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ABDUL NAZAR MADANI ETC.

v.

STATE OF TAMIL NADU AND ANR.

MAY 5, 2000

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[K.T. THOMAS AND R.P. SETHI, JJ.]

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Criminal Procedure Code, 1973—Section 406—Transfer petition—Seeking transfer to another State—On the apprehension of not getting fair trial in the State—In view of surcharged communal tension in the area—And on the ground of not getting adequate representation by lawyers—All arrangements for trial already made—Most of the co-accused and the witnesses belonging to the place of trial—No evidence that whole of the State communally surcharged—Accused adequately represented—Held, the transfer of the case at this stage, is not only against the interests of the prosecution but also against the interests of the other accused persons, the prosecution witnesses and the convenience of all the concerned in the matter.

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Sections 406 & 407—Transfer petition—Considerations for transfer—Held, any party can seek transfer of a case on the apprehension of not getting a fair trial—But such apprehension should be reasonable and not based on conjectures and surmises—The decision has to be based on the facts and circumstances of each case— Convenience of parties, i.e., the prosecution, other accused, the witnesses and the larger interests of the society, is relevant consideration.

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181 accused including the petitioners, were alleged to be involved in Coimbatore serial bomb blast case, and were charged under sections 120-B, 302, 307, 449, 465, 468, 471, 212, 153-A(1), 148, 149, 201, 109, 114 and 353 IPC; Sections 3, 4(b), 5 & 6 of Explosive Substances Act, 1908; Sections 25(1-B)(a) of Arms Act, 1959 and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992; and their case was pending in the Trial Court in Coimbatore (Tamil Nadu).

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The petitioners filed transfer petition before this Court for transfer of the above-mentioned case from Coimbatore to any Sessions Court in Kerala, on the grounds that there was no possibility of fair trial in the State of Tamil Nadu in view of the communally surcharged tension in the State; that they and other accused persons were not likely to get proper legal

assistance; and alternatively submitted that their case be transferred to some other place in the State of Tamil Nadu. The petitioners relied on the averments made by the Commissioner of Police in an order wherein it was stated that Coimbatore city had become communally hypersensitive place in the recent years in view of the communal riots.

Respondent-State contended that there was no communal tension in the State; and that advocates have already appeared for the accused in the courts at Coimbatore. The respondents also pointed out that out of the 168 accused, who were put in several jails in the State, more than 150 accused were from Coimbatore; that total number of witnesses, likely to be produced were 2333, out of whom 2083 were Tamil speaking witnesses; that special bench exclusively for speedy trial of the case, was constituted; that the building adjacent to the Central Prison, Coimbatore was remodelled with the object of accommodating the special court, costing a huge amount; and that final report under Section 173 Cr.P.C. consisting of statements and documents running into 16480 pages in Tamil had been submitted.

Dismissing the petitions, this Court

HELD : 1. The purpose of criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. 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 purpose of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. [1035-G-H; 1036-A-B]

A *G.X. Francis & Ors. v. Banke Bihari Singh & Anr.*, AIR (1958) SC 309, referred to.

B 2. The mere existence of a surcharged atmosphere without there being proof of inability for holding fair and impartial trial cannot be made a ground for transfer of a case. 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. [1036-E-F]

C *G.X. Francis & Ors. v. Banke Bihari Singh & Anr.*, AIR (1958) SC 309, distinguished.

D 3. Petitioners in the instant case have made wild and general allegations of the surcharged atmosphere against a particular community of the society in the whole of the State of Tamil Nadu. In a secular, democratic State, Government is responsible for ensuring free, fair and impartial trial to the accused notwithstanding the nature of accusations made against them. Nothing has been placed on record nor was it possible to allege that the whole of the State of Tamil Nadu has become a communal State which cannot ensure a free, fair and impartial trial against the petitioners. If such a situation is shown to be existing the State Government has no constitutional and moral right to rule the State as it would amount to perpetuating the continuance of a Government against the provisions of the Constitution which ensures and guarantees of a secular democratic systems of Governance. [1036-G-H; 1037-A]

F 4. The atmosphere in the State is not communally surcharged to the extent that holding of criminal trial against the petitioners and others is not possible in any part of the State. Even if some communal tension is shown to be in existence as perhaps is likely to be in view of the nature of offence committed and accusations made against petitioner and other accused persons, it is the obligation of the State Government to ensure the safety and security of the accused persons to stand free and impartial trial. The averments of the Commissioner of Police cannot be stretched to hold firstly that the whole State of Tamil Nadu has become communally surcharged and secondly that Coimbatore City itself continues to be so communally hypersensitive till date that the trial against the petitioners

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and other accused persons is not likely to be free, fair and impartial.

[1037-C-D]

5. There is no substance in the submission of the petitioners that as they and other accused persons are not likely to get proper legal assistance, the case should be transferred to some other State. This court is satisfied that the petitioners and other accused are adequately represented in the court and even if not, they can get the legal services from Palghat in Kerala where they want the case to be transferred. [1037-H]

6. The court is not satisfied with the alternative submission of the petitioner as the court is of opinion that at present there exists conducive atmosphere at Coimbatore where free, fair and impartial trial is possible to be conducted against the accused persons. In view of the facts, that despite the petitioners there are 152 other accused persons out of and more than 150 of them are from Coimbatore and the State Government have made elaborate arrangements for their stay in Central prison Coimbatore by making provision of having specified cells for the accused persons, lakhs of Rupees are shown to have been spent for the conduct of the case, the transfer of the case at this stage, is not only against the interest of the prosecution but also against the interests of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. A fair and speedy trial of the case is possible at Coimbatore and the accused persons including the petitioners need not have any cause for apprehension. [1038-D-G]

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Crl.) No. 183 of 1999 Etc.

Under Section 406 Crl. P.C.

Dr. A.M. Singhvi, V.K. Beeram, Haris Beeram, S. Dave, Shakil Ahmed Syed and S.U.K. Sagar for the Petitioners.

V.R. Reddy and V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

SETHI, J. Being some of the accused along with 152 others involved in what is popularly known as Coimbatore-Bomb Blast Case, the petitioners have prayed for the transfer of case PRC No.54 of 1998 pending in the Court of FCJ Magistrate Court, Coimbatore, Tamil Nadu entitled *State v. Abdul*

- A *Nazir Madani and others* to any Sessions Court in the State of Kerala allegedly on the ground of there being no possibility of fair trial in the State of Tamil Nadu. It is alleged that in the State of Tamil Nadu both Hindu and Muslim fundamentalists are inciting trouble which has surcharged the communal atmosphere in that State making the conduct of the fair trial impossible.
- B It is apprehended that the witnesses will not be in a position to give evidence without fear or favour. The petitioner Abdul Nazar Madani has referred to some attack on him by RSS Cadres during August, 1992 as a consequence of which he sustained injuries which ultimately resulted in the imputation of his right leg. He has two children aged four and one year old and a wife from a very poor family. He claims to be the founder of Al-amwar islamic Madras and Orphanage in Kollam District in Kerala where about 280 orphans are stated to be studying for whose day to day expenses an amount of Rs.2050 is required which is not possible to procure in his absence. He has further claimed to be the leader of an organisation named "Islamic Seva Sangh" which, according to him, was a social and cultural organisation. The said organisation is stated to have been declared as unlawful organisation in the State of Kerala after the demolition of Babri Masjid. Thereafter the said petitioner is stated to have organised a party named Peoples Democratic Party. He submits that there exists a feeling generally in Tamilnadu, Chennai and Coimbatore that the petitioner was an ISI (Pakistani Intelligence Service) agent who was responsible for the bomb blasts in the city of Coimbatore in Tamilnadu. It is alleged that a popular opinion appears to have been formed that no patriotic lawyer from Tamilnadu would appear and plead the case of the petitioners, as they thought it as anti-national and due to intimidation by the Police Intelligence Wing, lawyers are not willing to take up their briefs. On their behalf some advocates from Kerala are stated to have visited Coimbatore and Chennai with a request to local lawyers there to cooperate with the petitioners and conduct their cases but all of them are stated to have refused. It is submitted that being a well known political leader in the State of Kerala, the respondents have falsely implicated petitioner Madani, with others in the criminal cases.
- G In the counter affidavit filed on behalf of the respondents it is submitted that the petitioners along with others are involved in Coimbatore B-1 Bazar Police Station CR No.151 of 1998 under Sections 120B, 302, 307, 449, 465, 468, 471, 212, 153A(1), 148, 149, 201, 109, 114 and 353 IPC, Sections 3, 4 (b), 5, 6 of the Explosive Substances Act, 1908, Section 25(1-B)(a) of the Arms Act, 1959 and Section 4 of the Tamil Nadu Property (Prevention of
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Damage and Loss) Act, 1992. The petitioner, Madani is stated to be the prime accused concerned in the Serial Bomb Blast Case of Coimbatore. It is alleged that on 14.2.1998 at about 4 p.m. when Shri L.K. Advani, the then President of Bhartiya Janta Party was to address election meeting at RS Puram, Coimbatore City, the whole of the city and its suburbs were hit by a series of 12 powerful bomb blasts killing 47 persons and injuring 218 persons apart from causing extensive damage to the properties owned primarily by a particular section of the society. The high intensity bombs/Improvised Explosive Devices (IEDs) exploded all over the city and its suburbs including near the venue of the public meeting. The bomb blasts were targeted at some specified congregations and their establishments. Shri L.K. Advani was planned to be targeted by Suicide Squad members armed with "instantaneous-type bombs" tied to their waists and "throw-type bombs", which, however, could not materialise since neither the members of the suicide squad charged with the task could penetrate the police cardon and reach near the public meeting place, nor Shri Advani was available at the targeted place at the scheduled time due to delay of his flight. The blasts had been planned and executed by the muslim fundamentalists organisation named "Al-Umma" headed by S.A. Basha, co-accused No.1 in the case allegedly as a brutal answer/retaliation to the killing of 18 muslims in communal riots and police firing and extensive damages to the muslim properties following the stabbing to death of a Traffic Police Constable Selvaraj at Ukkadam, Coimbatore on 29.11.1997. There were some other bomb blasts resulting in total the death of 58 persons besides injuring 250 persons. Private and public properties to the tune of Rs.4.37 crores is also stated to have been damaged. The petitioner Madani has admitted to be the founder leader of Islamic Seva Sangh and presently the leader of Peoples Democratic party. He was arrested at Kozhikode on 31.3.1998 in connection with Kozhikode Kasba PS Cr.No.103/92 u/s 153-A and B IPC and in the case in Cr.No.62/98 under Section 120(B) 212 IPC and under Section 3 read with Section 25(1)(a) Arms Act, 1959 and was remanded to judicial custody and lodged in Central Prison, Cannanore, Kerala State. His involvement in the Coimbatore Series Bomb Blast case came to light from the alleged confession statement made by accused Tajudeen @ Abu Mujahith, Accused No.3 on 26th March, 1988. Other accused persons were arrested from different places on different dates.

Regarding allegations of the petitioners which have been made basis for seeking transfer, the respondents have submitted that it was not correct to state that there existed feelings in Tamil Nadu in general or in Chennai

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- A and Coimbatore in particular, that no patriotic lawyer would appear and plead for any of the accused persons in the Bomb Blast cases. The submission of the petitioners is alleged to be illusory. Advocates from Chennai, Vijayawada and Coimbatore are stated to have already appeared for the accused in the courts at Coimbatore and also before the High Court of Judicature at Chennai.
- B A list of such advocates has been annexed with the counter affidavit as Annexure A. Regarding the existence of an alleged surcharged communal atmosphere, it is submitted that there is presently no communal tension in Tamil Nadu as communal harmony is maintained in the State. The situation which was created in the aftermath of series bomb blasts in February, 1998
- C has since been completely defused and normalised due to the strong measures taken by the fair and firm investigation of the case and by the law and order machinery. The atmosphere in the State is stated to be peaceful and the trial is assured to be conducted peacefully and smoothly.

- D The submission of the petitioners that they will not get any assistance of lawyers of their choice due to rivalry of religious fundamentalists is false and concocted, deliberately put as a ground to stall and delay the progress of the case. The proposed transfer would cause inconvenience not only to the prosecution but also other co-accused persons. Most of the witnesses are in Tamil Nadu and to ensure the speedy trial of the case the prayer of the
- E petitioner is liable to be rejected.

- F We have heard the learned counsel for the parties and perused the records. Appearing for the respondents Shri V.R. Reddy, learned Senior Counsel has brought to our notice that charge-sheet had been laid against 181 accused persons out of whom 8 have died and 5 are still at large. Remaining
- G 168 accused are lodged in various prisons in the State of Tamil Nadu. Out of 168 accused persons 154 are from Coimbatore, 7 from Kerala 2 from Karnataka and 2 from Andhra Pradesh. Total number of witnesses which are likely to be produced are 2333 out of whom 2083 are Tamil speaking witnesses. The Government has constituted a special court exclusively for the speedy trial of this case. Remodelling of the building adjacent to the Central Prison, Coimbatore with the object of accommodating the special court was completed in January, 2000 at a cost of Rs.22.40 lacs. Final report under
- H Section 173 Cr.P.C. consisting of statements and documents which runs into 16480 pages in Tamil has been submitted. Total copies running into 37 lakh pages have been made and supplied to the accused persons on 27th March, 2000. Shri Thanikachalam, the Special Judge has taken charge on 7.4.2000.

The learned counsel has also shown us the sketch regarding the location of the Central Prison and the special court specially constituted for the trial of bomb blast case along with photographs of the specially made cells where all the accused persons are intended to be accommodated during the trial of the case.

Dr. Singhvi, the learned senior counsel appearing for the petitioner has drawn our attention to various averments made in the petition particularly in paras 16, 17 and 25 to urge that in view of existing surcharged atmosphere it was not possible to have a fair trial of the accused persons in the State of Tamil Nadu. In the alternative he has submitted that if the transfer of the case from the State of Tamil Nadu is not possible, the same be transferred to any court at Chennai, Thirunalveli, Salem in the State of Tamil Nadu. Relying upon *G.X Francis & Ors. v. Banke Bihari Singh & Anr.*, AIR (1958) SC 309, he has argued that in view of the surcharged communal tension in the area, the local atmosphere not being conducive to fair and impartial trial, there existed good ground for the transfer of the case to another State. In support of his submissions he has referred to Annexure P-3, proceedings of the Commissioner of Police, Coimbatore City which is an order passed under the National Security Act dated 7.7.1998. Relying upon the averments made therein to the effect that "Coimbatore City has become a communally hypersensitive place in the recent years in view of the communal riots. On 29.11.1997 at Ukkadam Traffic Point, Selvaraj, a Traffic Police Constable on duty was brutally murdered by the muslim youths belonging to Al-Umma. This resulted in the outburst of a major communal harmony", the learned counsel has submitted that in the interests of justice and for fair trial of the case, the prayer made in the petition is justified.

The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. 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 of the 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

A 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
B misconceived notions of apprehension. Convenience for the purposes of
transfer means the convenience of the prosecution, other accused, the wit-
nesses and the larger interest of the society.

In *G.X. Francis's* case (supra) this Court felt that where public con-
fidence in the fairness of the trial is likely to be seriously undermined under
C the circumstances of the case, transfer petition could be allowed. On finding
that "there is uniformity of testimony from both sides about the nature of
surcharged communal tension in that area", the Court found that the local
atmosphere was not conducive to a fair and impartial trial which justified a
good ground for transfer. The court rejected the contention of the petitioner
D therein regarding the wild allegations made to the effect that no court in the
State of M.P. would be unbiased or impartial for dispensing justice. In the
peculiar facts and circumstances of the case, the trial was transferred to an
adjoining court. The mere existence of a surcharged atmosphere without there
being proof of inability for holding fair and impartial trial cannot be made
E a ground for transfer of a case. 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. This Court
F had not concluded so generally in *Francis's* case as has been argued before
us on behalf of the petitioner.

On facts also we find that petitioners in the instant case have made wild
and general allegations of the surcharged atmosphere against a particular
community of the society in the whole of the State of Tamil Nadu. We are
G of the opinion that in a secular, democratic country governed by the rule of
law, the appropriate State Government is responsible for ensuring free, fair
and impartial trial to the accused notwithstanding the nature of accusations
made against them. Nothing has been placed on record nor was it possible
to allege that the whole of the State of Tamil Nadu has become a communal
H State which cannot ensure a free, fair and impartial trial against the petition-

ers. If such a situation is shown to be existing, the State Government has no constitutional and moral right to rule the State as it would amount to perpetuating the continuance of a Government against the provisions of the Constitution which ensures and guarantees of a secular, democratic system of governance. The respondent have very emphatically submitted and we have no reason to doubt that the atmosphere in the State is not communally surcharged to the extent that holding of criminal trial against the petitioners and others is not possible in any part of the State. Even if some communal tension is shown to be in existence as perhaps is likely to be in view of the nature of offence committed and the accusations made against the petitioner and other accused persons, it is the obligation of the State Government to ensure the safety and security of the accused persons to stand free and impartial trial. It is true that in the detention order dated 7.7.1998 against the petitioner, the Commissioner of Police has mentioned that on account of the communal riots the Coimbatore City had become communally hypersensitive but those averments cannot be stretched to hold firstly that the whole State of Tamil Nadu has become communally surcharged and secondly that Coimbatore City itself continues to be so communally hypersensitive till date that the trial against the petitioners and other accused persons is not likely to be free, fair and impartial. In the counter affidavit the respondents have specifically stated:

“With regard to the averments in Ground (A) of the petition, it is submitted that it is not correct to state that the communal tension is prevailing in the State of Tamil Nadu and both Muslim and Hindu fundamentalist are inciting troubles which will lead to communal tension is presently no communal tension in Tamil Nadu and communal harmony is maintained in the State. The situation that was created in the aftermath of the serial bomb blasts of February, 1998, has been since completely defused and normalised due to the strong measures taken by the fair and firm investigation of the case and by the Law & Order machinery. The atmosphere in the State is peaceful. Hence the trial will be conducted peacefully and smoothly.”

After perusing Annexure A we do not find any substance in the submission of the petitioners that as they and other accused persons are not likely to get proper legal assistance, the case should be transferred to some other State. We are also satisfied that the petitioners and other accused are adequately represented in the court and even if not, they can get the legal

A services from Palghat in Kerala where they want the case to be transferred. It may be noticed that Palghat is approximately 40 kilometers from Coimbatore and it is not difficult for any number of advocates to travel or stay at Coimbatore during the conduct of the trial. We are sure that if any advocate from outside the State of Tamil Nadu appears for any of the accused, the State Government shall provide him appropriate security to ensure him the discharge of his professional obligation towards the accused persons facing the trial in the case filed against them.

Dr. Singhvi, the learned counsel appearing for the petitioners alternatively submitted that even if this Court does not find any ground to transfer the case of the petitioner from the State of Tamil Nadu to any other State, particularly the State of Kerala, the trial of the case be ordered to be conducted at some other place in the State of Tamil Nadu preferably at Chennai, Thirunalveli or Salem. We are not satisfied with this submission also as we are of the opinion that at present there exists conducive atmosphere at Coimbatore where free, fair and impartial trial is possible to be conducted against the accused persons. This Court cannot loose sight of the fact that despite the petitioners there are 152 other accused persons out of which more than 150 are from Coimbatore and the State Government have made elaborate arrangements for their stay in the Central Prison, Coimbatore by making provision of having specified cells for the accused persons. We cannot forget the expenses of Rs.22.40 lacs incurred by the State Government for re-modelling the building adjacent to the Central Prison to accommodate the special court for which even a judicial officer has been appointed who is stated to have taken charge on 7.4.2000. Lakhs of rupees are shown to have been spent for the conduct of smooth, speedy, fair and impartial trial. The transfer of the case, at this stage, is not only against the interests of the prosecution but also against the interests of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. We are satisfied that a fair and speedy trial of the case is possible at Coimbatore and the accused persons including the petitioners need not have any cause for apprehension.

In this regard we have also perused the figures furnished to us showing the authorised accommodation and the actual population in the lock-ups in the State of Tamil Nadu. Whereas in Coimbatore Central Prison the authorised accommodation is for 2208 persons and the present lock-up strength is only 1998. In Chennai the position is otherwise as against authorised accommo-

dition of 1419 persons 1765 have been and are being accommodated. We cannot loose sight of the statement made on behalf of the respondents that in Coimbatore Central Prison separate cells have been renovated for accommodation of 168 accused persons in the instant case and such a facility is not available elsewhere in any other prison in that State. A

The present petitions which are totally misconceived are hereby dismissed with a direction to the trial court to expedite the trial and if possible hold the same on day to day basis so that cause of justice is achieved without any further delay. B

K.K.T.

Petitions dismissed.