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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(CRL.) 71/2025, CRL.M.A. 26224-26225/2025**

GAURAV MALHOTRA

.....Petitioner

Through: Mr. Praveen Kumar, Mr. Suman Raj
and Mr. Foozan Shah, Advocates

versus

**UMESH CHAND JAIN (PROPRIETOR OF
M/S CHAMAN LAL UMESH CHAND JAIN)**

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **02.09.2025**

1. The present petition under Section 447(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks transfer of CC. No. C. No. 2968/2023 titled *Umesh Chand Jain Proprietor of Ms. Chaman Lal Umesh Chand Jain v. Gaurav Malhotra* from the Court of Judicial Magistrate First Class, 1 South District, Saket Court Complex, New Delhi to any other Court of competent jurisdiction. The present petition is also directed against order dated 12th July, 2025 passed by Principal District & Session Judge, South, Saket Courts, New Delhi in Transfer Petition no. 35/2025 declining the request.

2. Briefly, the facts as narrated in the Petition are as follows:

2.1. The Petitioner is facing three complaints under Section 138 of the Negotiable Instruments Act, 1881¹ registered as CC NI Act Nos. 2966/2023,

¹ "NI Act"



2967/2023, and 2968/2023, all being heard together before the JMFC, South District, Saket Court, New Delhi. On 3rd May, 2024, when the cases were listed for cross-examination, the Petitioner's main counsel was unable to appear. The junior counsel sought an adjournment, which was allowed, but subject to costs of INR 1,000/-.

2.2. On 16th January, 2024, the matter was listed again. As counsel for the Petitioner was engaged elsewhere, another adjournment was sought. This time, the Magistrate imposed costs of INR 5,000/- in each case. Cross-examination eventually took place on 28th October, 2024 in CC NI Act Nos. 2966/2023 and 2968/2023. However, due to shortage of time, cross-examination in CC NI Act No. 2967/2023 had to be deferred. The Petitioner alleges that during the course of evidence, the Magistrate did not properly record the answers and intervened in a way that influenced the witness's testimony.

2.3. On 6th February, 2025, when the matter was called, the Petitioner's main counsel was not present at the first call and his junior sought a pass-over, which was declined. The Magistrate then closed the Petitioner's right of cross-examination in CC NI Act No. 2967/2023. The Petitioner challenged this order in revision, and by order dated 26th March, 2025, the Sessions Judge set aside the order and granted the Petitioner another opportunity to cross-examine.

2.4. On 27th March, 2025, all three cases were listed together. In the presence of both counsel, the matters were fixed for 4th July, 2025 at the request of the Respondent. However, later, the Magistrate advanced the date of hearing in CC NI Act Nos. 2966/2023 and 2968/2023 to 26th April 2025 for final arguments, and counsel for the Petitioner was informed of this



change through a message from the Reader of the Court.

2.5. On 26th April, 2025, counsel for the Petitioner sought an adjournment due to ill health and requested that the cases be heard along with the third complaint (CC NI Act No. 2967/2023) on 4th July, 2025. The request was declined, and the two matters were instead adjourned to 16th May, 2025 to be heard separately.

3. Counsel for the Petitioner contends the sequence of events, culminating in the refusal to accommodate his request for adjournment on medical grounds and for consolidation with a connected complaint, has given rise to a reasonable apprehension that the Presiding Officer is predisposed against the Petitioner. It is urged that such apprehension of bias need not be proved as an actual fact; what matters is the perception of a litigant that justice may not be administered with the requisite detachment. Reliance is placed on *Vinod Sharma v. State*,² to contend that even the likelihood of bias, if established on a reasonable basis, is sufficient to transfer a case.

4. The Court has considered the aforementioned facts and contentions. The Petitioner had moved a transfer petition before the Court of the Principal District and Sessions Judge (South), Saket Courts, New Delhi, seeking transfer on the very same grounds, now being urged before this Court. Those petitions were adjudicated and disposed of by a detailed order dated 12th July, 2025 to the following effect:

“By way of present transfer petitions, the applicant /petitioner is seeking transfer of cases bearing CC NI No.2967/2023 titled as Roopam Jain Vs. Gaurav Malhotra, CC. NI Act No.2966/2023 titled as Umesh Chand Jain Karta Vs. Gaurav Malhotra and CC NI Act No.2968/2023

² 2012 (1) JCC 665.



titled as Umesh Chand Jain Proprietor M/s. Chaman Lal Umesh Chand Jain Vs. Gaurav Malhotra, from the court of Ms. Norma Jain, learned JMFC to another court.

The facts in brief are that the respondent / complainant filed above mentioned three complaint cases under section 138 NI Act against the petitioner herein, which are pending adjudication before the court of Ms. Norma Jain, learned JMFC (NI Act), Digital Court - 01, South, Saket Courts, New Delhi. Since the parties in all the complaint cases are same they are taken up together on the same dates.

It is alleged that learned JMFC is not conducting the trial in fair and impartial manner and is biased towards the accused / petitioner herein. It is further alleged that on multiple occasions, learned JMFC without considering the submissions advanced by learned counsel for petitioner and without recording cogent reasons, has passed orders which reflect a pattern of prejudice against the petitioner.

*Learned counsel for the petitioner has primarily contended that on the last date of hearing i.e. 27.03.2025, in all the three matters the date was given for 04.07.2025 but in the afternoon, he received a message that in the two matters i.e. CC NI No.2966/2023 and CC NI No.2968/2023, which are listed for final arguments, the date has been changed to 26.04.2025. Therefore, he has stated that he does not have any confidence that he will get any justice from learned trial court. A specific query was put to learned counsel for petitioner who is appearing through VC as to whether he had moved any application before the trial court that earlier the date was given as 04.07.2025 and later on in post lunch session, the date was changed to 26.04.2025 to which he denied having moved any such application. Learned counsel for petitioner has placed reliance upon the judgment titled as **Radheshyam Laxmanrao Mopalwar Vs. State of Maharashtra & Ors., 2018 SCC OnLine Bom. 15307** in support of his contentions.*

*On the other hand, learned counsel for the respondent has argued that learned trial court is proceeding in the matter fairly and with due judicial process. Thus, there is no reason to transfer the cases. In support of her contentions, learned counsel has placed reliance upon the judgment titled as **M/s. Shri Sendhur Agro & Oil Industries Vs. Kotak Mahindra Bank Ltd, Transfer Petitioner (Crl.) No.608/2024 decided on 06.03.2025.***

After considering the arguments advanced by both the sides, I am of the opinion that only giving a shorter date for the final argument cases will not amount to losing the faith in the court as it is a general practice that the matter listed for final arguments are given shorter date than the matter fixed for evidence. Even from the ordersheets filed by the petitioner, it is not clear that the date of 04.07.2025 was given earlier and later on the date was changed to 26.04.2025. Hence, this contention of learned counsel for the petitioner cannot be accepted.

Secondly, learned counsel for the petitioner has not moved any



such application before the learned trial court for explaining why the date was changed. Thus also, this cannot be believed to be true.

Further, learned counsel for the respondent has argued that on 27.03.2025 in the morning sessions, counsel from the side of petitioner herein did not appear and only proxy counsel was present. Therefore, in the ordersheets also, the attendance of proxy counsel has been marked and the date of July was given in the evidence matter and date of April was given in the final arguments cases.

*In view of the above findings, I am of the opinion that there are no grounds for transferring the matters from the court of Ms. Norma Jain, learned JMFC (NI Act), Digital Court - 01, South, Saket Courts, New Delhi to other court. Hence, **all the transfer petitions stand dismissed.***

Files be consigned to Record room."

5. The Court is of the considered view that the Petitioner's ground for seeking transfer is wholly misconceived. The mere fact that the Trial Court advanced the date for final arguments does not, by itself, indicate any element of bias or prejudice in the conduct of proceedings. Scheduling is an aspect of case management, and unless shown to be actuated by *mala fides*, it cannot give rise to a reasonable apprehension of partiality. Significantly, the Petitioner did not even move a formal application before the Trial Court questioning the change of date. In these circumstances, no allegation of bias can be reasonably sustained.

6. It bears emphasis that the power to transfer a case is not to be invoked casually or as a matter of convenience. Transfer is an extraordinary measure, to be exercised only when there are cogent circumstances demonstrating a real likelihood of bias or partial conduct. Entertaining such requests without adequate foundation not only undermines the confidence reposed in the Presiding Officer but also unsettles the progress of trial. As a Coordinate Bench of this Court observed in *Directorate of Enforcement Vs. Ajay S.*



Mittal,³ transfer petitions grounded merely in perception or dissatisfaction with judicial outcomes can have an adverse effect:

“Demoralizing Effect of Such Transfer Orders

72. *In the hard realities of the legal profession, it is not uncommon for some judges to be perceived as more lenient or ‘relief giving’, while others are viewed as stricter or less inclined to grant relief. Such perceptions, whether accurate or not, can influence how parties approach their cases and the strategies they employ. Nevertheless, it is crucial to remember that every judge is bound by the same principles of law and justice, and strives to apply them impartially and fairly, irrespective of any preconceived notions which the parties or the counsels may hold about them. As long as the legal principles are applied impartially and fairly, irrespective of the outcome of an order, the party not getting relief cannot allege bias against him. The perceptions about a judge without there being any material showing bias has to remain within the realm of perception and cannot take place of evidence of bias.*

73. *However, when parties perceive that they can manipulate the judicial process by casting doubt on a judge's fairness, it sets a dangerous precedent. It is a general perception that some litigants attempt to manipulate the system by indulging in frivolous claims aimed at Court hunting, where litigants seek to have their cases heard by judges they perceive as more lenient. The justice system relies on the principle that judges are impartial arbiters, and any deviation from this principle must be based on clear, substantiated concerns, not mere suspicion or personal preference. Therefore, the application for transfer of case from one Court to another has to be dealt with circumspection and caution.*

74. *Withdrawing a case based solely on mere apprehension or unsubstantiated allegations, without first obtaining a report from the presiding judge, can have a deeply demoralizing effect not only on the officer concerned but the entire judiciary as the name of the concerned judge not only finds mention in the order but is all over the social media. In this Court's view, such actions undermine the confidence and morale of judges, suggesting that their impartiality and integrity can be easily questioned without substantial evidence. This not only affects the individual judge but also threatens the credibility of the entire criminal justice system. Such actions, needless to say, can seriously prejudice the judge and demoralize the entire*

³ 2024 SCC OnLine Del 4047.



judiciary. It may also discourage a judge from performing his duties without fear or favor.

75. In case a different view is taken in the facts and circumstances of the present case, it will amount to and lead to incapacitating a judicial officer from adjudicating matters pertaining to the Directorate of Enforcement. In case, the case is transferred from the Court of learned Special Judge on such grounds, it may be used by other parties also seeking transfer on this unsubstantiated ground on flimsiest pretext of bias.”

7. Conflating routine case-management decisions with prejudice or bias on part of the Presiding Officer, undermines the high threshold required to justify a transfer. In the present case, the allegations are speculative and unsupported by any substantive material. Rather than indicating a real likelihood of bias, they reflect an attempt to delay proceedings. Entertaining such request would risk eroding judicial authority and incentivizing unwarranted challenges to the conduct of trials.

8. For the foregoing reasons, the present petition is devoid of merit and is accordingly dismissed, along with all pending applications. The Petitioner is directed to pay costs of ₹10,000/- to the Respondent within three weeks from today.

SANJEEV NARULA, J

SEPTEMBER 2, 2025/d.negi