

SUPREME COURT OF INDIA

Sri Jayendra Saraswathy Swamigal, Tamil Nadu

Vs

State of Tamil Nadu

Transfer Petition (Crl.) 134 of 2005

(R.C.Lahoti and G.P.Mathur)

26/10/2005

JUDGMENT

G. P. MATHUR, J.

1. This petition has been filed by Jayendra Saraswathy Swamigal, Sankaracharya of Kanchi Kamakoti Peetam under Section 406 Cr.P.C. seeking transfer of Sessions Case No. 197 of 2005 pending before the Principal Sessions Court, Chenglepet, to any other State, out side the State of Tamil Nadu. The respondents arrayed in the Transfer Petition are (1) State of Tamil Nadu, (2) Director General of Police, Tamil Nadu, (3) Shri Prem Kumar, Superintendent of Police, Head of the Special Investigation Team (SIT), (4) Shri S.P. Sakthivel, Chief Investigating Officer, SIT, besides respondent Nos. 5 to 28, who are co-accused in the case. Except for respondent No. 5, P. Subramaniam @ Ravi Subramaniam, who has been granted pardon and has turned approver, the remaining co-accused, namely, respondent Nos. 6 to 28 are supporting the prayer for transfer of the case and some of them have filed affidavits in that regard.

2. An FIR was lodged at 7.00 p.m. on 3.9.2004 at Police Station B-2, Vishnu Kanchi by Shri N.S. Ganesan. It was stated therein that at about 5.45 p.m. on 3.9.2004 while he was in the office of Devarajaswamy Devasthanam, two persons armed with aruval came there and caused multiple injuries to Sankararaman, In-charge Administrative Manager, who was sitting on a chair. Four persons were waiting outside and the assailants escaped on their motorcycles. After the case was registered, necessary investigation followed and several persons were arrested.

3. According to the case of the prosecution, the petitioner had entered into a conspiracy with some other co-accused for getting Sankararaman murdered. The motive for the commission of the crime is said to be various complaints alleged to have been made by the deceased levelling serious allegations, both against the personal character of the petitioner and also his style of functioning as Shankaracharya of the Mutt. The petitioner was arrested on 11.11.2004 from Mehboobnagar in Andhra Pradesh. He filed a bail petition before the High Court of Madras, which was rejected on 20.11.2004 and the second petition was rejected on 8.12.2004. Thereafter, the petitioner filed Special Leave Petition (Crl.) No. 6192 of 2004, which was allowed by this Court on 10.1.2005 and he was granted bail. The very next day, i.e., on 11.1.2005 Vijayendra Saraswati Swamigal (respondent No. 6), who is the junior Sankaracharya, was arrested. According to the custom and tradition of the Mutt, he would succeed the petitioner.

4. After completion of investigation the police submitted a charge- sheet against all the 24 accused in the Court of Judicial Magistrate, Kanchipuram on 21.1.2005, which was registered as Preliminary Registered Case (PRC) No. 2 of 2005 and committal proceedings took place and finally the case was committed to the Court of Sessions where it has been registered as S.C. No. 197 of 2005.

5. The transfer of the case has been sought on several grounds and basically speaking they are as under: -

i) The State machinery in Tamil Nadu and specially the Special Investigation Team headed by Shri Prem Kumar, Superintendent of Police, has shown great zeal and has made extraordinary efforts, much beyond what is required under the law to anyhow secure the conviction of the accused and to achieve that object has procured and fabricated false evidence.

ii) The Chief Minister of the State of Tamil Nadu, who is also holding the Home portfolio, has made statements on the floor of the House that the petitioner and the other co-accused are actually involved in the murder of Sankararaman and has also given some press statements and has thereby pre-empted a fair decision in the criminal trial, as statements of persons holding such high offices and specially those made on the floor of the House, are generally believed to be correct and thus the accused stand condemned even before the commencement of the trial.

iii) A solatium of Rs.5.00 lakhs was paid by the Chief Minister of Tamil Nadu to Padma Sankararaman (widow of deceased Sankararaman) on 24.11.2004, long before completion of investigation and submission of charge-sheet, and, this was given wide publicity in the electronic media and newspapers etc., which shows that the State Government is taking special interest in the case and is too keen to secure conviction of the accused in order to justify the stand taken by it.

iv) Concocted and false cases have been registered against 16 co- accused. Even before their bail applications in the present case could be heard, detention orders were passed against them under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (for short

"Goondas Act") between 16.1.2005 and 6.2.2005 so that even after grant of bail by the court they may remain in custody.

v) The advocates appearing for the petitioner and other co-accused have been put under great threat on account of lodging of false and fabricated criminal cases against them and a situation has been created wherein they may not be in a position to defend the accused properly. This will also have a general affect as other lawyers would feel hesitant to conduct the case on behalf of the accused.

vi) The Mutt and other associated and connected trusts have 183 accounts in banks, which were all frozen by the SIT resulting in paralyzing the religious and other activities of the Mutt and other connected bodies.

vii) Criminal cases have been lodged against some leading journalists of the country and other prominent personalities, who had written articles criticizing the arrest of the petitioner, which not only violates right of free speech but also creates an atmosphere of threat against anyone daring to speak or write in favour of the accused and thus the accused seriously apprehend that they would not get a fair trial in the State of Tamil Nadu.

6. In reply to the Transfer Petition three sets of counter affidavits have been filed, one on behalf of the State of Tamil Nadu and its Director General of Police, second by Shri Prem Kumar, Head of SIT, who has been impleaded as respondent No. 3 and the third by P. Subramaniam @ Ravi Subramaniam, co-accused, who has been granted pardon and has turned approver in the case. A detailed rejoinder affidavit has been filed by the petitioner and some other affidavits have also been filed to which we will make reference at the appropriate stage.

7. We have heard Shri F.S. Nariman, learned senior counsel for the petitioner, Shri Ashok Desai, learned senior counsel, who has appeared for respondent No. 6 Vijayendra Saraswati Swamigal (junior Shankaracharya) and Shri G.L. Sanghi, learned senior counsel for respondent No. 8. We have also heard Dr. Rajeev Dhavan, learned senior counsel, who has appeared for respondent Nos. 1 and 2, Shri Shanti Bhushan, learned senior counsel, who has appeared for respondent No. 5 Ravi Subramaniam (approver) and Ms. Indira Jaisingh, who has appeared for Padma Sankararaman (widow of the deceased), though she had not been arrayed as party to the Transfer Petition.

8. The contention raised on the basis of the statements made by the Chief Minister on the floor of the House does not impress us. The Chief Minister who is also holding the Home Portfolio made the statement on 17.11.2004 and also gave a Press statement on 1.12.2004. She merely stated that the investigation has revealed the involvement of the petitioner Jayendra Saraswathy in the Shankararaman murder case. The investigating agency has come out with a case that the petitioner had entered into a conspiracy with some other co-accused in getting Shankararaman murdered. The petitioner had already been arrested earlier on 11.11.2004. The arrest of the petitioner had generated lot of publicity and in such circumstances no exception can be taken to the statement made by the Chief Minister on the floor of the House. We are, therefore, of the opinion that the petitioner or other co-accused cannot raise any grievance on the basis of the aforesaid statement of the Chief

Minister and it cannot be a ground for transferring the case to another State.

9. We will now take up the issue regarding availability of counsel to the accused and conduct of their cases by lawyers in a free atmosphere without any threat or fear, so that their defence may not go by default. The petitioner has engaged Shri K.S. Dinakaran, who is 67 years of age and is a very senior counsel having put in 43 years of practice. Besides him Shri A. Shanmugam, who has a standing of 27 years at the Bar and some other lawyers are also appearing for him. Shri Shanmugam has filed an affidavit in this Court on 27.4.2005, which was sworn on 18.4.2005. It is averred therein that the copy of the charge-sheet, which is a long document and runs into 1873 pages, was given to the accused on 31.3.2005 and on the same day the prosecution sought to examine Ravi Subramaniam (approver) before the Court of Judicial Magistrate, who had taken cognizance of the offence and was holding committal proceedings. An application was then moved on behalf of the petitioner praying for permission to cross-examine Ravi Subramaniam in case his statement was recorded and for this purpose some time was sought in order to go through all the documents contained in the charge-sheet. The learned Magistrate fixed 4.4.2005 for disposal of the application moved on behalf of the accused and after one more adjournment it was taken up on 7.4.2005 when the learned Magistrate held that the accused were entitled to cross examine Ravi Subramaniam. However, the prayer made on behalf of the accused to furnish copy of the video and audio cassettes, which are mentioned in the charge-sheet, was rejected. The examination-in-chief of Ravi Subramaniam commenced on 7.4.2005 which could not be completed on that day and the case was adjourned to 8.4.2005 and thereafter to 11.4.2005. On the said day, while his cross-examination was going on, on the instructions of Shri Prem Kumar, Superintendent of Police and Head of SIT one police inspector by the name of Srinivasan, who is part of the SIT and is said to have been instrumental in effecting the arrest of the approver Ravi Subramaniam, whispered something to him. Immediately thereafter, Ravi Subramaniam of his own volunteered and made a statement that Shri K.S. Dinakaran, senior counsel who is appearing for the petitioner, had met his wife Smt. Chitra at his house and had threatened her that he (Ravi Subramaniam) should not give any statement against the petitioner. This conduct of Shri Prem Kumar and inspector Srinivasan of prompting the witness to make a statement against the senior counsel Shri Dinakaran was strongly objected to by the defence lawyers and they expressed their anguish in the manner in which the police was going out of its way in making insinuations and securing statement of witnesses against the defence lawyers. On the objection being taken by the defence lawyers the learned Judicial Magistrate, who had witnessed the entire incident, asked the inspector Srinivasan to leave the court. He also declined to record the aforesaid statement made by Ravi Subramaniam wherein he had said that Shri K.S. Dinakaran had gone to his house and had threatened his wife. Shri K.S. Dinakaran, in his letter dated 23.9.2005 sent to Shri Krishna Kumar, Advocate on Record for the petitioner in the Supreme Court (copy of which has been placed on record), has mentioned that the said incident did take place in the court of learned Judicial Magistrate on 11.4.2005 and the affidavit filed by Shri A. Shanmugam, Advocate, wherein the aforesaid incident had been narrated, is correct. The allegation made against him by Ravi Subramaniam at the instance of Shri Prem Kumar and on the whispering made to him by inspector Srinivasan are false, frivolous and vexatious, apart from being motivated and he had never met the wife of Ravi Subramaniam at any time. He has also written that this is an attempt to demoralize and scare him by scandalizing his reputation and casting slur on his character and conduct. In the counter affidavit filed on behalf of the State it is stated in paragraph 15(vi) that Ravi Subramaniam had himself made a voluntary statement to the effect that Shri K.S. Dinakaran had met his wife at his house and had threatened her. However, the allegation that the aforesaid statement was made at the prompting of Shri Prem Kumar and thereafter whispering by inspector

Srinivasan to Ravi Subramaniam is denied. It is also denied that the learned Magistrate asked Srinivasan to leave the court. Shri Prem Kumar has given exactly similar version of the incident in paragraph 9 of his counter affidavit, namely, that Ravi Subramaniam made a voluntary statement that Shri K.S. Dinakaran had met his wife at his house and had threatened her and further that the said statement was not made either on his prompting or on the whispering of Srinivasan. It is important to note that in the statement of Ravi Subramaniam, as recorded in the court of Judicial Magistrate on 11.4.2005, the sentence that "Shri K.S. Dinakaran had met his wife at his house and had threatened her" does not find place. This, therefore, establishes the correctness of the version of the incident given by Shri A. Shanmugam in his affidavit and also by Shri K.S. Dinakaran, advocate in his letter, namely, that the aforesaid statement was given by Ravi Subramaniam at the prompting of Shri Prem Kumar and then whispering done by inspector Srinivasan to the witness and as a result of the objection raised by the defence lawyers the learned Magistrate declined to record the said part of the statement of the witness. This conduct of the prosecution machinery in prompting the witness to make a totally false allegation against a very senior counsel appearing for the defence is bound to demoralize and scare him and he cannot perform his duty of conducting the case in a fearless and proper manner. No lawyer would like to get associated with a case where a slur is made on his character and conduct and the reputation, which he has earned by maintaining high professional standards for a long period, is sought to be damaged. Any dignified lawyer would not agree to conduct a case on behalf of the accused in such an atmosphere and even if he does so, he would not be able to discharge his duties properly on account of threat to his personal reputation. This is bound to result in miscarriage of justice for the accused.

10. There is some other material to show threat to lawyers. One Mrs. Revathy Vasudevan is an advocate practicing at Kanchipuram and she is junior of Shri A. Shanmugam, Advocate. Another lady lawyer Mrs. Nadhira Banu is also practicing at Kanchipuram and is junior of Shri Y. Thiagarajan. Shri A. Shanmugam and Shri Y. Thiagarajan are appearing as counsel for the accused. Mrs. Revathy Vasudevan has been appointed by the Chairman, Legal Aid Service Authority as counsel to assist prisoners, who may be on remand and want to avail the services of a legal aid counsel. Mrs. Nadhira Banu has been appointed as a counsel for visiting the sub-jail, Kanchipuram and providing legal assistance from Legal Services Authority to under trial prisoners, who want to seek legal aid. On 19.2.2005 Smt. Chitra wife of Ravi Subramaniam (approver) lodged an FIR at B-1 Sivakanchi Police Station, alleging that she had visited the Kanchipuram sub-jail on the said date as she had come to know through newspaper reports that her husband had been arrested in connection with the Sankararaman murder case by the police and has turned as approver and is lodged at Kanchipuram sub-jail. When she met her husband, he told her that on 1.2.2005 and 9.2.2005 two lady advocates, namely, Revathy and Nathira Banu met him in the jail and asked him not to give any statement or evidence against the Shankaracharya and for this purpose he would be given huge sum of money and if he did not abide by their advice he would be killed when he would come out of the jail. He also told her that this threat was given to him by the lady lawyers as per the directions of Jayendra Saraswathi Swamigal (petitioner herein) and two advocates, viz., Shri Shanmugam and Shri Thiyagarajan. On the basis of the aforesaid report a case was registered as Crime No. 127 of 2005 under Section 201 read with Section 109, 213E, 506(2) IPC at Sivakanchi Police Station. It is noteworthy to mention here that in his confessional statement, which was recorded under Section 164 Cr.P.C. on 31.12.2004 before the Chief Judicial Magistrate, Chenglepet, Ravi Subramaniam had stated that his relations with his wife were strained for over ten years. Shri A. Shanmugam, advocate, apprehending that the FIR lodged by Smt. Chitra was manipulated by the State machinery and he may be falsely implicated in the aforesaid case and may be arrested, then

filed Writ Petition No. 6407 of 2005 (A. Shanmugham vs. State of Tamil Nadu and others) in the High Court of Madras praying for a writ of mandamus for transferring the investigation of case Crime No. 127 of 2005 from the local police to CBI. The writ petition was disposed of on 15.3.2005 by the following order: -

*"The learned Public Prosecutor states that no proceedings are contemplated against the writ petitioner Mr. A. Shanmugham. Therefore, nothing further survives in the writ petition. The writ petition is disposed of accordingly. Consequently, the connected W.P.M.P. No. 6990 of 2005 is closed." **

11. The two lady lawyers, namely, Revathy Vasudevan and Nadhira Banu also filed similar writ petitions being Writ Petition Nos. 19146 of 2005 and 19147 of 2005 praying that a writ of mandamus be issued directing the transfer of investigation of case Crime No. 127 of 2005 registered against them from the local police to the CBI. The local police, however, acted with considerable speed and submitted a charge-sheet on 17.6.2005 against both the lady lawyers under Sections 451, 214 IPC read with Sections 109, 201, 506 (2) IPC and a case was registered on the file of Judicial Magistrate No. I, Kanchipuram being PRC No. 3 of 2005. The writ petitions were disposed of on 24.6.2005 and paragraphs 1, 5, 6 and 7 of the order passed by the High Court are being reproduced below: -

"1. Petitioners herein are practicing Women Lawyers at Kancheepuram and both of them are in the panel of Taluk Legal Services Committee, Kancheepuram. Misconstruing their visit to the sub-jail on 1.2.2005 and 9.2.2005 as though they had attempted to induce one Ravisubramaniam, an accused in the sensitive criminal case, namely, Sankararaman murder case, in crime No. 914 of 2004 on the file of Vishnu Kanchi Police Station and now pending as S.C. No. 197 of 2005 on the file of District and Sessions Court, Chingleput, to resile from his earlier statement made against the co-accused in the said case, a case was registered against both the petitioners in crime No. 127 of 2005 for the offences punishable under Sections 201 read with 109, 213, 451 and 506(2) IPC, in which final report had already been filed and was taken on file as PRC No. 3 of 2005 on the file of Judicial Magistrate No. I, Kancheepuram.

5. Today Mr. K. Doraisami, learned Public Prosecutor after getting necessary instructions from the Government, perusing the relevant records, applying his mind on the issue and taking into consideration the facts and circumstances of the case, submits that necessary steps will be taken to withdraw the case against the petitioners in accordance with law or alternatively the petitioners may be permitted to take appropriate steps in PRC 3 of 2005 on the file of Judicial Magistrate No. I, Kancheepuram, to discharge themselves, to which learned Public Prosecutor will not have any objection. Of course, the learned Public Prosecutor also expects the petitioners that they will not give any room for such allegations in future.

6. Both the petitioners present before the Court today stated that they did not involve in any such act as complained and charged, nor they will involve in such act in future. The above statement of the petitioners is put on record.

*7. In view of the fair stand of Mr. K. Doraisamy, learned Public Prosecutor; I am of the considered opinion that nothing survives in the above writ petitions and therefore no further orders are required in the matter, except to permit the learned Public Prosecutor to take steps for withdrawal of the case against the petitioners as contemplated under Section 321 Cr.P.C., or alternatively, to permit the petitioners to get themselves discharged from PRC No. 3 of 2005 on the file of Judicial Magistrate No. I, Kancheepuram, in accordance with law, in appropriate proceedings." **

12. Shri F.S. Nariman, learned senior counsel for the petitioner has strongly urged that in case the version given in the FIR lodged by Smt. Chitra, wife of Ravi Subramaniam, was correct there was no occasion for the public prosecutor to make a statement that necessary steps would be taken to withdraw the case and the prosecution should have proceeded with the case to its logical end which would have revealed the truth. He has further submitted that in spite of the statement of the public prosecutor on the basis of which the writ petition was disposed of on 24.6.2005, till now no application has been moved under Section 321 Cr.P.C. seeking withdrawal of the case. Dr. Rajeev Dhavan, learned senior counsel for the State has, however, submitted that the presence of the two lady lawyers in the jail on the dates mentioned in the FIR lodged by Smt. Chitra is not disputed, which prima facie indicates about the correctness of the FIR lodged by her. Dr. Dhavan has also placed some papers for the perusal of the Court which show that the District Magistrate has written to the Government for withdrawing the case. However, the fact remains that so far no application under Section 321 Cr.P.C. has been moved to withdraw the criminal case wherein a charge-sheet has been submitted against the two lady lawyers. The fact that Shri A. Shanmugam, advocate for the petitioner, had to move a writ petition in the High Court for transfer of the investigation of the case lodged by Smt. Chitra and the two lady lawyers, who are juniors to the advocates appearing for the accused, had also to file similar writ petitions gives an idea of the atmosphere in which the lawyers appearing for the accused are functioning and discharging their professional duties. The mere statement of the public prosecutor that steps will be taken to withdraw the criminal case, in absence of any concrete steps having been taken in that regard, namely, filing of an application under Section 321 Cr.P.C., can hardly give any solace to the concerned lawyers. There cannot be even a slightest doubt that a lawyer appearing for an accused who is facing a murder charge, cannot perform his professional duty as is required of him when he himself is faced with criminal prosecution, for a serious charge like 201 and 214 IPC, which are punishable with imprisonment for a term which may extend to seven years and also fine. Though it is not necessary for the decision of the present Transfer Petition yet we cannot restrain ourselves from commenting that the necessary ingredient of an offence under Section 201 IPC is actually causing any evidence of the commission of an offence to disappear with the intention of screening the offender from legal punishment. Therefore, the oral threat or inducement allegedly given by the two lady lawyers to Ravi Subramaniam not to give any statement against the petitioner cannot amount to commission of an offence under the said section. Yet the local police submitted a charge-sheet against the aforesaid lady lawyers for their prosecution under Section 201 IPC. Institution of the criminal case against the junior lawyers, whose seniors are appearing as counsel for the accused, undoubtedly shows that in the prevailing conditions the accused will be seriously handicapped in defending themselves on account of threat and intimidation to their counsel.

13. Another strong circumstance, pointed out by the learned counsel for the petitioner to show that the State machinery is going out of its way in preventing the petitioner and some other accused connected with the Mutt in defending themselves and to secure their conviction by any means, is the

action of the SIT in issuing a direction for freezing the accounts of the Mutt in the banks. Shri Prem Kumar and Shri S.P. Sakthivel, Head and Chief Investigating Officer of SIT (respondent Nos. 3 and 4) wrote to several banks to "stop all further transactions, if any, through your bank in future" whereby 183 bank accounts belonging to the Mutt and even independent trusts, which had been functioning under the control and/or direction of the Mutt, became unfunctional. The result whereof was that the entire working of the Kanchi Mutt came to a standstill. Faced with such a draconian order of the State authorities His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam Samasthanam, represented by its Manager, filed writ petition No. 1050 of 2005 impleading (1) State of Tamil Nadu, (2) Secretary to Government, Hindu Religious and Charitable Endowments Department, (3) Superintendent of Police, SIT and several banks as respondents praying that a writ of mandamus be issued forbearing respondents 1 to 3 from interfering with the right of the petitioner to manage and administer its affairs properly including the bank accounts in various banks held in its name and in the names of its various endowments and trusts connected with it. The High Court after examining the matter in considerable detail allowed the writ petition by the judgment and order dated 11.2.2005. It is noticed in the judgment that the Manager of the Mutt was called at least 15 times for interrogation and was arrested on 24.12.2004 and the junior Shankaracharya was also arrested on 11.1.2005. The police called for title deeds relating to the properties, which had no connection with the criminal case. The letter, which was sent by the Chief Investigating Officer to various banks has been quoted in the judgment and the same reads as under: -

*"During the course of investigation there are reasonable suspicion to indicate certain irregularities had crept in by way of money transactions to certain agencies through your bank till today. Hence it is expedient and necessary to stop all further transaction if any through your bank in future. Therefore, I request that necessary steps may be taken immediately to freeze the account in the above reference No. 1 on the file of your bank." **

The respondent State sought to justify the action of freezing of the accounts under Section 102 Cr.P.C. After detailed consideration of the matter the High Court recorded its findings on the relevant issues and paragraphs 44 and 46 thereof are being reproduced below: -

"44. The scope and applicability of Section 102, Cr.P.C. is under rare and exceptional circumstances and is to be applied only to the assets of the accused, which are the direct outcome of the crime and not to stifle the activities of the Mutt which is an institution unconnected with the offence. The power which is vested for a particular purpose cannot be stretched to irrelevant matters and to extremes and to a breaking point, in the event of which, the Court is compelled to interfere. Discretion to use the power should be used and exercised cautiously, failing which, it becomes misuse of discretion and tainted with arbitrariness.

46. The Mutt is an organization of religious faith of innumerable people. So also is the Church, Mosque, Wakf, etc. There are several Endowments, Trusts and philanthropic activities attached to these organizations over which several devotees have personal interest, faith and sentimental devotion. One may or may not agree with the respective faith or belief of others. But they have a right to establish and maintain institutions for religious and charitable purposes within the framework of law and such right is granted as a fundamental right under the Constitution vide

*Article 26. Such an organization cannot be paralysed or closed down virtually by sending a letter purporting to act under Section 102, Cr.P.C., only for the reason that the Head of the Mutt and few office bearers are alleged to be involved in some offences. A word of caution to the Special Investigation Team: By all means, take action in the criminal cases against the indicted individuals with a single-minded determination if you feel convinced about their guilt. No one is above the law. But if you divert and deviate from that direction unmindful of the rights of innocent devotees of the Mutt, it would result not only in diluting the prosecution, but also cast a deep shadow on it. If there is anything wrong with the administration of the Mutt, it is for the H.R. and C.E. Department which has to comply with the procedure under the Act and to look after the said issues in terms of the provisions of the Act and it is not for the police to interfere with the functions of the Mutt while investigating a case of murder or assault. Even if any commission or omission amounting to a criminal misconduct is brought to light in so far as the administration of the Mutt is concerned in the opinion of the H.R. & C.E. Department, it may be open to the H.R. & C.E. Department to file a complaint before the police for appropriate action against the individuals concerned. It is not for the Special Investigation Team dealing with a murder and assault case to plunge into the accounts of the Mutt, and paralyse its functions by invoking Section 102, Cr.P.C." **

14. The High Court accordingly held that the impugned action of the Chief Investigating Officer, SIT in invoking Section 102 Cr.P.C. for freezing of the accounts of the Mutt is ultra vires the said provision, illegal and liable to be set aside, subject to the direction to the petitioner that they shall submit a statement of accounts pertaining to all bank deposits to the third respondent once in a month till the completion of the trial.

15. Dr. Dhavan, learned senior counsel appearing for the respondents sought to justify the freezing of the accounts on the ground that the petitioner had hatched conspiracy to get Sankararaman murdered and large amount of money was being withdrawn from the banks to finance the hirelings. We are not impressed by the submission made by Dr. Dhavan. The alleged conspiracy to commit the murder of Sankararaman culminated with his murder, which took place on 3.9.2004 and thereafter even according to the own case of the prosecution no further offence has been committed in pursuance of the said conspiracy. The directions for freezing the accounts were issued some time in 2005. It is also important to note that the order of the High Court allowing the writ petition and setting aside the direction issued regarding freezing of the accounts has attained finality as the same has not been challenged in any higher forum. As rightly observed by the High Court an organization (Mutt) cannot be paralysed or closed down by issuing a direction under Section 102 Cr.P.C. only for the reason that the head of the Mutt and few office bearers are alleged to be involved in some offence. The freezing of all the accounts of the Mutt and its associated trusts and endowments is a clear pointer to the fact that the State machinery anyhow wants to paralyse the entire working of the Mutt and the associated trusts and endowments in order to put pressure upon the petitioner and other co-accused who are in any manner connected with the Mutt so that they may not be able to defend themselves. It is indeed surprising that in spite of clear language used in sub-Section (1) of Section 102 Cr.P.C. to the effect any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence all the 183 accounts were frozen merely on the ground that the head of the Mutt was involved in the murder case. The action of freezing the accounts demonstrates as to what extent the State machinery can go while prosecuting the petitioner in the Sankararaman murder case.

16. Another circumstance pointed out by the learned counsel for the petitioner is the invocation of Goondas Act against 16 co-accused of the case, including N. Sundaresan (respondent No. 7) and M.K. Raghu (respondent No. 8) between 13th to 25th January, 2005, while they had still not been granted bail in the present murder case. N. Sundaresan is a Gold Medalist of B.Com. and retired as Class I Officer in the Reserve Bank of India. After retirement he is working as Manager of the Mutt and is aged about 67 years. The detention order was challenged by these accused by filing Habeas Corpus petition No. 79 etc. of 2005 in Madras High Court and the same was allowed on 5.5.2005 and all the detention orders were quashed. The High Court observed as under in its judgment: -

"In spite of our hectic search, we are unable to find any material either through some documents or through some statements from the public to show that due to the ground incident, there has been a feeling of insecurity among the people who are residents of the local area. Similarly, no single materials has been placed before the detaining authority to indicate that even tempo of life was affected or that the people in the locality got afraid or felt insecure or that there was public disorder. Nobody speaks about the apprehension that even tempo of the community got endangered

In the absence of any material to show that there was disturbance to the public order in the public place and the people got panic due to the said incident, we are at loss to understand as to how the detaining authority could uniformly state in all the detention order: "by committing the above describing crime in a public place, he has created fear and panic and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.

*..... that the conclusion arrived at by the detaining authority as mentioned in the grounds of detention totally contradicts the case of the sponsoring authority." * (the word "ground incident" has been used for the murder case of Sankararaman)*

17. Dr. Rajeev Dhavan, learned senior counsel for the respondents, has submitted that against the judgment of the High Court the Prohibition and Excise Department, Tamil Nadu, has filed a Special Leave Petition in the Supreme Court on which notice has been issued both on the petition and also on the stay application on 22.8.2005. Be that as it may, the date of passing of the detention order is quite relevant. This Court granted bail to the petitioner Jayendra Saraswathi on 10th January, 2005 and the detention orders have been passed between 13th to 25th January, 2005, while these 16 co-accused were still in custody in the murder case. It is not possible to lightly brush aside the contention of the learned counsel for the petitioner that the aforesaid detention orders were passed only to pre-empt the release from custody of these accused as a result of bail being granted to them, as some of them would have claimed parity with the order of bail granted to the petitioner Jayendra Saraswathi by the Supreme Court.

18. Shri G.L. Sanghi, learned senior counsel for the accused M.K. Raghu (respondent No. 8) has submitted that another case as Crime No. 289 of 2005 has been registered against respondent Nos. 7, 8 and 10 under Section 20(b)(ii) of NDPS Act on the basis of the alleged statement of one Agilan @ Sait, who was allegedly arrested on 22.4.2005 near bus stand Chenglepet for being in possession

of 3 Kg. of Ganja. According to the learned counsel a persistent attempt is being made by the State machinery to implicate the accused in several cases so that they may not be in a position to effectively defend themselves in the murder case of Sankararaman.

19. Shri Nariman, learned senior counsel for the petitioner has also submitted that not only the State machinery is being used to cause harassment to the accused in the murder case in every possible manner but even those, who have written any kind of article or have given any press statement or interview criticizing the action of the State in arresting and involving the petitioner Jayendra Saraswathi in the murder case of Sankararaman, have not been spared and criminal cases have been lodged against them. He has placed before the Court copies of the complaints which have been filed under Section 199(2) Cr.P.C. against Shri Murli Manohar Joshi, former Union Minister for Human Resources Development, Shri Karunanidhi (President, DMK and former Chief Minister of Tamil Nadu), Shri H. Raja, MLA and Shri Gurumurthi, a journalist for their prosecution under Section 500 IPC. These papers show that the City Public Prosecutor, Chennai has filed separate complaints in accordance with Section 199(2) Cr.P.C. against Shri Murli Manohar Joshi, Shri Karunanidhi, Shri H. Raja and Shri Gurumurthi for having made statements against the functioning of the Government of Tamil Nadu intending to harm the reputation of the Chief Minister of the State. Shri Gurumurthi filed writ petition No. 5835 of 2005 in the Madras High Court for quashing of the FIR and the charge-sheet filed against him and an order has been passed staying his arrest. Learned counsel has submitted that filing of the complaints under Section 500 IPC against these persons shows that even expressing any kind of dissent against the prosecution of the petitioner either in an article which is published in a newspaper or by giving interview to media or a press statement is not being tolerated in the State of Tamil Nadu and by launching prosecution an atmosphere of threat and fear has been created to stifle any kind of dissent. According to the learned counsel the filing of the complaints amounts to violation of the fundamental rights of free speech guaranteed under the Constitution. Dr. Dhavan, learned counsel for the State has submitted that if any defamatory statement is made maligning the reputation of the Chief Minister a prosecution under Section 500 IPC can certainly be launched and as such no adverse inference can be drawn merely because a complaint has been filed against those who are holding high political offices or some journalists.

20. Shri Nariman has also submitted that an amount of Rs.5.00 lakhs was paid by way of solatium by the Chief Minister to Padma Sankararaman, widow of Sankararaman (deceased) in the Secretariat building on 24.11.2005, which event was widely covered in the media. Just five days thereafter Padma Sankararaman identified respondent Nos. 12 and 13 in a test identification parade as they are alleged to have gone to her house enquiring about the deceased. Learned counsel has submitted that there is no occasion for paying an amount of Rs.5.00 lakhs from public exchequer to the widow of the deceased of a murder case. Ordinarily, the State pays compensation or some monetary help to victims of natural calamity like flood, earthquake, cyclone, etc., or to family members of public servants who are killed in the discharge of their official duty. After payment of this heavy amount of money to the widow of the deceased, it is urged, the widow of the deceased can go to any extent and would speak whatever the prosecution agency wants her to say. The fact that an amount of Rs.5.00 lakhs was paid to the widow of the deceased Sankararaman on 24.11.2004 in the Secretariat building, which was widely covered in the media, is not disputed from the side of the State.

21. Shri Shanti Bhushan, learned senior counsel for respondent No. 6 Ravi Subramaniam (approver) has strongly opposed the prayer for transfer of the case from the State of Tamil Nadu. Learned

counsel has submitted that that there is nothing wrong if the Chief Minister, who is also holding the Home portfolio, makes a statement on the floor of the House, specially where the case had generated wide publicity and was being reported in various newspapers and media. Learned counsel has further submitted that in case the accused has any genuine apprehension that they will not get a fair trial before a particular sessions judge, they can approach the High Court and seek transfer to some other Sessions Judge but there is no reason at all to condemn the entire judiciary of the State of Tamil Nadu. Learned counsel has also urged that over 370 prosecution witnesses have been cited in the charge-sheet and while judging the apprehension of the accused the inconvenience, which may result to the prosecution in the event of transfer of the case to another State, cannot be overlooked. Ms. Indira Jaisingh, who has appeared for Padma Sankararaman (widow of the deceased Sankararaman) has submitted that all the prosecution witnesses are Tamil speaking and various documents pertaining to the case are also in the Tamil language. There being no allegation against the concerned Sessions Judge, it is contended that there is absolutely no ground to transfer the case outside the State of Tamil Nadu. Learned counsel has placed strong reliance on Abdul Nazar Madani vs. State of Tamil Nadu and another , where this Court made the following observations in paragraphs 7 and 8 of the report: -

"The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous consideration. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.

Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.

*The mere existence of a surcharged atmosphere without there being proof of inability of holding fair and impartial trial cannot be made a ground for transfer of a case. The alleged communally surcharged atmosphere has to be considered in the light of the accusations made and the nature of the crime committed by the accused seeking transfer of his case. It will be unsafe to hold that as and when accusations are made regarding the existence of a surcharged communal atmosphere, the case should be transferred from the area where existence of such surcharged atmosphere is alleged. The Supreme Court had not concluded so generally in Francis Case (G.X. Francis vs. Banke Bihari Singh, (distinguished), explained and distinguished)." **

22. Learned counsel for the petitioner in support of his submission has placed reliance on the following observations made by this Court in Gurcharan Dass Chadha vs. State of Rajasthan

(referred):-

*"A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension." **

In K. Anbazhagan v. Superintendent of Police & Ors. 1 (referred), it was held as under: -

"Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done it should be seemed to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."

*

The principle laid down in these cases is more or less the same. **If there is reasonable apprehension on the part of a party to a case that justice may not be done, he may seek transfer of the case. The apprehension entertained by the party must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. #**

23. We have discussed above many facets of the case which do show that the State machinery in Tamil Nadu is not only taking an undue interest but is going to any extent in securing the conviction of the accused by any means and to stifle even publication of any article or expression of dissent in media or press, interview by journalists or persons who have held high positions in public life and are wholly unconnected with the criminal case. The affidavits and the documents placed on record conclusively establish that a serious attempt has been made by the State machinery to launch criminal prosecution against lawyers, who may be even remotely connected with the defence of the accused. The Superintendent of Police, SIT and police inspector connected with the investigation even went to the extent of prompting the approver Ravi Subramaniam to make insinuation against a very senior counsel, who has been practicing for over 43 years and is appearing as counsel for the petitioner. The other counsel had to file writ petitions in the Madras High Court for seeking a direction for transferring investigation of the criminal cases registered against them from the local police to CBI. The police submitted charge-sheet against two junior lady lawyers under various sections of IPC including Section 201 IPC when even accepting every word in the FIR lodged by Smt. Chitra wife of Ravi Subramaniam (approver) as correct, no offence under the said provision is

made out. Clause (1) of Article 22, which finds place in Part III of the Constitution of India dealing with Fundamental Rights, gives a guarantee to a person arrested and detained to be defended by a legal practitioner of his choice. Section 303 of Code of Criminal Procedure says that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code, may of right be defended by a pleader of his choice. Even under the British Rule when Code of Criminal Procedure 1898, was enacted, Section 340(1) thereof gave a similar right to an accused. It is elementary that if a lawyer whom the accused has engaged for his defence is put under a threat of criminal prosecution, he can hardly discharge his professional duty of defending his client in a fearless manner. A senior and respected counsel is bound to get unnerved if an insinuation is made against him in court that he approached the wife of a witness for not giving evidence against the accused in the court. From the material placed before us we are prima facie satisfied that a situation has arisen in the present case wherein the lawyers engaged by the petitioner and other co-accused cannot perform their professional duty in a proper and dignified manner on account of various hurdles created by the State machinery. The lawyers would be more concerned with shielding their own reputation or their liberty rather than cross-examining the prosecution witnesses for eliciting the truth. The constant fear of not causing any annoyance to the prosecution witnesses specially those of the police department would loom large over their mind vitally affecting the defence of the accused. Passing of the detention order against 16 co-accused soon after grant of bail to the petitioner by this Court on 10.1.2005, which order could be of some support in seeking parity or otherwise for securing bail in the present murder case, is a clear pointer to the fact that the State wanted to deprive them of any chance to secure release from custody. Even though this Court has issued notice on the special leave petition filed by the State against the order of the High Court by which Habeas Corpus petition of the 16 co-accused was allowed, yet the observations made in the said order show in unmistakable terms that the even tempo of life was not disturbed, nor the public order was affected by the murder of Sankararaman and the detention order was passed without any basis. Again, the action of the State in directing the banks to freeze all the 183 accounts of the Mutt in the purported exercise of the power conferred under Section 102 Cr.P.C., which had affected the entire activities of the Mutt and other associated trusts and endowments only on the ground that the petitioner, who is the head of the Mutt, has been charge sheeted for entering into a conspiracy to murder Sankararaman, leads to an inference that the State machinery is not only interested in securing conviction of the petitioner and the other co-accused but also to bring to a complete halt the entire religious and other activities of the various trusts and endowments and the performance of Pooja and other rituals in the temples and religious places in accordance with the custom and traditions and thereby create a fear psychosis in the minds of the people. This may deter any one to appear in court and give evidence in defence of the accused. Launching of prosecution against prominent persons who have held high political offices and prominent journalists merely because they expressed some dissent against the arrest of the petitioner shows the attitude of the State that it cannot tolerate any kind of dissent, which is the most cherished right in a democracy guaranteed by Article 19 of the Constitution.

24. Taking into consideration the entire facts and circumstances of the case and the material on record, we have no hesitation in holding that the petitioner and other co-accused of the case have a reasonable apprehension that they will not get justice in the State of Tamil Nadu. # We would like to clarify here that we are casting no reflection on the district judiciary in the State of Tamil Nadu. But it is the actions of the prosecuting agency and the State machinery, which are responsible for creating a reasonable apprehension in the mind of the petitioner and other co-accused that they will not get justice if the trial is held in any place inside the State of Tamil Nadu.

We are, therefore, of the opinion that the interest of justice requires that the trial may be transferred to a place outside the State of Tamil Nadu.

25. The next question which arises for consideration is as to where the sessions case should be transferred. Shri F.S. Nariman, learned senior counsel for the petitioner, has submitted that the case may be transferred to any adjoining district like Chittoor, Nellore, Cuddapah or Tirupati in the State of Andhra Pradesh as about one-third of the judicial officers in the said State and particularly in the aforesaid districts are conversant with Tamil language. It is also submitted that in view of Section 277 Cr.P.C. if the witness does not give statement in the language of the Court, a translation of the evidence in the language of the Court has to be prepared as the examination of the witness proceeds and, therefore, transferring the case to a district which is not Tamil speaking is also permissible under law. Dr. Rajiv Dhawan, learned counsel for the respondents, has submitted that if at all the case is transferred, it should be transferred to Pondicherry as the language spoken there is Tamil and it is only at a distance of 70 kms. From Kanchipuram. In our opinion, while directing transfer of a criminal case the language spoken by the witnesses assumes great importance as translation of deposition of a witness apart from being a difficult job, often does not carry the same sense which the witness wants to convey. The convenience of the prosecuting agency, especially in a case where there are large number of witnesses and documents, has also an important bearing. We are, therefore, of the opinion that the case may be transferred to Pondicherry as there will be no difficulty in recording the evidence in the same language in which almost all the witnesses would depose and with which the presiding judge would be familiar. It is only at a short distance from Kanchipuram and the witnesses would not face much inconvenience in going there.

26. The transfer petition is accordingly allowed. The Sessions Case No.197 of 2005 pending before the Principal Sessions Court, Chenglepet, is transferred to the Court of Principal District and Sessions Judge, Pondicherry, who may either try the case himself or assign it to any other Sessions Judge competent to try the same. All applications stand disposed of.

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