

A CENTRAL BUREAU OF INVESTIGATION (C.B.I.)

v.

HOPESON NINGSHEN & ORS.

(Transfer Petition (Crl.) Nos. 219-220 of 2009)

MAY 3, 2010

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[K.G. BALAKRISHNAN, CJI., DEEPAK VERMA AND DR.
B.S. CHAUHAN, JJ.]

Code of Criminal Procedure, 1973:

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s.406 – Transfer of cases of kidnapping and murder against accused, an activist of a militant organization, pending in State of Manipur – Sought by CBI to a court in Delhi – HELD: In order to ensure that a fair trial takes place in the cases in question, Court must account for the interests of all stakeholders, namely, the accused, the witnesses, the prosecutors, the near relatives of the victims as well as society at large – The instant case presents a complex situation where there is a certain degree of divergence in the interests of the respective stakeholders – The CBI in its capacity as the investigating agency has clearly conveyed the risks associated with conducting the trial in Manipur – Even assuming that the apprehension about social unrest and communal tension between the Meities and the Nagas were a little exaggerated, there can be no quarrel that there exists a real possibility of a physical attack on the respondent-accused as long as he is in Manipur – It was precisely because of this consideration that the respondent-accused is being held in custody at a distant location in Delhi – Furthermore, conducting the trial in Manipur could also reasonably lead to more friction in the State which in turn could affect the trial proceedings – Note must especially be taken of the fact that the killings took place in a region where opinions are sharply divided on the justness of the causes espoused by the NSCN (IM), an organization of which the

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accused is a member – This creates a risk of intimidation of witnesses as well as undue prejudice seeping into the minds of those who may be involved in the legal proceedings in different capacities – In the circumstances, the considered view of the Court is that it would be expedient in the ends of justice to conduct the trial in Delhi – Accordingly, it is directed that the cases be transferred from the Court of the Chief Judicial Magistrate, Ukhrul, Manipur to a designated CBI Court (manned by a judicial officer of the rank of a Sessions Judge) in New Delhi – Since there are 52 cited witnesses, CBI has undertaken to arrange for their travel between Manipur and Delhi, so as to facilitate recording of their testimonies and subsequent cross-examination during trial – It must be remembered that the right of cross-examination is an essential element in the course of a criminal trial – As far as the near relatives of the deceased persons are concerned, the physical distance between Manipur and Delhi may cause some hindrance to their participation in the proceedings, but the transfer of the case is essential – In order to protect their interests, CBI as well as the Government of Manipur is directed to render full assistance to victim's legal heirs in the matter of legal representation by way of engaging advocates of their choice –The applicant has agreed to arrange for the to-and-fro journey and stay etc., for one member belonging to the families of each of the deceased persons on the dates of hearing.

Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 2 SCR 378 = (1979) 4 SCC 167; Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 4 SCC 157, referred to.

Case Law Reference:

(1979) 2 SCR 378 referred to para 10

(2004) 4 SCC 157 referred to para 11

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition
(Crl.) No. 219-220 of 2009.

A Transfer Petition Under Section 406 of the Code of Criminal Procedure.

B P.P. Malhotra, ASG, Siddarth Luthra (A.C.), Colin Gonsalves, Abantee Dutta, Ashdeep Singh, P.K. Dey, Shweta Verma, A.K. Sharma (for B. Krishna Prasad), Kamini Jaiswal, Khwairakpam Nobin Singh for the appearing parties.

The following Order of the Court was delivered

ORDER

C 1. The Central Bureau of Investigation [Hereinafter 'CBI'] has approached this Court by way of Transfer Petition (Criminal) No. 219-220 of 2009 as contemplated under Section 406 of the Code of Criminal Procedure [Hereinafter 'CrPC'], seeking transfer of cases RC IMPH 2009/S0002 and RC IMPH 2009/S0003, both dated 02-04-09, from the Court of the Chief Judicial Magistrate, Ukhrul, Manipur to a competent Criminal court in Delhi.

E 2. In these cases, the respondent has been accused of the kidnapping and murder of three government employees in the State of Manipur. It would be useful to provide an overview of the fact-situation leading up to the present litigation. On 13-2-2009, Dr. Thingnam Kishan Singh (S.D.O., Kasom Khullen, Distt. Ukhrul) along with five staff members was abducted by F militants while on their way from Ukhrul to Kasom Khullen. On 14-2-2009, three of the abducted persons, namely Sh. Ram Singh Siro, Sh. Ramthing Singlai and Sh. Kapangkhui Jajo were released. Following this, a case bearing FIR No. 8(2)/2009 was registered under Sections 365, 368 and 34 of the G IPC at the Ukhrul Police Station in respect of the missing persons. However, on 17-2-2009, dead bodies of Dr. Thingnam Kishan Singh, Sh. Y. Token Singh and Sh. A. Rajen Sharma were recovered from the bank of river Taphao Kuki in the proximity of National Highway-39 in Senapati District, Manipur. H In light of the discovery of the dead bodies, a case bearing FIR

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No. 3(2)/2009 was registered under Sections 302 and 400 of the IPC at the Senapati Police Station. These killings had provoked an outcry in the State of Manipur and protests were held by several groups. In fact a Joint Action Committee (JAC) had been formed by several civil society groups to mobilize opinion about this case. Having regard to the seriousness of the crime, the Government of Manipur thought it fit to transfer the investigation into these cases to the CBI, which was effected by way of a notification dated 19-2-2009 as contemplated under Section 6 of the Delhi Special Police Establishment Act. In pursuance of the same, CBI acting through its Imphal Branch registered cases [RC IMPH 2009/S0002 and RC IMPH 2009/S0003, both dated 2-04-2009] on the transfer of the above-mentioned FIRs.

3. Subsequent investigation pointed to the involvement of the respondent in the abduction and killing of the deceased persons. The respondent, who is an activist of the NSCN (IM) a militant organisation, was arrested by CBI on 29-05-2009. He was then produced before the Chief Judicial Magistrate in Ukhrul District, who remanded him to police custody till 12-06-2009, which was subsequently extended. In the meanwhile, there had been considerable unrest in relation to this case. The Counsel for CBI has drawn our attention to the fact that among the government employees who had been abducted on 13-2-2009, three persons released on 14-02-2009 were of Naga ethnicity whereas the three deceased persons were of Metei ethnicity. In addition to the social unrest created in wake of the killings, there is also an apprehension of conflict between persons belonging to these communities since the alleged killers were of Naga ethnicity. Irrespective of such an apprehension, CBI has urged that the trial in these cases be transferred to Delhi, in view of the specific threat to the life of the respondent-accused which could frustrate the objective of conducting a fair trial. Reliance has been placed on the correspondence between the Director General of Police, Govt. of Manipur and a CBI officer (dated 04-06-2009), the relevant

A extracts of which are reproduced below:-

B "... It may be recalled that on 29.05.2009 when Shri Hopeson Ningshen was brought to Imphal for production before the CJM Ukhrul for police remand, a mob of considerable strength gathered near the airport with intention to cause harm to Shri Hopeson Ningshen. This was despite keeping the information about the production of the accused Ningshen a secret. The members of the JAC and general public are now aware that Shri Ningshen has been remanded to police custody for 15 (fifteen) days and he is to be produced again before CJM Ukhrul after expiry of the police remand period. Considering the highly emotive nature of this case with serious possibility of ethnic clash between Meities and Nagas, it is felt that the very presence of Shri Ningshen in Manipur is likely to lead to serious law and order problem, breach of peace, violence and eminent threat to the life and safety of the accused."

E 4. The CBI had instituted a transfer petition before this Court on 08-06-2009. In the intervening period the respondent-accused has been brought to Delhi for interrogation and he is presently being held in custody in Tihar Jail. In the meanwhile, the investigation in these cases has also proceeded and the requisite charge-sheet under Section 173 of the CrPC has been framed.

G 5. Shri P.P. Malhotra, learned ASG appearing on behalf of the CBI has contended that it would be in the interest of a fair trial to transfer the cases to a competent Criminal Court in Delhi. It was urged that proceeding with the trial in Manipur is likely to cause further social unrest as well as flaring up of communal tensions which could ultimately have an adverse impact on the integrity of the criminal trial. In particular, it was urged that there existed a real danger of the accused being physically attacked during the pendency of the trial.

H Furthermore, there was also the danger of witnesses being

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intimidated and the undue harassment of the victims' families. A
In the proceedings before us, the counsel appearing on behalf
of the State of Manipur has not objected to the directions sought
by CBI. In fact, the State Government has taken a positive stand
that looking at the situation prevalent even today, it cannot
guarantee the safety of the respondent-accused. B

6. Shri Siddharth Luthra, Sr. Adv., appeared before this
Court as an amicus curiae in the present matter.

7. However, the near relatives of the deceased persons
have objected to the transfer of the cases under Section 406 C
of CrPC. One line of reasoning taken by these parties was that
the investigating agencies have exaggerated the
apprehensions about the social unrest and the law and order
problems, which may arise if the trial were to proceed in
Manipur. In the written submissions, it has been suggested that D
the predictions about communal tension and a physical attack
on the accused are misplaced and that the police and judicial
system in Manipur are robust enough to prevent undue
interference with the criminal trial. It was further suggested that
there are some other unexplored angles in relation to the killings E
of the three government employees and that the transfer of the
case away from Manipur was being sought at the behest of
some corrupt local officials. We do not find any merit in the latter
line of reasoning.

8. Shri Colin Gonsalves, Sr. Adv., did raise a significant F
point about the interests of the near relatives of the deceased
persons in the course of the criminal proceedings. Our attention
was drawn to the recently notified amendments to the CrPC,
wherein some provisions have been inserted to ensure the
meaningful participation of victims in the criminal justice system. G
In this regard, we can refer to Sections 2 and 3 of the Code of
Criminal Procedure (Amendment) Bill, 2008 which provide the
following:

2. In section 2 of the Code of Criminal Procedure, 1973 H

A (hereinafter referred to as the principal Act), after clause
(w), the following clause shall be inserted, namely:—

B '(wa) "victim" means a person who has suffered any loss
or injury caused by reason of the act or omission for which
the accused person has been charged and the expression
"victim" includes his or her guardian or legal heir;'

3. In section 24 of the principal Act, in sub-section (8), the
following proviso shall be inserted, namely:—

C "Provided that the Court may permit the victim to engage
an advocate of his choice to assist the prosecution under
this sub-section."

D In this regard, concerns were expressed that the transfer of the
case from Manipur to Delhi would make it quite difficult for the
near relatives of the deceased persons to participate in the trial
proceedings, either by way of legal representation or any other
conceivable method. It was therefore urged that if such a
transfer is indeed directed by this Court in exercise of the power
under Section 406 of CrPC, then some directions be given to
E protect the interests of the near relatives of the deceased
persons.

F 9. We must reiterate that the foremost consideration for
directing the transfer of cases under Section 406 of CrPC is
to examine what is expedient in the ends of justice. This is self-
evident from a bare reading of the relevant provision which
states:

G *406. Power of Supreme Court to transfer cases and
appeals. – (1) Whenever it is made to appear to the
Supreme Court that an order under this section is
expedient for the ends of justice, it may direct that any
particular case or appeal be transferred from one High
Court to another High Court or from a Criminal Court
subordinate to one High Court to another Criminal Court*

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of equal or superior jurisdiction subordinate to another High Court. A

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10. This court has of course given orders under the above-mentioned provision in the past. Since this is a discretionary power, it may be instructive to refer to the following observations made in the matter reported as *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 SCC 167, (V.R. Krishna Iyer, J. at Paras. 2 and 5): B

"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 imperiling, 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 where 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. C D E F

... 5. A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of the court is G H

A obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer. ..."

11. The observations quoted above were also cited with approval in *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 157, wherein the Court had also observed

F (Pasayat, J. at Para. 36):

G "... It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It

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will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."

12. While there are several other instances where this Court has passed orders in exercise of the power contemplated by Section 406 of CrPC, the observations cited above are sufficient to guide the adjudication of the present case. In order to ensure that a fair trial takes place in the cases in question, we must account for the interests of all stakeholders, namely the accused, the witnesses, the prosecutors, the near relatives of the victims as well as society at large. We are indeed confronted with a complex situation where there is a certain degree of divergence in the interests of the respective stakeholders. The CBI in its capacity as the investigating agency has clearly conveyed the risks associated with conducting the trial in Manipur. Even if one were to concede that the apprehension about social unrest and communal tension between the Meities and the Nagas were a little exaggerated, there can be no quarrel that there exists a real possibility of a physical attack on the respondent-accused as long as he is in Manipur. It was precisely because of this consideration that the respondent-accused is being held in custody at a distant location in Delhi. Furthermore, conducting the trial in Manipur could also reasonably lead to more friction in the State of Manipur which in turn could affect the trial proceedings

- A themselves. We must especially take note of the fact that the killings took place in a region where opinions are sharply divided on the justness of the causes espoused by the NSCN (IM) and that the respondent-accused is a member of the same organisation. This creates a risk of intimidation of the witnesses
- B as well as undue prejudice seeping into the minds of those who may be involved in the legal proceedings in different capacities.

13. In this scenario, in our considered view it would be expedient in the ends of justice to conduct the trial in Delhi. We accordingly direct that the impugned cases be transferred from
- C the Court of the Chief Judicial Magistrate, Ukhrul, Manipur to a designated CBI Court (manned by a judicial officer of the rank of a Sessions Judge) in New Delhi.

14. Since there are 52 cited witnesses, CBI has
- D undertaken to arrange for their travel between Manipur and Delhi, so as to facilitate recording of their testimonies and subsequent cross-examination during trial. It must be remembered that the right of cross-examination is an essential element in the course of a criminal trial. As far as the near
- E relatives of the deceased persons are concerned, we understand that the physical distance between Manipur and Delhi may cause some hindrance to their participation in the proceedings, but the transfer of the case is essential in light of the considerations discussed above. In order to protect their
- F interests, we direct the CBI as well as the Government of Manipur to render full assistance to the victim's legal heirs in the matter of legal representation by way of engaging advocates of their choice.

15. In fact, looking to the interests of the victim's families,
- G we thought it fit to safeguard their interests as well. On a suggestion being made, Mr. P.P. Malhotra, learned ASG, agreed to arrange for the to-and-fro journey and stay etc., for one member belonging to the families of each of the deceased persons on the dates of hearing. It was indeed a fine gesture.
- H Apart from the above, the learned ASG has also suggested that

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even though a list of 52 witnesses has been prepared, efforts A
will be made to reduce the number of witnesses to be
examined in an endeavour to examine only the necessary
witnesses. It is further necessary to direct that none of the
parties should seek undue adjournments in the matter and
should render all possible help to conclude the trial at the B
earliest.

16. The present petitions are disposed off accordingly.

R.P.

Transfer Petitions disposed of.