the case of **Shri Sendhur Agro & Oil Industries** (supra) the Hon'ble Supreme Court observed to the following:-

“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 subsections (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 nonofficial 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]

50. The above-mentioned factors are not exhaustive in nature and are illustrative of the requirements of a fair trial. It is clear as a noon day that ensuring a fair trial is the predominant consideration for a court to rule on a motion for transfer of a case. This Court in *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 SCC 167 has held thus: “2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having

jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

13. In the case at hand, no circumstances enunciated in subparagraphs (i) to (v) of the decision in **Shri Sendhur Agro & Oil Industries** (supra) has been pleaded. Such decision lays down that this power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. The only case that has been made out is that the pendency of the cases at Diamond Harbour is telling upon the health and finance of the petitioner. Such grounds are equally available to the opposite party as well.

14. In **B.R. Gupta and another** (supra), the Hon'ble Supreme Court directed transfer of a criminal case, which was presumably an offshoot of a case for dishonour of cheque, to the Court where the case relating to dishonour of cheque was pending. However, the facts and circumstances are altogether different in the instant case. The number of pending cases at the Courts at Diamond Harbour is much more than that in the Court where transfer is sought. It would be more convenient to transfer lesser number of cases to the Court where higher number of cases is pending. Moreover, there is an order in this regard, as noted above, subsisting and such order has neither been challenged nor complied till date. 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 nonofficial witnesses as laid down in the case of ***Shri Sendhur Agro & Oil Industries*** (supra) seems to be poised against the prayer of the petitioner.

15. Therefore, on the basis of aforegone discussions, I find no justification in transferring the case being C. Case No. 55 of 2013 pending before learned 2nd Judicial Magistrate, Diamond Harbour to the Court of learned 12th Metropolitan Magistrate, Kolkata.

16. Consequently, the instant application being **CRR 3560 of 2025** is dismissed, however without any order as to costs. Accordingly, order of stay granted in terms of order dated September 3, 2025 shall stand vacated

17. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Md. Shabbar Rashidi, J.)