MD. SHAHABUDDIN

v.

STATE OF BIHAR & ORS.

(Criminal Appeal No. 591 of 2010)

MARCH 25, 2010

[DALVEER BHANDARI AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Criminal Procedure, 1973:

ss. 9(6), 11, 407 and 465 – Notification by High Court shifting the venue of Court of Session inside the District Jail, and Notification by State Government establishing Court of Judicial Magisrate 1st class inside District Jail to try cases pending against accused – HELD: Are valid – High Court in exercise of its administrative power u/s 9(6) is empowered to shift the venue of the pending case/trial without hearing the accused and this would not violate his fundamental rights under Articles 14 and 21 or any other provision of the Constitution – The power of High Court u/s 9(6) is administrative in nature and as such, it is under no obligation to observe the rule of **audi alteram partem** *– By issuing the Notification, High Court cannot be said to have transfered the cases pending against the accused – There was a shift simpliciter in the venue of the trial without there being anything more – Delay in publishing the Notification and supplying a copy thereof to accused would not vitiate the trial as no prejudice is caused to him – Notification dated 7.6.2006 issued by State Government establishing the Court of Judicial Magistrate 1st Class inside the District Jail satisfies all the requirements of s. 11 – Constitution of India, 1950 – Articles 14 and 21 – Principle of natural justice – Rule of* **audi alteram partem** *– Interpretation of Statutes – Judicial Review – Practice and Procedure.*

A *s. 327 – Court to be open – Trial of accused inside the jail – HELD: Open trial is an important part of judicial system – Public access is essential to achieve the objective of maintaining public confidence in the administration of justice – Although the universal rule is that criminal trial should be* B *an open trial, but in exceptional cases, there can be deviation from the rule in larger public interest – The instant case falls in the category of and exceptional cases where, in the interest of justice, it became imperative to shift the venue of the trials inside the jail – However, there is no presumption* C *that a trial in prison is not an open trial – Apart from the large number of lawyers of the accused, press and those who want to watch the trial have free access to the venue during the court proceedings - Thus, no prejudice is caused to the appellant – Constitution of India, 1950 – Articles 14 and 21 – Administration of Justice – Open trial.*

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Constitution of India, 1950:

Article 14 – Equality before law – Reasonable classification – A classification may be reasonable even E *though a single individual is treated as a class by himself – Code of Criminal Procedure, 1973 – s.9(6).*

Plea:

New pleas regarding constitutional validity of s.9(6) CrPC F *and delay in publication of notification in official gazette and in supply of copy thereof to accused raised at the time of hearing of appeal before Supreme Court – HELD: Not maintainable.*

G *Evidence Act, 1872:*

s.114, Illustration (e) – Presumption that official act has been regularly performed – In the Notification issued by the State Government stating that Court of Session would hold its sitting inside District Jail, apart from mentioning s.9(6) H *CrPC, s.14(1) of Bengal, Assam and Agra Civil Courts Act,*

1887 also referred – HELD: If the notification refers to a wrong provision, the same cannot be held to be invalid when its validity could be upheld on the basis of some other provision – In the instant case, notification was valid in view of provisions of s.9(6) CrPC – Besides statutory presumption as envisaged by s.114 Illustration (e) would also be available – Code of Criminal Procedure, 1973 – s.9(6) – Practice and Procedure.

The appellant, a sitting M.P., was involved in a large number of criminal cases and, as such, was in custody in District Jail, Siwan in the State of Bihar. The Superintendent of Police reported that more than forty cases were pending against the appellant and there was serious danger to public peace during his presence in the court premises; that his supporters and other criminals could attack the witnesses; that since the appellant was accused in many cases, other criminal groups could also attack him. The matter was taken up by the Law Secretary of the State with the Registrar General of the High Court and ultimately, the High Court in exercise of its powers, under sub-section (6) of s.9 of the Code of Criminal Procedure, 1973, issued Notification dated 20.5.2006 stating that the premises of District Jail, Siwan would be the place of sitting of the Court of Session for the Sessions Division of Siwan for expeditious trial of the Sessions cases pending against the appellant. Thereafter, the State Government issued Notification dated 7.6.2006 to the effect that Court of Judicial Magistrate I Class, Siwan would hold its sitting inside the District Jail, Siwan for trial of cases pending against the appellant. Another Notification dated 7.6.2006, issued by the State Government, stated that the Additional District and Sessions Judge of Siwan Sessions Division would hold its sitting inside the District Jail, Siwan to try Sessions cases pending against the appellant. The appellant challenged all the three Notifications before the High Court in a writ petition, which was dismissed.

A In the instant appeal it was primarily contended for the appellant that the power u/s 9(6) of the Code of Criminal Procedure, 1973 could not be exercised for a particular individual or accused, and if at all, the principle of 'audi alteram partem' had to be complied with; that the B Notification dated 20.5.2006 was vitiated as copy thereof was not supplied to the appellant; that changing the venue of the Court inside the District Jail would violate the right of the appellant to be tried in an open court.

C Dismissing the appeal, the Court

HELD: Per Dalveer Bhandari, J

1.1The High Court, in view of the extraordinary facts and circumstances of a particular case, is empowered to D change the venue of the pending case/trial without hearing the accused and this would not violate his fundamental rights guaranteed under Articles 14 and 21 or any other provision of the Constitution. This controversy is no longer res integra and is fully settled E in view of the judgment of this Court in *Kehar Singh's* case.* [para 153.IV] [998-C-D]

**Kehar Singh vs. State (Delhi Administration)* 1988 (2) Suppl. SCR 24 = 1988 SCC (3) 609, relied on.

F 1.2. In the instant case, the record indicates that by the criminal acts of the appellant reign of terror had spread. The appellant has also earned enemies who would like to seize upon an opportunity and endanger his life if the trial is conducted in general court. G Simultaneously, other criminals owing allegiance to the appellant are likely to create law and order problem including communal tension and endanger the life of the common public during his trial in general court. After assessing the entire situation, the District Magistrate informed the State Government that trial of the appellant H

was not possible in the District Court of Siwan. Pursuant to the report of the District Magistrate, the Law Secretary, Government of Bihar made a request to the High Court for designation of Court of Session and Court of Judicial Magistrate, 1st Class inside the Siwan Jail premises for expeditious trial of the cases pending against the appellant. After evaluating and assessing the entire situation, the notification was issued by the High Court as also by the State Government in consultation with the High Court for sitting and establishment of courts for expeditious trial of cases pending against the appellant. [Para 38 and 39] [953-G-H; 954-A-D]

2.1. This Court in *Kehar Singh's* case has held that the order of the High Court notifying the trial of a particular case in a place other than the court house is not a judicial order but an administrative order. It is clear from the wording of Section 9 of the Code of Criminal Procedure, 1973 that there is no need for the High Court to give a hearing while deciding the venue of the trial. It is, therefore, clear that there is no statutory right for the appellant to be heard. [Para 103-105] [979-G-H; 980-A-F-H]

2.2. The principles of natural justice are essential to the framework of our laws and protection against arbitrary actions. It is the bounden duty of the courts to judicially review administrative actions. However, this power has to be exercised judiciously. In the instant case, there is no violation of the principles of natural justice in shifting the trials of the cases of the appellant from a regular court to a special court. When there is no prima facie violation of the principles of natural justice then one must properly consider whether there is need for a judicial review of the orders of shifting the trials. [Para 105, 108, 110 and 111] [981-D-E; 982-C-D]

A *State Bank of Patiala & Others v. S.K. Sharma* **(1996) 3 SCC 364, relied on.**

Wiseman & Another v. Borneman & Others **(1971) A.C. 297;** *Regina v. Gaming Board for Great Britain* **(1970) 2 Q.B. 417, referred to.**

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3.1. The decision to hold the trials of cases of the appellant in jail was taken in pursuance of the notification dated 20.5.2006 issued by the High Court. The State Government issued two notifications on 7th June, 2006 in pursuance of the notification of the High Court dated 20.5.2006. It became imperative for the State to issue the said notifications because of the Notification of High Court dated 20.5.2006 particularly when the new venue of the trial, i.e., Siwan Jail, was not within the control of the High Court. All the three notifications are valid and were issued in consonance with the relevant provisions of law. [para 153.II and III] [997-G-H; 998-A-B]

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3.2. After the High Court took the decision to establish a Court of Additional District and Sessions Judge in the Siwan District Jail, necessary correspondence/instruments/requests were sent by the High Court for implementation of its decision, which ultimately culminated in the two Notifications issued by the State Government on 7th June, 2006 and also culminated in the Notification of the 20th May 2006 being gazetted on 16th August, 2006. There is, therefore, no scope for any person, leave alone the appellant, to contend that the decision was not of the High Court or High Court never applied its mind. [para 52] [959-B-D]

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4. A notification empowering a Court of Session to sit and hold a trial inside the jail is not outside the purview of s.465 of the Code. It would come within the meaning of "other proceedings" "during a trial", because as per

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the admission of the appellant the trial has already been started. [Para 57] [961-A]

5. It cannot be said that the entire trial would vitiate because of non-supply of a copy of the notification dated 20.5.2006 to the appellant in time. The High Court was correct in ordering that a copy of the notification be supplied to the appellant. Initially the copy of the notification was not given to the appellant but on the directions of this Court the same was made available to the appellant. So there is no surviving grievance of the appellant as far as this aspect of the matter is concerned. [para 141 and 153.I] [994-G-H; 997-E-F]

Managing Director, ECIL, Hyderabad etc. etc. v. B. Karunakar etc. etc. **(1993) 4 SCC 727; and** *State Bank of Patiala & Others v. S.K. Sharma* **(1996) 3 SCC 364, relied on.**

6.1. Criminal trial is a public event. What transpires is a public property. Therefore, open trial is the universal rule and must be scrupulously adhered to. The right to public trial has also been recognized u/s 327 of the Code. Public trial is an important part of the judicial system. Every criminal act is an offence against the society. The people are, therefore, entitled to know whether the justice delivery system is adequate or inadequate; whether it responds appropriately to the situation or it presents a pathetic picture. The other aspect, which is still more fundamental, is that when the State representing the society seeks to prosecute a person, it must do so openly. In dispensation of justice, the people should be satisfied that the State is not misusing its machinery viz. the Police, the Prosecutors and other Public Servants. The people may see that the accused is fairly dealt with and not unjustly condemned. [para 102,131,132 and 145] [979-C; 989-C-D; 990-B-C; 995-D-E]

A *Kehar Singh vs. State (Delhi Administration)* **1988 (2) Suppl. SCR 24 =1988 SCC (3) 609, relied on.**

Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd.; Haldia & Others **(2005) 7 SCC 764, referred to**

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Scott & Another v. Scott: **1913 A.C. 417, referred to.**

Cooley's Constitutional Law, **Vol I, 8th edn., at page 647, referred to.**

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6.2. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other, and could survive only by the strength of public confidence. The public confidence can be fostered by exposing courts more and D **more to public gaze. Public access is essential if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice. Publicity is the authentic hallmark of judicial functioning distinct from administrative functioning. Open trial serves** E **an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. It restores the balance in cases when shocking crime occurs in the society. [Para 132, and 142-144] [990-C-D; 995-A-C; 994-G-H]**

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Kehar Singh vs. State (Delhi Administration) **1988 (2) Suppl. SCR 24 =1988 SCC (3) 609; and** *Naresh Shridhar Mirajkar v. State of Maharashtra* **(1966) 3 SCR 744, relied on.**

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"First Amendment Right of Access to Pretrial Proceeding in Criminal Cases" by Beth Hornbuckle Fleming Emory Law Journal, **V.32 (1983) P.619, referred to.**

Gannett Co. Inc. v. Danial A. DePasquale **(1979) 443**

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U.S. 368; *Richmond Newspapers, Inc. et al v. Commonwealth of Virginia et al* **65L Ed 2d 973 = (1980) 448 US 555;** *Globe Newspaper Co. v. Superior Court for the County of Norfolk* **(1982) 457 US 596 : 73 L.Ed. 2d 248, referred to.** A

6.3. Although the universal rule as recognized in all civilized countries governed by rule of law is that the criminal trial should be a public trial or open trial, but in exceptional cases there can be deviation from the universal rule in the larger public interest. However, in order to ensure that the right of the appellant to a public trial is not vitiated by the court being set up inside the jail, the State must demonstrate that: (a) there is a clear and logical reason as to why the case was transferred from the court house to the Jail; and (b) nobody is being denied entry to the court room as long as they agree to the regular security checks. The case in hand would fall in the category of those extraordinary and exceptional cases where in the interest of justice it became imperative to shift the venue of the trial. The letters exchanged between the police authorities and the request made to High Court clearly show that there was serious danger in producing the appellant in open court. The police authorities had shown that the appellant being a sitting M.P., his supporters and the large crowds were making a fair trial impossible and creating delays in deciding the cases. Besides, since the appellant was wanted in many cases, other criminal groups could also attack him. It must be noted that a large number of supporters of the appellant may create unrest in front of the court room and much larger security would be required to protect the witnesses, the officers of the Court and the appellant. It is necessary to maintain the discipline of the court which is not only trying the case of the appellant but a large number of other cases which were getting delayed by the presence of a large number of the supporters of the appellant. [para 110, 127,138,139,146,149 and 154] [982- B C D E F G H

A **B; 987-D-E-H; 993-G-H; 994-A-B; 998-F-G]**

Alfred Thangarajah Durayappah of Chundikuly v. W.J. Fernando & Others **(1967) 2 AC 337, referred to.**

B **6.4. There is no presumption that a trial in prison is not an open trial. The appellant has merely stated that the trial of his cases has been transferred from the Siwan Court to the Siwan Jail. This in itself does not prove that the trial has been closed to the public. In order to establish that the appellant's right to a open trial has been denied,** C **the appellant has to prove more than mere shifting of the location of the trial. It has been shown by the respondents that no one had been prevented from attending or watching the trial. Apart from appellant's 38 lawyers, the public and the press used to attend to the** D **court proceedings. The Siwan Jail is only one kilometer from the Siwan Court. The court proceedings were regularly reported in the press. So, in the instant case no real prejudice has been caused to the appellant. [Para 112,117, 119, 121 and 153V] [983-A-B; 984-C; 985-B-C-F;** E **998-D-E]**

K.L. Tripathi v. State Bank of India & Others **(1984) 1 SCC 43;** *R. Balakrishna Pillai v. State of Kerala* **(2000) 7 SCC 129;** *Jankinath Sarangi v. State of Orissa* **(1969) 3 SCC** F **392;** *A.K. Roy & Others v. Union of India & Others* **(1982) 1 SCC 271 and** *Sahai Singh v. Emperor* **AIR 1917 Lah. 311, referred to.**

Samuel H. Sheppard v. E.L. Maxwell **384 U.S. 333 (1966);** *Press-Enterprise Co. v. Superior Court* **478 U.S. 1** G **(1986);** *State of Oregon v. James Donald Jackson* **178 Or App 233, 36 P3d 500 (2001);** *Stephen Gary Howard v Commonwealth of Virginia* **6 Va. App. 132 (1988);** *Adolph Dammerau v. Commonwealth of Virginia* **3 Va. App. 285 (1986);** *The People v. Robert England the Court* **83 Cal. App.** H

4th 772 (2000); *Malloch v. Aberdeen Corporation* **(1971) 1 W.L.R. 1578; and** *George v Secretary of the State for the Environment* **(1979) 77 L.G.R. 689 (1979), referred to.** A

Union of India & Another v. Tulsiram Patel & Others **1985 (2) Suppl. SCR 131 = (1985) 3 SCC 398** ; *E. P. Royappa v. State of Tamil Nadu* **1974 (2) SCR 348 = (1974) 4 SCC 3;** *Maneka Gandhi v. Union of India* **1978 (2) SCR 621 =(1978) 1 SCC 248;** *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Others* **1990 (1) Suppl. SCR 142 =1991 (Supp) 1 SCC 600;** *D.K. Yadav v. J.M.A. Industries Ltd.* **1993 (3) SCR 930 = (1993) 3 SCC 259;** *State of W.B. v. Anwar Ali Sarkar* **AIR 1952 SC 75;** *Krishan Lal v. State of J&K* **1994 (2) SCR 149 = (1994) 4 SCC 422;** *State of Karnataka v. Kuppuswamy Gownder & Others* **1987 (2) SCR 295 = (1987) 2 SCC 74;** *Ranbir Singh v. State of Bihar* **(1995) 4 SCC 392;** *Zahira Habibullah H. Shaikh & Another v. State of Gujarat & Others* **(2004) 4 SCC 158;** *Ranjit Singh v. Hon'ble the Chief Justice & Others* **ILR 1985 Delhi 388;** *Kailash Nath Agarwal & Another v. Emperor* **AIR (34) 1947 Allahabad 436;** *re M. R. Venkataraman* **AIR (37) 1950 Madras 441;** *re T. R. Ganeshan* **AIR (37) 1950 Madras 696;** *Prasanta Kumar Mukerjee v. The State* **AIR (39) 1952 Calcutta 91** *Narwarsingh & Another v. State* **AIR 1952 Madhya Bharat 193, cited.** B C D E

<u>Per Dr. Mukundakam Sharma, J</u> **(Concurring)** F

1.1. A bare reading of the provisions of s.9(6) of the Code of Criminal Procedure, 1973 explicitly indicates that the power conferred on the High Court is the power to determine the place or places where the Court of Session shall ordinarily hold its sittings. The second part which immediately follows the first part opens with the word "but", thereby carving out an exception to the general rule that the venue of the Court of Session shall be the place notified by the High Court. However, being an exception, the Code specifically mandates in the second G H

A part for observance of a special procedure contemplating compliance of the rule of *audi alteram partem* and also for obtaining the consent of the parties before the Court of Session may hold its sittings at a place other than the place or places notified by the High Court. [Para 14] [1007-
B A-E]

1.2. In the instant case, the essential conditions ingrained in the second part of s. 9(6), are not applicable inasmuch as the power to change the venue of the trial of cases pending against the appellant, was exercised by
C the High Court and not by the Court of Session. The power of the High Court u/s 9(6) to notify a particular place or places where the Court of Session shall ordinarily hold its sitting is an administrative power unlike the power of the Court of Session under second part of
D s.9(6) which is a purely judicial power in nature. Being so, the High Court was under no obligation to observe the rule of audi alteram partem. It has been the consistent view of this Court that an administrative order when passed by a competent authority may not necessarily be
E required to be issued only after due compliance with the principles of natural justice. [Para 15, 17, 21 and 25] [1008-B-D; 1009-D-E; 1012-B-C; 1013-D-E]

Kehar Singh vs. State (Delhi Administration) 1988 (2) Suppl. SCR 24 =1988 SCC (3) 609; *Union of India v. Col.*
F *J.N. Sinha,* (1970) 2 SCC 458; *Haradhan Saha v. State of W.B.* 1975 (1) SCR 778 = (1975) 3 SCC 198 ; *Olga Tellis v. Bombay Municipal Corporation* 1985 (2) Suppl. SCR 51 =(1985) 3 SCC 545; *Carborundum Universal Ltd. v. Central Board of Direct Taxes,* (1989) Supp. 2 SCC 462; and
G *Ajit Kumar Nag v. G. M. (PJ), Indian Oil Corp. Ltd.* (2005) 7 SCC 764, relied on.

1.3. The second part of s.9(6) of the CrPC expressly requires the Court of Session to afford the prosecution and the accused an opportunity of hearing and to obtain
H their consent beforehand whereas there is no such

stipulation under first part of s.9(6). The omission of such a requirement in case of the High Court pertaining to first part of sub-section (6) of s.9 is to be construed as a conscious decision on the part of the legislature for, it intended to exclude such a requirement when such power is to be exercised by the High Court. [Para 22] [1012-D-F]

1.4. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is the determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. [Para 23] [1012-F-G]

Ansal Properties & Industries Ltd. v. State of Haryana **2009 (1) SCR 553 = (2009) 3 SCC 553, relied on.**

1.5. As regards the constitutional validity of s.9(6), significantly, no such plea was ever raised at any stage and even such ground was not raised in the memo of appeal. An important question of constitutional validity of a provision in a Central Act cannot be permitted to be raised for the first time at the stage of final hearing. The Union of India is also not a party in the proceedings and in its absence no such issue could be allowed to be raised, argued and decided. [Para 26] [1013-F-G]

2.1. Section 407 of the Code deals with the power of the High Court to "transfer" cases and appeals. The key word in this section is the word 'transfer', which essentially consists of two steps: (a) removing a case or class of cases from the jurisdiction of the court where it/ they is/are pending trial, and (b) putting it/them under the jurisdiction of another court (whether of equal or superior jurisdiction) for adjudication. Thus, every transfer involves two different courts. [Para 16] [1008-G-H; 1009-A]

A 2.2. By issuing the notification dated 20.5.2006, the High Court cannot be said to have transferred the cases pending against the appellant, for the said notification simply notified the premises of District Jail, Siwan, to be the place of sitting for holding the trial of cases pending B against the appellant. The notification did not, in any manner, affect or abridge the jurisdiction of the Court of Session, Siwan, to try those cases. Thus, there was a shift simpliciter in the venue of the trial, without there being anything more. In such circumstances, the instant case C cannot be said to be a case of "transfer" to which the provisions of s. 407 are attracted. [Para 16] [1009-A-C]

3.1. Section 11 CrPC makes it explicitly clear that a Court of Judicial Magistrate could be established by the State Government after consultation with the High Court. D The State Government is vested with the power, after due consultation with the High Court, to create or to establish for any local area one or more courts of Judicial Magistrate First Class so as to try any particular case or class of cases. [Para 27] [1014-A-C]

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3.2. By issuing one of the two impugned notifications dated 7.6.2006 the State of Bihar, in exercise of its powers conferred u/s 11 of the CrPC and in consultation with the High Court, established a Court of Judicial Magistrate, F First Class inside the District Jail, Siwan to hold its sitting for the trial of cases pending against the appellant in the Court of Judicial Magistrate, First Class. The impugned notification satisfies all the requirements and all the four corners as envisaged u/s 11 of the Code and, therefore, the said notification is legal and valid inasmuch as, the G same was issued by the competent authority and also in full compliance with the requirements and the safeguards provided in the said provisions. [Para 43] [1020-G-H; 1021-A-B]

H 3.3. So far the other notification issued by the

Government of Bihar on 07.06.2006 directing that the Court of Additional District and Sessions Judge of Siwan Sessions Division would hold its sitting inside the District Jail, Siwan to try sessions cases pending against the appellant is concerned, it appears to be a surplusage, which was issued for making available the jail premises for the purpose of holding the Court of Session. The power u/s 9(6) is vested in the High Court and in exercise of the said power the High Court had issued a notification on 20.05.2006 which was also published in the official Gazette. Any further notification by the State Government making the jail premises available for the said purposes cannot be said to be illegal and void. [Para 44] [1021-C-F]

3.4. There is thus no infirmity in establishing both the Special Courts i.e. the Court of Additional District and Sessions Judge to try sessions cases and the Court of Judicial Magistrate, First Class to try the other cases, pending against the appellant, inside the premises of the District Jail, Siwan as the notification u/s 9(6) was issued in accordance with the provisions of law by the High Court and subsequent notification was also issued by the State Government in consultation with the High Court. [Para 45] [1021-G-H; 1022-A-B]

4.1. The issue whether the notification dated 20.5.2006 was published in the official Gazette or not or whether a copy thereof was supplied to the appellant or not, is a mixed question of law and fact and, therefore, the same should have been raised specifically in the writ petition and at least in the appeal petition. It also does not appear from the material available on record that such an issue was ever raised by the appellant before the High Court. Therefore, the issue being raised for the first time at the time of hearing of the appeal before this Court cannot be permitted to be raised. [Para 32] [1015-B-D]

A *Shakti Tubes Ltd. v. State of Bihar,* **2009 (10) SCR 739 = (2009) 7 SCC 673, relied on**

4.2. However, from the records, it is conclusively established that the High Court took all necessary steps to get the notification issued and published in the official gazette. If the Government Press took some time to get the notification published in the official gazette, the High Court cannot be blamed for it nor could the notification be declared to be void, particularly, when it was so published in the official gazette, as it is established from the records placed before the Court, although after some delay. [Para 42] [1020-B-D]

5.1. It cannot be said that reference of the provisions of s.14 (1) of the Bengal, Assam and Agra Civil Courts Act, 1887 apart from referring to the provisions of s.9(6) CrPC in the notification dated 07.06.2006 issued by the State Government indicates non-application of mind by the competent authority and on that ground the notification was illegal and void. If the notification quotes a wrong section and refers to a wrong provision, the same cannot be held to be invalid if the validity of the same could be upheld on the basis of some other provision. In the instant case, for making available the jail premises to hold the Court of Session, provisions of s.9(6) CrPC would be applicable. [Para 46,47 and 49] [1022-B-E; 1023-E]

N. Mani v. Sangeetha Theatre, **(2004) 12 SCC 278, relied on.**

5.2. It is a well-established law that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and the validity of such impugned order must be judged on a consideration of its

substance and not its form. The principle is that the act of a public servant must be ascribed to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, this Court will always rely upon s.114 Ill. (e) of the Evidence Act, 1872 to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. [para 48] [1022-G-H; 1023-A-B]

P. Balakotaiah v. Union of India, **1958 SCR 1052 =AIR 1958 SC 232;** *Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer,* **(1966) 1 SCR 120;** *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India,* **1992 (1) SCR 406 = (1992) 2 SCC 343;** *B.S.E. Brokers' Forum, Bombay v. Securities And Exchange Board of India,* **(2001) 3 SCC 482, relied on.**

6. As regards the plea that the power and jurisdiction u/s 9(6), CrPC could not be exercised by the High Court in respect of the trials relating to one particular individual pending in one Sessions Division, it is well settled law that a classification may be reasonable even though a single individual is treated as a class by himself, if there are some special circumstances or reasons applicable to him alone and not applicable to others. There were about 40 cases pending against the appellant and they were being tried in different courts. Difficulties were being created for conducting the said cases at various courts both for the prosecution as also to the appellant. Therefore, disposal of all the cases pending against the appellant most expeditiously at one place without being in any manner disturbed by the factors mentioned in the letter of the Superintendent of Police, could be said to be a reasonable ground. Expeditious disposal of cases is also a factor and a necessary concomitant to administration of justice and the hallmark of fair

A **administration of justice. Since the venue of the trial of a group or a class of cases was shifted by establishing and constituting a Court within the District Jail, Siwan, the same cannot be said to be void or invalid in any manner. [Para 50-51 and 57] [1023-F-H; 1024-A-C-D; 1028-E-F]**

B **7.1. So far as the plea that a trial must be conducted in an open court and the constitution of a special Court of Session in the jail premises of District Jail, Siwan amounts to violation of Articles 14 and 21 of the Constitution of India as also of the provision contained** C **in s.327 CrPC is concerned, although the general rule is that a trial must be conducted in an open court, it may sometimes become necessary or rather indispensable to hold a trial inside a jail. Considerations of public peace and tranquility, maintenance of law and order situation,** D **safety and security of the accused and the witnesses may make the holding of a trial inside the jail premises imperative as is the situation in the instant case. A trial does not stand vitiated solely because it is conducted inside the jail premises. What is significant is that there** E **must be compliance of the provisions contained in s.327 CrPC which guarantees certain safeguards to ensure that a trial is an open trial. [Para 53-55] [1025-B-C; 1026-B-C-F-H]**

Kehar Singh vs. State (Delhi Administration) **1988 SCC** F **(3) 609, relied on.**

R. v. Denbigh Justices, **(1974) 2 All ER 1052, 1056 (QBD), relied on.**

Black's Law Dictionary **(6th Edition, 1990, p. 1091),,** G **referred to.**

7.2. In the instant case, a general notice inviting the public to witness the trial of the appellant was affixed on the jail gate; the appellant was represented by 38 H **advocates who regularly attended the court in jail**

premises; the day-to-day proceedings of the court were reported in the newspapers daily; and entry was allowed to all persons after recording their personal details into a register maintained by the jail authorities. It has also not been shown that any permission sought for by any intending person to witness the proceedings was refused by the authority. In this view of the matter, there was sufficient compliance with s.327 CrPC. [Para 56] [1027-G-H; 1028-A-B]

West Bengal v. Anwar Ali Sarkar, **1952 SCR 284 =AIR 1952 SC 75 held in applicable.**

7.3. It must be noted that in the instant case, no special procedure was prescribed and the cases were to be conducted and disposed of in accordance with the ordinary criminal procedure as prescribed under the Code of Criminal Procedure. Thus, no prejudice was caused to the appellant while shifting the cases to the Special Courts situated inside the premises of District Jail, Siwan. Therefore, there is no violation either of s.327 CrPC or of Articles 14 and 21 of the Constitution. The legality and the validity of all the three notifications is upheld. Consequently, the trial can proceed as against the appellant in all the pending cases and it would continue to be held in terms of the notifications in accordance with law. The order passed by the High Court is upheld. [Para 57, 60 and 61] [1028-G-H; 1029-A-E-G]

Case Law Reference:

Judgment by Dalveer Bhandari, J

1952 SCR 284	**not applicable**	**para 11**
AIR 1936 Privy Council 246	**referred to**	**para 14**
(1913) A C 417	**referred to**	**para 14**
65L Ed 2d 973	**referred to**	**para 15**

A	1988 (2) Suppl. SCR 24	relied on	para 27
	(1966) 3 SCR 744	relied on	para 27
	1985 (2) Suppl. SCR 131	cited	para 28
B	1974 (2) SCR 348	cited	para 28
	1978 (2) SCR 621	cited	para 28
	1990 (1) Suppl. SCR 142	cited	para 31
	1993 (3) SCR 930	cited	para 32
C	1994 (2) SCR 149	cited	para 33
	1987 (2) SCR 295	cited	para 54
	(1982) 1 SCC 271	referred to	para 72
D	AIR 1917 Lah. 311	referred to	para 73
	AIR (34) 1947 Allahabad 436	referred to	para 74
	AIR (37) 1950 Madras 441	referred to	para 75
E	AIR (37) 1950 Madras 696	referred to	para 76
	AIR (39) 1952 Calcutta 91	referred to	para 77
	AIR 1952 Madhya Bharat 193	referred to	para 77
	(1996) 3 SCC 364	relied on	Para 105
F	(1971) A.C. 297	referred to	para 107
	(1970) 2 Q.B. 417	referred to	para 108
	(1967) 2 AC 337	referred to	para 111
G	384 U.S. 333 (1966)	referred to	para 114
	478 U.S. 1 (1986)	referred to	para 114
	178 Or App 233, 36 P3d 500 (2001)	referred to	para 115
H			

6 Va. App. 132 (1988)	**referred to**	**para 115**	A
3 Va. App. 285 (1986)	**referred to**	**para 116**	
83 Cal. App. 4th 772 (2000)	**referred to**	**para 118**	
(1971) 1 W.L.R. 1578	**referred to**	**para 120**	B
(1984) 1 SCC 43	**referred to**	**para 122**	
(1979) 77 L.G.R. 689 (1979)	**referred to**	**para 123**	
AIR 1917 Lah. 311	**referred to**	**para 118**	
(2000) 7 SCC 129	**referred to**	**para 124**	C
(1969) 3 SCC 392	**referred to**	**para 125**	
(2005) 7 SCC 764	**relied on**	**para 134**	
(1982) 457 US 596 : 73 L.Ed. 2d 248	**referred to**	**para 135**	D
(1993) 4 SCC 727	**relied on**	**para 140**	

Judgment by Dr. Mukundakam Sharma, J.

1988 (2) Suppl. SCR 24	**relied on**	**para 12**	E
(1970) 2 SCC 458	**relied on**	**para 19**	
1975 (1) SCR 778	**relied on**	**para 20**	
1985 (2) Suppl. SCR 51	**relied on**	**para 21**	F
(1989) Supp. 2 SCC 462	**relied on**	**para 21**	
(2005) 7 SCC 764	**relied on**	**para 21**	
2009 (1) SCR 553	**relied on**	**para 23**	G
2009 (10) SCR 739	**relied on**	**para 32**	
(2004) 12 SCC 278	**relied on**	**para 47**	
1958 SCR 1052	**relied on**	**para 48**	H

A	**(1966) 1 SCR 120**	**relied on**	**para 48**
	1992 (1) SCR 406	**relied on**	**para 48**
	(2001) 3 SCC 482	**relied on**	**para 48**
B	**(1974) 2 All ER 10521056 (QBD)**	**relied on**	**para 54**
	1952 SCR 284	**held in applicable**	**para 57**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C No. 591 of 2010.

From the Judgment & Order dated 14.8.2007 of the High Court of Judicature at Patna in Criminal Writ Jurisdiction Case No. 553 of 2006.

D Ram Jethmalani, Pranay Ranjan, Lata Krishnamurthy, P.R. Mala, Sourab Ajay Gupta, Praneet Ranjan for the Appellant.

Ranjeet Kumar, P.H. Parekh, Gopal Singh, Manish Kumar, Ajay Kumar Jha, Divya Sinha, Vishal Prasad (for Parekh & Co.) E for the Respondents.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted.

F 2. This appeal is directed against the judgment of the High Court of Judicature at Patna passed in Criminal Writ Jurisdiction Case No.553 of 2006 dated 14.08.2007.

3. The appellant is aggrieved by the notification No.184A G dated 20th May, 2006 whereby the Patna High Court in exercise of administrative powers conferred under sub-section (6) of section 9 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has been pleased to decide that the premises of the District Jail, Siwan will be the place of sitting H of the Court of Session for the Sessions Division of Siwan for

the expeditious trial of Sessions cases pending against Md. Shahabuddin. A

4. The appellant is also aggrieved by the two notifications bearing No.A/Act-01/2006 Part-1452/J corresponding to S.O. No. 80 dated 7.6.2006 and No.A/Act-01/2006 Part-1453/J corresponding to S.O. No.82 dt. 7.6.2006 issued by the State of Bihar at the behest of the High Court of Patna. The State of Bihar has established a Court of Judicial Magistrate 1st Class inside the District Jail, Siwan and directed that: B

(a) the Court of Judicial Magistrate 1st Class, Siwan shall now hold its sitting inside the District Jail Siwan for trial of cases pending against the appellant Md. Shahabuddin in the Court of Judicial Magistrate 1st Class; and C

(b) This notification shall come into force with effect from the 7th June, 2006. D

5. The appellant is further aggrieved by another notification issued on the same day by which the court of the Additional District & Sessions Judge of Siwan Sessions Division was directed to now hold its sitting inside the District Jail, Siwan to try Sessions cases pending against the appellant Md. Shahabuddin. E

6. Mr. Ram Jethmalani, learned senior counsel appearing for the appellant canvassed the following propositions of law; F

(a) That in pending criminal cases of which cognizance had been taken and even evidence had been recorded can only be shifted to another venue by the trial court after satisfying the conditions laid down in Section 9(6) of the Code. G

(b) That the High Court's administrative power of creating a court is not applicable for transferring a case from one court to another. A new court with its own defined jurisdiction can be created for the public generally, or for specified class of cases generally but not for cases in which a particular citizen is H

A involved. The High Court missed the significance of the word 'ordinarily' in Section 9(6) of the Code.

(c) That the administrative power of the High Court can only be exercised where the principle of *audi alteram partem* does
B not apply. In all situations where an order affects the interests of a party in a pending case, this power is not available. That power can only be exercised under section 408 of the Code after hearing the affected parties. It is settled law that even administrative orders are subject to the rule of *audi alteram*
C *partem* and by not hearing the appellant before transferring of the venue of cases had led to infringement of the fundamental rights of the appellant under Articles 14 and 21 of the Constitution.

(d) That the administrative power is not available merely
D to expedite the trial of a particular case. Expedition is necessary for all cases. The High Court did not act in the interest of expedition but really for terrorizing witnesses into giving evidence which suited the prosecution.

E (e) That the three notifications read together show that the action was taken by the State Government and the High Court has merely concurred with it. All the three notifications are thus without jurisdiction and void.

7. Mr. Jethmalani has drawn our attention to the relevant
F part of Section 9(6) of the Code which reads as under:

"9. Court of Session.—

x x x

G (6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other
H place in the sessions division, it may, with the consent of

the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein." A

8. Mr. Jethmalani submitted that the power of changing the venue is vested exclusively with the High Court and the State Government has no say in the matter. B

9. The power under Section 9(6) of the Code cannot be exercised for a particular individual or accused and if it has to be exercised for one individual, then according to the principle of *audi alteram partem*, he has to be given hearing. Admittedly, no such hearing was given to the accused in this case. C

10. Mr. Jethmalani referred to Section 407 of the Code which reads as under:

"407. Power of High Court to transfer cases and appeals.— (1) Whenever it is made to appear to the High Court— D

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or E

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, F

it may order—

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence; G

(ii) that any particular case or appeal, or class of cases H

A or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

B

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower C Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an D application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the E applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation F which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which G it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

H (6) Where the application is for the transfer of a case of

appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

11. Mr. Jethmalani further submitted that power under Section 407 of the Code can be exercised after hearing all the concerned parties. He heavily relied on the judgment of this court in *State of West Bengal v. Anwar Ali Sarkar & Another* AIR 1952 SC 75 and particularly placed reliance on para 37 which reads as under:

"37. Speedier trial of offences may be the reason and motive for the legislation but it does not amount either to a classification of offences or of cases. As pointed out by Chakravarti J. the necessity of a speedy trial is too vague and uncertain a criterion to form the basis of a valid and

A reasonable classification. In the words of Das Gupta J., it is too indefinite as there can hardly be any definite objective test to determine it. In my opinion, it is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons
B or to cases which are to be subject to the special procedure prescribed by the Act. The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been
C made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. Persons concerned in offences or cases needing so-called speedier trial are entitled to inquire
D "Why are they being made the subject of a law which has short-circuited the normal procedure of trial; why has it grouped them in that category and why has the law deprived them of the protection and safeguards which are allowed in the case of accused tried under the procedure mentioned in the Criminal Procedure Code; what makes
E the legislature or the executive to think that their cases need speedier trial than those of others like them?"

12. He further contended that the west Bengal Special Act of 1950 (Special Act) gives special treatment because they
F need it in the opinion of the provincial government; in other words, because such is the choice of their prosecutors. This answer is neither rational nor reasonable. The only answer for withholding from such person the protection of Article 14 of the Constitution that could reasonably be given to these inquiries
G would be that "Of all other accused persons they are a class by themselves and there is a reasonable difference between them and those other persons who may have committed similar offences." They could be told that the law regards persons guilty of offences against the security of the State as a class in
H themselves. The Code of Criminal Procedure has by the

process of classification prescribed different modes of procedure for trial of different offences. Minor offences can be summarily tried, while for grave and heinous offences an elaborate mode of procedure has been laid down. A

13. The said Special Act suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has not laid down any yardstick or measure for the grouping either of persons or of cases or of offences by which measuring these groups could be distinguished from those who are outside the purview of the Special Act. The Act has left this matter entirely to the unregulated discretion of the provincial government. It has the power to pick out a case of a person similarly situate and hand it over to the special tribunal and leave the case of the other person in the same circumstance to be tried by the procedure laid down in the Code. The State Government is authorized, if it so chooses, to hand over an ordinary case of simple hurt to the special tribunal, leaving the case of dacoity with murder to be tried in the ordinary way. It is open under this Act for the provincial government to direct that a case of dacoity with firearms and accompanied by murder, where the persons killed are Europeans, be tried by the Special Court, while exactly similar cases where the persons killed are Indians may be tried under the procedure of the Code. B C D E

14. According to the learned senior counsel, the appellant cannot be denied the trial in an open court where there is presence of free media. He has also placed reliance on *Cora Lillian McPherson v. Oran Leo McPherson* AIR 1936 Privy Council 246 wherein it is held that "Every Court of Justice is open to every subject of the King." (Ref.: *Scott & Anr. v. Scott* (1913) A C 417). Publicity is the authentic hall-mark of judicial as distinct from administrative procedure, and it can be safely hazarded that the trial of a divorce suit, a suit not entertained by the old Ecclesiastical Courts at all, is not within any exception. F G

15. Mr. Jethmalani placed strong reliance on the H

A observation of the US Supreme Court in *Richmond Newspapers, Inc. et al v. Commonwealth of Virginia et al* 65L Ed 2d 973 = (1980) 448 US 555. One of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, . . . appears to have
B been the rule in England from time immemorial. This was mentioned by F. Pollock, The Expansion of the Common Law 31-32 (1904). [See also: E. Jenks, The Book of English Law 73-74 (6th ed 1967)].

C 16. The learned senior counsel for the appellant further relied upon the following passages of the *Richmond's* case *(supra)*:

17. (Page 983) In some instances, the openness of trials was explicitly recognized as part of the fundamental law of the
D Colony. The 1677 Concessions and Agreements of West New Jersey, for example, provided:

> "That in all public courts of justice for trials of causes, civil or criminal, any person or persons, inhabitants of the said
E Province may freely come into, and attend the said courts, and hear and be present, at all or any such trials as shall be there had or passed, that justice may not be done in a corner nor in any covert manner." [Reprinted in Sources of Our Liberties 188 (R. Perry ed.1959). *See also* 1 B.
F Schwartz, The Bill of Rights: A Documentary History 129 (1971).]

18. (Page 985) Jeremy Bentham not only recognized the therapeutic value of open justice but regarded it as the keystone:

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> "Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would
H be found to operate rather as cloaks than checks; as

cloaks in reality, as checks only in appearance." J. Bentham Rationale of Judicial Evidence 524 (1827). A

19. (Page 985) The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioral scientists, that public trials had significant community therapeutic value. B

20. (Pages 985-986) When a shocking crime occurs, a community reaction of outrage and public protest often follows. [*See* H. Weihofen, The Urge to Punish 130-131 (1956)]. Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated, and may manifest themselves in some form of vengeful "self-help," as indeed they did regularly in the activities of vigilante "committees" on our frontiers. "The accusation and conviction or acquittal, as much perhaps as the execution of punishment, operate to restore the imbalance which was created by the offense or public charge, to reaffirm the temporarily lost feeling of security and, perhaps, to satisfy that latent 'urge to punish.'" Mueller, Problems Posed by Publicity to Crime and Criminal Proceedings, 110 U Pa L Rev 1, 6 (1961)." C D E

21. (Page 987) From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice. This conclusion is hardly novel; without a direct holding on the issue, the Court has voiced its recognition of it in a variety of contexts over the years. F G

22. (Page 999) This Court too has persistently defended the public character of the trial process. *In re Oliver* established that the Due Process Clause of the Fourteenth Amendment forbids closed criminal trials. Noting the "universal *rule against* H

A secret trials," 333 U.S. at 266, 92 L Ed 682, 68 S Ct 499, the Court held that

> "In view of this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means, at least, that an accused cannot be thus sentenced to prison." Id., at 273, 92 L Ed 682, 68 S Ct 499.

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23. (Page 1000) Tradition, contemporaneous state practice, and this Court's own decisions manifest a common understanding that "[a] trial is a public event. What transpires in the court room is public property." *Craig v. Harney,* 331 US D 367, 374, 91 L Ed 1546, 67 S Ct 1249 (1947).

24. (Page 1000-1001) Publicity serves to advance several of the particular purposes of the trial (and, indeed, the judicial) process. Open trials play a fundamental role in furthering the E efforts of our judicial system to assure the criminal defendant a fair and accurate adjudication of guilt or innocence. [*See, e.g., Estes v. Texas,* 381 U.S., at 538-539, 14 L Ed 2nd 543, 85 S Ct 1628]. But, as a feature of our governing system of justice, the trial process serves other, broadly political, interests, and public access advances these objectives as well. To that extent, F trial access possesses specific structural significance.

25. (Page 1001) Secrecy is profoundly inimical to this demonstrative purpose of the trial process. Open trials assure the public that procedural rights are respected, and that justice G is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice. [*See Gannett,* supra at 428-429, 61

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L Ed 2d 608, 99 S Ct 2898 (Blackmum, J., concurring and dissenting). A

26. (Page 1003) Shrewd legal observers have averred that:

> "open examination of witnesses *viva voce,* in the presence of all mankind, is much more conducive to the clearing up of truth than the private and secret examination . . . where a witness may frequently depose that in private which he will be ashamed to testify in a public and solemn tribunal." 3 Blackstone (supra) at *373. B C

27. Mr. Jethmalani also submitted that *Kehar Singh & Others v. State (Delhi Administration)* (1988) 3 SCC 609 has no relevance in the present case. In the said case, the shifting of the trial in jail was caused because of extraordinary situation which happened after assassination of Mrs. Indira Gandhi and that cannot be compared with the present situation. He placed reliance on the following paragraph: D

> '*204.* In *Naresh Shridhar Mirajkar v. State of Maharashtra* (1966) 3 SCR 744 this Court had an occasion to consider the validity of a judicial verdict of the High Court of Bombay made under the inherent powers. There the learned Judge made an oral order directing the press not to publish the evidence of a witness given in the course of proceedings. That order was challenged by a journalist and others before this Court on the ground that their fundamental rights guaranteed under Article 19(1)(*a*) and (*g*) have been violated. Repelling the contention, Gajendragadkar, C.J., speaking for the majority view, said: (SCR pp. 760-61) E F
>
> > "The argument that the impugned order affects the fundamental rights of the appellants under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decision. . . . But it is singularly inappropriate to assume that a judicial decision G H

A pronounced by a judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy B between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its C decisions cannot be said to affect the fundamental rights of citizens under Article 19(1)."

28. Mr. Jethmalani also placed reliance on *Union of India & Another v. Tulsiram Patel & Others* (1985) 3 SCC 398 para 92 in which this Court relied on *E. P. Royappa v. State of* D *Tamil Nadu* (1974) 4 SCC 3. Para 85 of the said judgment reads as under:

"... Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all E matters relating to public employment. *The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.* Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., 'a way F of life', and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. *Equality is a dynamic concept with many aspects and dimensions* and it cannot be 'cribbed, cabined and G confined' within traditional and doctrinaire limits. From a positivistic point of view, *equality is antithetic to arbitrariness.* In fact *equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute* H

monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. *Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.* Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16." (emphasis supplied)

29. Mr. Jethmalani further placed reliance on the following paragraph:

"*93.* Bhagwati, J., reaffirmed in *Maneka Gandhi* case (1978) 1 SCC 248 what he had said in *Royappa* case (supra) in these words (at pp. 673-74): (SCC p. 283, para 7):

"Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning, for to do

A so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa* v. *State of T.N.* namely, that from
B a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal
C both according to political logic and constitutional law and is therefore violative of Article 14. *Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential*
D *element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence* ...(emphasis supplied)

30. In the said judgment, Bhagwati, J., further observed (at pp. 676-77): (SCC p. 286, para 10)

E "Now, if this be the test of applicability of the doctrine of natural justice, *there can be no distinction between a quasi-judicial function and an administrative function for this purpose.* The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and
F if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made
G between one and the other? Can it be said that the requirement of 'fair-play in actions' is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence *the rules of natural*
H

justice must apply equally in an administrative inquiry which entails civil consequences." (emphasis supplied)

31. Mr. Jethmalani placed reliance on *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Others* 1991 (Supp) 1 SCC 600 wherein vide paras 166, 167 and 168, this Court observed thus:

"*166.* It is well settled that even if there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

167. An order impounding a passport must be made quasi-judicially. This was not done in the present case. It cannot be said that a good enough reason has been shown to exist for impounding the passport of the appellant. The appellant had no opportunity of showing that the ground for impounding it given in this Court either does not exist or has no bearing on public interest or that the public interest can be better served in some other manner. The order should be quashed and the respondent should be directed to give an opportunity to the appellant to show cause against any proposed action on such grounds as may be available.

168. Even executive authorities when taking administrative action which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a

A manner which is patently impartial and meets the requirements of natural justice."

32. Reliance was also placed on *D.K. Yadav v. J.M.A. Industries Ltd.* (1993) 3 SCC 259, wherein vide para 10, the court observed thus:

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"10. In *State of W.B.* v. *Anwar Ali Sarkar* AIR 1952 SC 75 per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi* v. *Union of India* (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

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33. Learned counsel for the appellant referred to the case

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of *Krishan Lal v. State of J&K* (1994) 4 SCC 422, wherein vide para 28 the court observed thus: A

> "*28.* The aforesaid, however, is not sufficient to demand setting aside of the dismissal order in this proceeding itself because what has been stated in *ECIL* case (1993) 4 SCC 727 in this context would nonetheless apply. This is for the reason that violation of natural justice which was dealt with in that case, also renders an order invalid despite which the Constitution Bench did not concede that the order of dismissal passed without furnishing copy of the inquiry officer's report would be enough to set aside the order. ....." B C

34. Mr. Ranjit Kumar, learned senior counsel appearing for the State submitted that the appellant is involved in a large number of criminal cases, the details of which are as under: D

"(i) Session Trial No. 287/2007

(ii) Session Trial No. 441/2006

(iii) Session Trial No. 419/2006 E

(iv) Siwan Town P.W. Case No. 11/2001

(v) Ander P.S. case – 41/1999

(vi) Ander P.S. case – 10/1998 F

(vii) Siwan Muffassil case no. 61/1990

(viii) Session Trial No. 99/1997; and

(ix) Session Trial No. 63/2004" G

35. Mr. Kumar also submitted that even by transferring the trial, no prejudice whatsoever has been caused to the appellant. He submitted that the venue is just one kilometer away from the Sessions Court, therefore, no inconvenience or prejudice H

A is caused to any one. No one has been denied entry. On the contrary, a large number of advocates and press people have attended the hearings and they have been regularly reporting this matter. He also referred to the notification dated 20th May, 2006 issued by the Patna High Court by which trial pending against the appellant has been expedited. The notification reads as under:

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> "No.184A:- In exercise of powers conferred under sub-section (6) of Section 9 of the Criminal Procedure Code, 1973, the High Court has been pleased to decide that the premises of the District Jail, Siwan will be the place of sitting of Court of Session for the Sessions Division of Siwan for expeditious trial of sessions cases pending against Md. Sahabuddin.
>
> By Order of the High Court
>
> Sd/-
>
> Registrar General
>
> *Memo No.5146-49 dated, Patna the 20th May, 2006.*
>
> Copy forwarded to the District and Sessions Judge, Siwan/The Chief Judicial Magistrate, Siwan/ The Secretary to the Government of Bihar, Law (Judicial) Department, Patna/The Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms, Patna for information and necessary action.
>
> By Order of the High Court
> Sd/-
> Registrar General"

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36. Mr. Kumar, learned senior counsel further submitted that the two notifications were subsequently issued by the Government of Bihar because the premises were not under the control of the High Court. Where the premises are not under the control of the High Court, the notification has also to be

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issued by the State Government. The establishment of the court can be done by the State Government in consultation with the High Court. He referred to the notification dated 20.5.2006 and notifications corresponding to S.O. Nos.80 and 82 both dated 7.6.2006. The notifications establishing the court were issued in consonance with the scheme of the Act.

37. Mr. Ranjit Kumar has drawn our attention to the counter affidavit filed by the State *in extenso*. In the said counter affidavit filed by the State it is mentioned that the reign of terror created by the appellant and his 'private army' in the last two decades is beyond imagination. Some of the notorious crimes committed by the appellant and his gang of criminals and the extent to which he has been interfering with the administration of justice, has been enumerated in the counter affidavit. It would be pertinent to recapitulate the same as under:

"xxx xxx xxx

(a) That on 03.5.1996 the petitioner along with his associates fired upon the then Superintendent of Police, Shri S. K. Singhal, IPS with sophisticated arms. In this case, bearing S.T. No. 320/2001, the petitioner and his two associates have been found guilty and sentenced to undergo rigorous imprisonment for 10 years.

(b) That during a raid conducted on 16.03.2001 in the house of the petitioner, the accused-petitioner and his private army fired upon the raiding party and burnt the vehicles of the Deputy Inspector General of Police, Saran Range, District Magistrate Siwan and Superintendent of Police Siwan. These criminals fired more than 100 rounds of ammunition from arms including AK 47 and AK 56 etc. In that firing, one constable was killed and several constables were injured. In this raid, huge quantity of ammunitions were recovered from the house of the accused. An FIR bearing Case No. 32 of 2001 was registered in the Hussainganj Police Station."

A (c) That in another raid conducted in 2005 on the order of the Bihar Military Force-I, a large number of arms and ammunition and other articles were recovered from the house of the accused. Pursuant to this raid, an FIR bearing Case Nos. 41 to 44/2005 was registered in the B Hussainganj Police Station.

(d) That when the petitioner was being shifted from Siwan Jail to Beur Jail Patna pursuant to his arrest on 10.02.2005, the petitioner did not sit in the vehicle of the Jail Administration and forcibly sat in a private vehicle. He C first visited his village home at Pratapur in flagrant violation of the directions of the jail administration and the police escort party. All along the way he did as he chose and before finally arriving at the Beur Jail Patna, he even visited his relative and minister Sh. Izazul Haq at the government D quarter. Resistance of the escorting police party were brushed aside by threatening them with dire consequences and use of brute force to carryout the above illegal acts.

(e) That in Sessions Trial No. 63 of 2002 accused and his E gang fired upon Munna Choudhary. He was kidnapped in injured conditions and was thereafter killed and his body was disposed off. Such was the terror of the accused person that when the case was tried in the general court, 21 prosecution witnesses including the parents and sisters F of the deceased as well as the investigating officers turned hostile due to fear created by the petitioner. Presently, this case is being tried in the Court at Siwan Jail, where the father and mother of the deceased have filed their affidavits stating that they were coerced and threatened by the G petitioner and his gang, therefore, they could not depose against him.

(f) That the distance between the District Court Siwan and the Court at Siwan Jail is about one kilometer. From the jail gate to District Court there is one way which passes H through narrow bridge over a river. This area is densely

populated and is a market area of the town. Whenever, the accused was produced in the District Court in the past, there used to be large gathering of criminals. It was always very difficult for the District Administration to control the situation. During the trial, thousands of criminals and armed men used to enter District Court premises and also inside the Court Room in support of the accused and created an atmosphere of terror in the minds of the prosecution witnesses. Consequently, no one dared to depose truthfully against the accused which led to his acquittal in more than 16 cases, one after the other.

(g) That prior to the constitution of the Court in the jail premises, when the petitioner was remanded to Siwan Jail in various criminal cases from time to time, he never co-operated and got himself produced in the concerned court, situated about one kilometer away from Siwan Jail, on the dates fixed for his appearance. Perusal of the order sheet of 9 cases which are undergoing trial in the Court shows that on only 24% occasions, the petitioner co-operated and got himself produced in the trial courts situated in court campus Siwan. On 76% occasions, he did not cooperate and consequently could not be produced from the Jail before the various trial courts. It is apparent that in most of them, the petitioner appeared before the Trial Court only once, at the time of remand or when he surrendered before the Court for getting himself remanded in the case. On several subsequent occasions, on one pretext or the other, he did not appear before the concerned court despite being in Siwan Jail."

38. It is also incorporated in the counter affidavit filed by the State that by the criminal acts of the appellant reign of terror had spread. The appellant has also earned enemies who would like to seize upon an opportunity and endanger his life if the trial is conducted in general court. Simultaneously, criminals owing allegiance to the appellant are likely to create law and

A order problem including communal tension and endanger the life of the common public during his trial in general court.

39. It is further incorporated in the counter affidavit that in view of the aforementioned background and after assessing the entire situation, the then District Magistrate, Siwan informed B the State Government that trial is not possible in the District Court of Siwan against the accused person. Pursuant to the report of the District Magistrate, the Law Secretary, Government of Bihar made a request to the Patna High Court for designation of Court of Session and Court of Judicial Magistrate, 1st Class C inside the Siwan Jail Premises for expeditious trial of the cases pending against the appellant. After evaluating and assessing the entire situation, the notification was issued by the Patna High Court as also by the State Government with the consultation of Patna High Court for sitting and establishment D of courts for expeditious trial of cases pending against the appellant.

40. Mr. Ranjit Kumar next submitted that Notification No. 184A dated 20.5.2006 was issued by the Patna High Court in E exercise of its power conferred under section 9(6) of the Code. Mr. Kumar further submitted that Section 9(6) is in two parts. First part pertains to the statutory power of the High Court and the Second part pertains to the judicial power of the Sessions Court. Notification No.184A dt.20.05.2006 pertains to the first F part.

41. According to the learned counsel for the State, the *audi alteram partem* rule would not be applicable to the first part but the second part. Therefore, the challenge by the appellant on the ground of breach of the *audi alteram partem* rule is G unsustainable.

42. Mr. Kumar further submitted that immediately after the notification on 20.5.2006, on the same day, the High Court through its Registrar General wrote a letter asking for the State H of Bihar to publish the notification in the official gazette. Delay

in the publication was not at the instance of the High Court. The appellant could not assail the notification of the High Court on this ground as no such plea or ground was raised either in the High Court or in this appeal.

43. Mr. Kumar also contended that the court inside the Jail was created by the High Court through its Notification dated 20.05.2006. Since the jail premises did not belong to the High Court, the State of Bihar issued two Notifications dated 7.6.2006 to facilitate the smooth functioning of the said court which had been created by the High Court. In any case, the administrative/statutory orders made by the High Court are given effect to by the State Government (e.g. appointments terminations, dismissals, retirements etc.)

44. Mr. Kumar further contended that the Sessions Court was created by the State and not by the High Court is contrary to the record. The notification dt.7.6.2006 makes it clear that it was issued in pursuance to Notification No.184A dated 20.5.2006 of the Patna High Court.

45. Mr. Kumar also brought to the attention of the court that the appellant has faced trials in 43 cases before the Magistrates and the Sessions' Courts. Out of the 30 cases before the Magistrates, he has been convicted in 3 and acquitted in 1 and 26 remaining cases are pending. Out of the 13 cases before the Sessions Court, he has been convicted in 3, acquitted in 3 and 7 cases are still pending.

46. Mr. Kumar also contended that the Court premises inside the Jail are open to all. The appellant is being represented through 38 lawyers. Apart from all his lawyers and every other person wanting to attend has been allowed to do so. The press and the public have also been allowed entry. In fact, the appellant and his supporters had objected to the presence of the reporters. Therefore, the allegation of denial of a fair and open trial is devoid of any substance.

47. Mr. Kumar further submitted that the appellant is a notorious criminal and it is virtually impossible to hold his trials in the normal court premises. The atmosphere of terror let loose by the appellant and his supporters had jeopardized the functioning of the court warranting trials of his cases inside the jail. The Superintendent of Police formed an opinion and forwarded it to the District Magistrate. The State drew the attention of the High Court and the High Court decided to act on it. There is nothing sinister or clandestine in this. The opening and the closing lines of the opinion forwarded by the Superintendent of Police of the District to the District Magistrate speak of the desire of the High Court qua trial of the appellant.

48. He further submitted that during the course of the hearing, the appellant was permitted inspection of the High Court records. Based on it, the appellant has set out a new case during the course of arguments in rejoinder.

49. According to the learned counsel for the State, the submission of the appellant that there was variance between the Notification No. 184A in English and the Notification No.184 Ni in Hindi is wholly untenable. (This has been explained both by the State and the High Court to mean 'appointment' in English and 'niyukti' in Hindi.)

50. Learned counsel for the State further submitted that the contention of the appellant that absence of a serial order in the publication of 16.8.2006 makes it suspicious is also unsustainable.

51. Mr. Kumar also contended that the State Government issued notifications for establishing courts in jail only after issuance of the Notification No. 184A dated 20.5.2006 by the High Court is fully proved from the following correspondence:

a. Letter No.5137 dated 20th May 2006 from the Registrar General to the Secretary, Department of

Personnel and Administrative Reforms, State of Bihar, requesting that the State Government be moved to issue the necessary notification to give effect to the transfer to Siwan of one Shri Gyaneshar Singh as Additional and District Sessions Judge in the Court being constituted inside the District Jail, Siwan for expediting the trial for sessions case pending for trail against the appellant.

b. Letter No.5138 dated 20th May, 2006 was sent to the Law Secretary as a copy of the letter at Sl.No.1.

c. Letter No.5139 was addressed to the Secretary, Law Department by the Registrar General dated 20th May, 2006 informing that the High Court had considered the matter regarding establishment of a Special Court of Judicial Magistrate, First Class inside the District Jail, Siwan and expedite the proposal of the State Government for such establishment for trial of cases pending against the appellant.

d. Letter No.5140 dated 20th May, 2006 was a copy of the aforesaid letter at Sl.No.3 forwarded to the Secretary, Department of Personnel and Administrative Reforms for information and necessary action.

e. Letter No.5141 of 20th May, 2006 was written to the Secretary, Government of Bihar, Department of Personnel and Administrative Reforms requesting that Shri Vishwa Vibhuti Gupta, Judicial Magistrate First Class, Siwan designated as presiding officer of the Judicial Magistrate First Class being constituted inside the District Jail, Siwan for expeditious trial of pending cases of the appellant.

f. The Letter No.5142 of 20th May, 2006 being the

A copy of the letter at Sl.No.5 was sent to the Secretary (Law), Judicial Department for information and necessary action.

g. Letter No.5143 dated 20th May 2006 was addressed by the High Court to the Secretary (Law), Judicial Department informing that the High Court having considered the matter was pleased to accept the proposal of the State Government for establishment of a special court of Additional District and Sessions Judge inside the District Jail, Siwan for expeditious trial of cases against the appellant.

h. Letter No.5144 dated 20th May 2006 being the copy of letter at Sl.No.7 was sent by the High Court to the Secretary, Department of Personnel and Administrative Reforms for information and necessary action.

i. Letter No.5145 dated 20th May, 2006 was sent by the Registrar General of the High Court to Superintendent, Government Printing Press, Gulzarbagh for publication of the notification No.184A dated 20th May, 2006 in the next issue of Bihar gazette (copy of this letter was also submitted by the Counsel for appellant in the High Court during the course of hearing on the last day).

j. The Patna High Court notification dated 20th May, 2006 issued under Section 9(6) of the Code was forwarded by the Registrar General of the High Court vide letter Nos.5146-49 of even date to the District and Sessions Judge/The Chief Judicial Magistrate, Siwan/Secretary to the Government of Bihar (Law), Judicial Department, the Secretary, Department of Personnel and Administrative Reforms for information and necessary action.

52. It will, thus, be seen from the above chronology that after the High Court took the decision to establish a Court of Additional District and Sessions Judge and of the Judicial Magistrate First Class in the Siwan District Jail, necessary correspondence/instruments/requests were sent by the High Court for implementation of the decision of the High Court in seriatim from letter Sl.Nos.5137-5138, 5139-5140, 5141-5142, 5143-5144, 5145 and 5146-5149. This full series of correspondence to give effect to the decision of the High Court was brought into operation which ultimately culminated in the two Notifications issued by the State Government on 7th June, 2006 respectively and also culminated in the Notification of the 20th May 2006 being gazetted on 16th August, 2006. There is, therefore, no scope for any person, leave alone the appellant, to contend that the decision was not of the High Court or High Court never applied its mind.

53. Learned counsel for the State further submitted that the argument that Section 462 of the Code only deals with a wrong court and not a wrong place is untenable. A reading of Section 462 categorically shows that the title of the section speaks of proceedings in wrong place but the substantive portion of the Section speaks of the wrong Sessions Division, District, Sub-Division or other local area, unless it appears that such an error in fact occasioned a failure of justice.

54. The decision rendered in *State of Karnataka v. Kuppuswamy Gownder & Others* (1987) 2 SCC 74 placed before the Court fully demolishes the contention of the appellant. Further, in any case the court of the Sessions Division within the compound of the Siwan Jail is not a wrong place for the purpose of holding the trial. The same has been duly notified.

55. The argument qua Section 465 Cr.P.C. that the notification dated 20th May, 2006 saying "other proceedings before and during the trial" and therefore, section 465 would not apply is totally devoid of any merit. Firstly, as per the

admission of the appellant himself, judicial proceedings against him had started in several cases and trials were going on, and therefore, it would come within the purview of words 'before or during the trial'. The emphasis of the State is on 'during trial'. Secondly, the words 'other proceedings before and during trial" would include the notification issued by the High Court and given effect to by the State Government by virtue of the constitutional provisions in Chapter-VI of the Constitution relating to Subordinate Courts and the notification is in the nature of a sanction to prosecute the appellant within the Siwan Jail premises in the courts of Sessions Division and the Judicial Magistrate. The notification issued, therefore, in other proceedings during the trial would clearly come within the purview of Section 465 of the Code. It would also come within the words 'irregularities in any sanction for the prosecution'. If the arguments of the appellant were to be upheld that the notification is bad because of non-gazetting thereof, prior to the State gazette notification inasmuch as the notification of the High Court having been issued on 16th August, 2006, it is stated that the delay, if any, would only amount to an irregularity and nothing more. Even for the said irregularity the appellant would have to lay foundation in the pleadings and prove to the court that there has been a failure of justice in his case.

56. In fact the appellant himself admitted in the summary of submissions in rejoinder that new points could be raised 'so long as they did not cause surprise to the other side' or at another place 'new point must be capable of being disposed off on the existing record or additional record, the aforesaid is not open to any challenge'. The learned counsel for the State-respondent submitted that the argument definitely raised surprise to the State Government because had such an argument been raised, both the State and High Court would have filed counter-affidavits. It is for the appellant to prove his allegations. He, having not even pleaded, cannot be allowed to raise new point at this stage.

57. A notification empowering a Sessions Court to sit and hold a trial inside the jail is not outside the purview of Section 465 of the Code. It would come within the meaning of other proceedings as explained above during a trial, because as per the admission of the appellant the trial has already been started.

58. The argument qua exercise of power for transfer of proceedings could only be done under Section 407 of the Code after giving adequate opportunity of hearing to the appellant has been answered against the appellant by this court in *Ranbir Singh v. State of Bihar* (1995) 4 SCC page 392. In para 13 it has been specifically said -

> "We are unable to share the above view of Mr. Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon an prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial power of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunity to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused, it is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch."

59. Mr. Kumar placed reliance on the case of *Zahira Habibullah H. Shaikh & Another v. State of Gujarat & Others* (2004) 4 SCC 158, particularly on Para 36 of the judgment. The relevant portion of Para 36 of the judgment reads as under:

A "36. .....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.
B 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
C is certainly denial of fair trial."

60. Mr. Kumar further submitted that when the notification of 20th May, 2006 was issued by the High Court, it is expected that the judges of the High Court would take care of all aspects including the interest of the accused. According to him, section
D 9(6) of the Code is in two parts. The first part is when the notification is issued by the High Court, then it is presumed that they would take into consideration the interests of the parties including the accused before issuing the notification. In the second part, the Court of Session may decide to hold its sitting
E at any place in the session. They can do so only after hearing the parties and that order of the Court of Session is a judicial order and order issued by the High Court is an administrative order.

F 61. He submitted that the Jail is an open court as long as there are no restrictions and right of the accused to fair trial is not compromised. The concept of open court is where there is access of every one.

62. He placed reliance on a Division Bench judgment of
G the Delhi High Court in *Ranjit Singh v. Hon'ble the Chief Justice & Others* ILR 1985 Delhi 388. In this case, the court held that when the notification is issued by the High Court, then there is no necessity of issuing notice to the accused before passing an order to fix a place of holding the trial. The relevant
H observation made by the Division Bench reads as under:

"7. .....Surely, it is a reasonable presumption to hold that when the Full Court exercised its power, like in the present case, directing that the Court of Session may hold its sitting at a place other than its ordinary place of sitting considerations of the interest of justice, expeditious hearing of the trial and the requirement of a fair and open trial are the considerations which have weighed with the High Court in issuing the impugned notification. It should be borne in mind that very rarely does the High Court exercise its power to direct any particular case to be tried in jail. When it does so it is done only because of overwhelming consideration of public order, internal security and a realization that holding of trial outside jail may be held in such a surcharged atmosphere as to completely spoil and vitiate the Court atmosphere where it will not be possible to have a calm, detached and fair trial. It is these considerations which necessitated the High Court to issue the impugned notification. Decision is taken on these policy considerations and the question of giving a hearing to the accused before issuing a notification is totally out of place in such matters. These are matters which evidently have to be left to the good sense and to the impartiality of the Full Court in taking a decision in a particular case....."

63. Mr. Kumar also placed reliance on the case of *Naresh Shridhar Mirajkar* (supra). In this case, the court emphasized the importance of public trial, but at the same time noted that they cannot overlook the fact that the primary function of judiciary is to do justice between the parties and that it was difficult to accede to the proposition that there can be no exception to the rule that all cases must be tried in open court.

64. Mr. Kumar contended that all the questions which have been raised by Mr. Ram Jethmalani were raised before this Court in the case of *Kehar Singh's* case (supra). This Court has answered to all those questions in the said case against

A the appellant herein. In this case, a three Judge Bench of this Court has given three separate judgments. Reliance has been particularly placed on paragraphs 21 to 24. On interpretation of section 9(6) of the Code, Oza, J. in paras 21 and 22 at pages 635 to 636 observed as under:

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"21. .....

On the basis of this language one thing is clear that so far as the High Court is concerned it has the jurisdiction to specify the place or places where ordinarily a Court of
C Session may sit within the division. So far as any particular case is to be taken at a place other than the normal place of sitting it is only permissible under the second part of sub-clause with the consent of parties and that decision has to be taken by the trial court itself. It appears that seeing
D the difficulty the Uttar Pradesh amended the provision further by adding a proviso which reads:

> Provided that the court of Session may hold, or the High Court may, direct the Court of Session to hold, its sitting in any particular case at any place in the
E sessions division, where it appears expedient to do so for considerations of internal security or public order, and in such cases, the consent of the prosecution and accused shall not be necessary.

F 22. But it is certain that if this proviso is not on the statute book applicable to Delhi, it can not be used as the High Court has used to interpret it. That apart, if we look at the notification from a different angle the contention advanced by the learned Counsel for the appellants ceases to have
G any force. Whatever be the terms of the notification, it is not disputed that it is a notification issued by the Delhi High Court under Section 9 Sub-clause (6) Cr.P.C. and thereunder the High Court could do nothing more or less than what it has the authority to do. Therefore, the said
H notification of the High Court could be taken to have

notified that Tihar Jail is also one of the places of sitting of the Sessions Court in the Sessions division ordinarily. That means apart from the two places Tis Hazari and the New Delhi, the High Court by notification also notified Tihar Jail as one of the places where ordinarily a Sessions Court could hold its sittings. In this view of the matter, there is no error if the Sessions trial is held in Tihar Jail after such a notification has been issued by the High Court." A B

65. The question regarding Article 21 of the Constitution was also dealt with by this Court. The relevant para 23 of the judgment reads as under: C

"23. The next main contention advanced by the counsel for the appellants is about the nature of the trial. It was contended that under Article 21 of the Constitution a citizen has a right to an open public trial and as by changing the venue the trial was shifted to Tihar Jail, it could not be said to be an open public trial. Learned counsel also referred to certain orders passed by the trial court wherein it has been provided that representatives of the Press may be permitted to attend and while passing those orders the learned trial Judge had indicated that for security and other regulations it will be open to Jail authorities to regulate the entry or issue passes necessary for coming to the Court and on the basis of these circumstances and the situation as it was in Tihar Jail it was contended that the trial was not public and open and therefore on this ground the trial vitiates. It was also contended that provisions contained in Section 327 Cr.P.C. clearly provides that a trial in a criminal case has to be public and open except if any part of the proceedings for some special reasons to be recorded by the trial court, could be in camera. It was contended that the High Court while exercising jurisdiction. under Section 9(6) notified the place of trial as Tihar Jail, it indirectly did what the trial court could have done in respect of particular, part of the D E F G H

A proceedings and the, High. Court has no jurisdiction under Section 327 to order trial to be held in camera or private and in fact as the trial was shifted to Tihar Jail it ceased to be open and public trial. Learned counsel on this part of the contention referred to decisions from American B Supreme Court and also from House of Lords. In fact, the argument advanced has been on the basis of the American decisions where the concept of open trial has developed in due course of time whereas so far as India is concerned here even before the Constitution our C criminal practice always contemplated a trial which is open to public."

66. In this case, the Court dealt with Section 327 Cr.P.C. which reads as under:

D *"327. Court to be open*-(1) The place in which any. Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

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Provided that the Presiding Judge or Magistrate, may, if he thinks fit, of order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

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(2) Notwithstanding anything contained in Sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code shall be G conducted in camera:

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular per: son to have access to, or be or remains in, the room or building used by the court.

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(3) Where any proceedings are held under Sub-section (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court." A

67. On analysis of Section 327 Cr.P.C., this Court observed as under: B

".....So far as this country is concerned the law be very clear that as soon as a trial of a criminal case is held whatever may be the place it will be an open trial. The only thing that it is necessary for the appellant is to point out C that in fact that it was not an open trial. It is not disputed that there is no material at all to suggest that any one who wanted to attend the trial was prevented from so doing or one who wanted to go into the Court room was not allowed to do so and in absence of any such material on actual D facts all these legal arguments loses its significance. The authorities on which reliance were placed are being dealt with elsewhere in the judgment."

68. In the concurring judgment, Ray, J. has specifically dealt with this aspect of the case. On interpretation of Section 327 Cr.P.C., the Court observed as under: E

".....It is pertinent of mention that Section 327 of the Cr.P.C. provides that any place in which any criminal court is held for the purpose of inquiring into or trying any offence F shall be deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain them. The place of trial in Tihar Jail according to this provision is to be deemed to be an open court as the access of the public to it was not prohibited. G Moreover, it has been submitted on behalf of the prosecution that there is nothing to show that the friends and relations of the accused or any other member of the public was prevented from having access to the place

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A where trial was held. On the other hand, it has been stated that permission was granted to the friends and relations of the accused as well as to outsiders who wanted to have access to the court to see the proceedings subject, of course, to jail regulations. Section 2(p) Criminal Procedure B Code defines places as including a house, building, tent, vehicle and vessel. So court can be held in a tent, vehicle, a vessel other than in court. Furthermore, the proviso to Section 327 Criminal Procedure Code provides that the presiding Judge or Magistrate may also at any stage of C trial by order restrict access of the public in general, or any particular person in particular in the room or building where the trial is held. In some cases trial of criminal case is held in court and some restrictions are imposed for security reason regarding entry into the court. Such restrictions do not detract from trial in open court. Section 327 proviso D empowers the Presiding Judge or Magistrate to make order denying entry of public in court. No such order had been made in this case denying access of members of public to court."

E 69. Ray, J. has also dealt with Indian, English and American cases. He placed reliance on a judgment of this Court in *Naresh Shridhar Mirajkar* (supra). The relevant passage of the said judgment which was relied on by Ray, J. is set out as under:

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"While emphasizing the importance of public trial, we cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If a judge trying a cause is satisfied that the very purpose of finding truth in the case would be G retarded, or even defeated if witnesses are required to give evidence subject to pubic gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the trial is to do justice in causes brought before it, then on

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principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise whereby following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the high Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course..... In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice, it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict, arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice."

70. In this case, Shetty, J. in his concurring judgment also elaborately dealt with this aspect of the matter and observed as under:

"The right of an accused to have a public trial in our country has been expressly provided in the code, and I will have an occasion to consider that question a little later. The Sixth Amendment to the United States Constitution provides "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury..." No such right has been guaranteed to the accused under our Constitution."

71. The Court observed that "the trial in jail is not an innovation. It has been there before we were born". The validity of the trial with reference to Section 352 of the Code of 1898 since re-enacted as Section 327(1) has been the subject matter of several decisions of different High Courts.

A 72. The Court also dealt with the judgment of this Court in *A.K. Roy & Others v. Union of India & Others* (1982) 1 SCC 271 and observed (at page 342, para 106) as under:

> "..... The right to a public trial is not one of the
B guaranteed rights under our Constitution as it is under the 6th Amendment of the American Constitution which secures to persons charged with crimes a public, as well as a speedy, trial. Even under the American Constitution, the right guaranteed by the 6th Amendment is held to be
C personal to the accused, which the public in general cannot share. Considering the nature of the inquiry which the Advisory Board has to undertake, we do not think that the interest of justice will be served better by giving access to the public to the proceedings of the Advisory Board."

D 73. Reliance was placed on the case of *Sahai Singh v. Emperor* AIR 1917 Lah. 311. In this case, the conviction of the accused was challenged on the ground that the whole trial is vitiated because it was held in the jail. In this case, the Court held that, "there is nothing to show that admittance was refused
E to anyone who desired it, or that the prisoners were unable to communicate with their friends or counsel. No doubt, it is difficult to get counsel to appear in the jail and for that reason, if for no other, such trials are usually undesirable, but in this case the Executive Authorities were of the opinion that it would be unsafe
F to hold the trial elsewhere."

74. In *Kailash Nath Agarwal & Another v. Emperor* AIR (34) 1947 Allahabad 436, the Allahabad High Court has taken the view that there is no inherent illegality in jail trials if the Magistrate follows the rules of Section 352 which is equivalent
G to Section 327(1) of the new Code.

75. *In re M. R. Venkataraman* AIR (37) 1950 Madras 441, the Court came to the conclusion that the trial is not vitiated because it was held in jail.

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76. *In re T. R. Ganeshan* AIR (37) 1950 Madras 696, the High Court upheld the validity of the jail trial. A

77. In *Prasanta Kumar Mukerjee v. The State* AIR (39) 1952 Calcutta 91 and *Narwarsingh & Another v. State* AIR 1952 Madhya Bharat 193, the High Court recognized the right of the Magistrate to hold court in jail for reasons of security for accused, for witnesses or for the Magistrate himself or for other valid reasons. B

78. Mr. Pravin Parekh, the learned senior counsel appearing for the High Court submitted that the Law Secretary, Government of Bihar vide letter No. 1-C(R) dated 7.5.2006 wrote to the Registrar General of the Patna High Court that the Patna High Court may kindly be moved for trial of cases pending against Md. Shahabuddin in Siwan Jail by constituting two special courts, one each of Additional Sessions Judge and another of Judicial Magistrate 1st Class. C D

79. Mr. Parekh pointed out that the Superintendent of Police, Siwan vide his letter No. 1493 dated 8.5.2006 wrote to the District Magistrate that more than forty cases were pending against Mohd. Shahabuddin and directions had been received from the Patna High Court to dispose of those cases expeditiously. It is stated that there was a serious danger to public peace during the presence of the appellant in the court premises. His supporters and other co-criminals could attack the witnesses. Even the possibility of threat and attack on the public prosecutor/district prosecuting officer could not be ruled out. Besides this, since he was wanted in many cases, therefore, other criminal groups could also attack him. Since he was a sitting Member of Parliament (hereinafter referred to as 'M.P.') and looking to the number of his supporters, it would impair the working of other courts in the Civil Court, Siwan. His supporters could create disturbance during hearing or realizing that his defence became weak and there was a possibility that his supporters might disturb public peace in the court premises and nearby areas and could commit murder and/or create other E F G H

A serious law and order problems. The pecple of Siwan got frightened on the mere mention of name of Mohd. Shahabuddin. In view of orders passed by the High Court, competent Court may be moved for constituting Special Court in Siwan Jail.

B 80. Mr. Parekh submitted that the District Magistrate concurred with the report of the Superintendent of Police, Siwan and wrote to the Home Secretary, Bihar. While referring to the Superintendent of Police's letter dated 8.5.2006, the District Magistrate requested that necessary action may kindly be taken for construction of Court rooms in District Jail for quick trial of C cases relating to the appellant.

81. Mr. Parekh also brought to our attention that the Law Secretary, Government of Bihar vide letter No. 361/C/2006 dated 9th May, 2006 wrote to the Registrar General of Patna D High Court by enclosing a photocopy of letters of Superintendent of Police, Siwan and District Magistrate, Siwan both dated 8.5.2006. He stated that Md. Shahabuddin is a high profile M.P. from Siwan having criminal antecedents, since reportedly facing prosecution in more than forty cases. His physical E production in the court during trial may be a source of menace to the public peace and tranquility, besides posing a great threat to the internal security extending other prosecution witnesses and prosecutors too. That apart, it may have adverse impact on inside Court working condition making the situation F surcharged during trial. It was likely to impair inside court room working culture which in the ultimate analysis may have fallout on the administration of criminal justice. To promote efficient conducting of trial as also to strengthen its efficacy, therefore, the trial of Md. Shahabuddin inside District Jail, Siwan by proposed especially constituted courts seems to be an G imperative need of the time. Accordingly, he requested that the Patna High Court may be moved to constitute Special Courts for the trial of the appellant Md. Shahabuddin inside the District Jail, Siwan.

H 82. Accordingly, a note requesting for placing the aforesaid

matter for consideration of the Standing Committee was put up by the Registrar General on 9.5.2006 to the Chief Justice of Patna High Court by enclosing both the letters of Superintendent of Police, Siwan and the District Magistrate dated 8.5.06 along with the Law Secretary's letter dated 9.5.06 by enclosing three precedents in respect of designation of the Special Courts for the trial of:

(a) Accused person relating to the cases of Lakshmanpur (Bathe), Jerhanabad carnage;

(b) Cases relating to Narainpur (Jehanabad) massacre;

(c) Sessions trial No. 115 of 2006 (*State vs. Anandmohan & Ors.*) relating to murder of G. Krishnaiyyah, the then District Magistrate, Gopalganj and for earmarking court of the Additional District & Sessions Judge.

83. Mr. Parekh further submitted that the Chief Justice of Patna High Court directed that the matter be put up before the Standing Committee. A list of the Additional Sessions Judges for trial of sessions' cases and list of the Special Magistrates was also placed for kind consideration of the Standing Committee.

84. Accordingly, the matter was placed before the Standing Committee in its meeting held on 11.5.2006. The Agenda for the said meeting was: "Letters received from the Law Secretary, Government of Bihar regarding designation of the Special Court of Session and Court of Judicial Magistrate, 1st Class for expeditious trial of the cases pending against Mohd. Shahabuddin and for notifying Siwan Jail a place for shifting of Sessions Court and Magisterial Court inside the jail for trial of such cases". Accordingly, a decision was taken by the Standing Committee, which is as under:

"Upon due deliberation and consideration of the letters

A received from the Law Secretary, regarding designation of Special Court of Session and Court of Judicial Magistrate, 1st Class for expeditious trial of cases pending against Md. Shahbuddin and for notifying the Siwan Jail for sitting of Sessions and Magisterial Courts inside the B Siwan Jail for trial of such cases. It is resolved to designate one court of Additional District and Sessions Judge as Special Court for trying the cases triable by the Courts of Sessions and one Court of Judicial Magistrate for trying the cases triable by the Court of Maigistrate, 1st Class. C The matter of posting of the Officers i.e. ADJ and Judicial Magistrate, 1st Class, the matter be placed before the Sub committee which has been entrusted the transfer and posting under the Annual General Transfer. It is also resolved that the Siwan Jail premises be notified as a D place of sitting of Sessions Court and Magisterial Court under provisions of Section 9(6) of the Criminal Procedure Code."

85. Mr. Parekh further pointed out that another note was put up by the Joint Registrar (Estt) on 17.5.2006 to the Registrar E General pointing out Section 9(6) of the Code related only to Court of Session and not to Judicial Magistrate. A request was made to place the matter before the Hon'ble Court for necessary orders.

F 86. The Standing Committee in its meeting dated 18.5.2006 decided as under:

"*It is resolved* that the minutes of the proceeding of the last meeting of the Standing Committee held on 11th May, 2006, be approved, with the only modification that in G the last line of agenda item No. (4) after section 9 sub-section (6) "and section 11 Sub-section (1) of the Code of Criminal Procedure, 1973, respectively" be added."

87. Accordingly, Notification No. 184A dated 20.5.2006 H was issued by the Patna High Court by which the premises of

the District Jail, Siwan will be place of sitting of the Court of Sessions.

88. Mr. Parekh also pointed out that vide letter No. 5137/ Admn (Appointment) dated 20.5.2006, Mr. Gyaneshwar Srivastava, Additional District and Sessions Judge, Darbhanga was designated as the Presiding Officer (Special Judge) of the Special Court of the Additional District and Sessions Judge being constituted inside the District Jail, Siwan for the expeditious trial of Sessions Cases pending against Mohd. Shahabuddin.

89. Similarly, vide letter No. 5139, the Registrar General informed the Law Secretary that the Patna High Court had been pleased to accept the proposal of the State Government for establishment of a Special Court of Judicial Magistrate, 1st Class inside the District Jail, Siwan for the expeditious trial of cases pending against Mohd. Shahabuddin. The Registrar General vide letter No. 5141 dated 20.5.2006 informed the Secretary Department (Personnel) that Patna High Court has been pleased to recommend the name of Shri Vishwa Vibhuti Gupta, Judicial Magistrate, 1st Class, Siwan for his designation as the Presiding Officer (Special Magistrate) of the Special Court of Judicial Magistrate, 1st Class being constituted inside the District Jail, Siwan for expeditious trials of cases pending against Md. Shahabuddin.

90. The Registrar General vide his letter No. 5145 dated 20.5.2006 wrote to the Superintendent, Secretariat Press, Bihar, Gulzarbagh, Patna with a request to publish the enclosed notification in the next issue of Bihar Gazette. The issuing section was instructed to issue it at once on the very same day under a sealed cover as per the directions of the Registrar General.

91. Accordingly, notification No. 184A dated 20.5.06 was published in Part-1 of the Bihar Gazette dated 16.8.2006 along with other notifications of various dates.

A 92. Thereafter, the Law (Judicial) Department, Government of Bihar, Patna published the two Notifications bearing Nos. Part-1452/J and Part-1453/J both dated 7.6.2006 corresponding to S.Os. 80 and 82 respectively in the Bihar Gazette (Extraordinary Edition) which were impugned by the B appellant. The Personnel Department also issued the Notification Nos. 5556 and 5557 dated 12.6.2006 regarding appointment of the Presiding Officers for the said two Special Courts.

93. The impugned Notifications provide that the State of C Bihar in exercise of its power conferred by Section 11 of Cr.P.C. and in consultation with Patna High Court had been pleased to establish a Court of Judicial Magistrate of 1st Class, inside the District Jail, Siwan, shall hold its sitting inside the District Jail, Siwan for trial of cases pending against Md. D Shahabuddin in the Court of Judicial Magistrate, 1st Class.

94. Similarly, another Notification dated 7.6.2006 was issued by the Governor of Bihar, in exercise of the powers conferred by sub-section (1) of Section 13 and sub-section (1) E of Section 14 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act 12 of 1887) and sub-section (6) of Section 9 of the Code and in the light of Notification No. 184A dated 20th May, 2006 issued by the High Court of Judicature at Patna directing that the Court of Additional District and Sessions Judge of F Siwan Sessions Division shall now hold its sitting inside the District Jail, Siwan to try Sessions cases pending against Md. Shahabudin. Both these notifications came into force with effect from 7.6.2006.

95. Mr. Parekh submitted that there is no infirmity in G establishing two Special Courts inside the Siwan Jail for trying the cases of Md. Shahabuddin, M.P. from Siwan constituency, as the impugned notifications were issued in pursuance to the direction of the Patna High Court vide its notification dated 20.5.2006.

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96. According to Mr. Parekh, the contentions raised by the appellant in the present appeal have been rejected by a three-Judge Bench of this court in *Kehar Singh's* case. It has been held that:

> "The High Court need not afford hearing to accused before fixing place of sitting of Sessions Court. Under Section 9(6) Cr.P.C. the High Court has the jurisdiction to specify the place or places where ordinarily a Court of Session may sit within the division. There is no error if the Sessions trial is held in Tihar Jail after such a notification has been issued by the High court. As soon as a Court holds trial in a venue fixed for such trial, it is deemed to be an open Court under Section 327, irrespective of the place of trial – whether it is a private house or a jail and everyone has a right to go and attend the trial. The High Court can fix a place other than the Court where the sittings are ordinarily held if the High Court so notifies for the ends of justice. The argument that jail can never be regarded as a proper place for a public trial is too general. Jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons."

97. *Kehar Singh's* judgment (supra) laid down that the public trial is a means, though important and valuable to ensure fair administration of justice, it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trials on the other, inevitably, public trials may have to be regulated or controlled in the interest of administration of justice. Moreover, it is laid down that order of the High Court is an Administrative Order and not Judicial Order.

98. Mr. Parekh has referred to a separate counter affidavit filed in the High Court. He has also mentioned that the

A expeditious trial should not be read out of context. The cases of the appellant cannot be decided in normal course in the court premises because of the background of the appellant. The appellant is keeping a private army and if trial is conducted in court there is serious apprehension to the lives of the witnesses, B public prosecutor, Presiding Officer and the accused. Therefore, after taking into consideration all facts and circumstances, a decision has been taken to hold the trials in jail. He referred to para 22 of the *Kehar Singh's judgment (supra)* delivered by Oza, J. in which it is mentioned that the High Court by C notification has notified that Tihar Jail along with Tis Hazari and the New Delhi will be the places of sittings of the sessions court. He also referred to the para 157 of the judgment delivered by Shetty, J. who gave a concurring judgment in the *Kehar Singh's* case *(supra)*.

D 99. He has further submitted that the High Court is empowered under section 9(6) of the Code to specify a place or places for hearing of individual case. He referred to para 171 in which Shetty, J. has observed that under Section 9(6), the High Court exercises administrative power intended to further E the administration of justice. The second part deals with the power of the Court of Session. The judicial power of the court intended to avoid hardship to the parties and witnesses in particular. One is independent of and unconnected with the other, the exercise of which is conditioned by mutual consent F of the parties. The court further observed that the exercise of that power has to be narrowly tailored to the convenience of all concerned. It cannot be made use for any other purpose. The limited judicial power of the Court of Session should not be put across to curtail the vast administrative power of the High G Court.

100. In response thereto, Mr. Jethmalani, the learned senior counsel for the appellant pointed out in the rejoinder that there is no law that a bad character person should be tried by a Special Court. He submitted that Notification dated 20th May,

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2006 was not gazetted before the consequential notification dated 7th June, 2006 was issued. He has referred to the definitions of "notification", "official Gazette" and "Gazette" in the Criminal Procedure Code. According to the definition given in the Code, the word "notification" means a notification published in the Official Gazette. "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State.

101. He submitted that the copy of the notification was not made available to the appellant and he was driven to file a writ petition before this court and only because of the direction of this court, a copy of the notification was made available to him.

102. Public trial is an important part of the judicial system and this court in *Kehar Singh's* case has ruled:

> "In open dispensation of justice, the people may see that the State is not misusing the State machinery like the Police, the Prosecutors and other public servants. The people may see that the accused is fairly dealt with and not unjustly condemned. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and institutions of the State may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze."

103. The first question that one asks, before setting aside any order, is the nature of the action, judicial, legislative or administrative. This is because the grounds under which each type of action may be set aside are different. It was held in *Kehar Singh's* case that the High Court hearing the trial is not a judicial order but an administrative order. The court held as under :-

> "The objects of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing is to ensure that justice is done, that

A "The order of the High Court notifying the trial of a particular case in a place other than the Court is not a judicial order but an administrative order."

104. Since this is an administrative function, therefore, the test for this court should be whether the decision of the High Court stands up to the test of judicial review of administrative decisions. The first question, therefore, is whether the appellant had a statutory right to a hearing. If this is answered in the positive, then there is no need to go to further issues, as this would mean that the State has violated a statutory right to hearing. It is clear from the wording of Section 9 of the Code that there is no need for the High Court to give a hearing while deciding the venue of the trial. It is only if the Sessions Court is moving the place of trial that the parties have a right to a hearing. It must be added that one of the exceptions to the rule of *audi alteram partem* is the denial of hearing by implication. D. D. Basu in his celebrated book mentions:

"(a) Where the statute classifies different situations and while, in some cases, it makes it obligatory to give a hearing to the party to be affected by the proposed order, in some other specified circumstances, such as an emergency or the avoidance of public injury, no such hearing is required because of the nature of the exceptional situation." [Basu, Durga Das, Administrataive Law, Sixth Edition, 2004 at pg. 288]

105. It is therefore, clear that there is no statutory right for the appellant to be heard. However, common law and the principles laid down in the Constitution lay down that even in administrative action there must be minimum standards that are to be maintained. In *State Bank of Patiala & Others v. S.K. Sharma* (1996) 3 SCC 364 this court ruled:

"The objects of the principles of natural justice - which are now understood as synonymous with the obligation to provide a fair hearing is to ensure that justice is done, that

there is no failure of justice and that every person whose rights are going to be affected by the proposed action gets a fair hearing." A

106. In *Wiseman & Another v. Borneman & Others* (1971) A.C. 297 Lord Reid held: B

"For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation." C

107. Therefore, this court must look into the issue whether the right to a fair hearing was denied to the appellant or not even if there is no statutory provision for it. D

108. The principles of natural justice are essential to the framework of our laws and a protection against arbitrary actions. There is every duty of the courts to judicially review administrative actions. However, this is usually not to be applied blindly. *In Regina v. Gaming Board for Great Britain* (1970) 2 Q.B. 417, the court emphasized: E

"it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter." F

109. However, there are situations where the action of the State is prima facie void and therefore has to be set aside. If the denial of a public trial was a prima facie case of vitiation of natural justice, the court would be justified in exercising judicial review. This Court in *Naresh Shridhar Mirajkar's* case (supra) held that: G

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A "If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exception whatever, cases may arise where by following the principle, justice itself may be defeated."

B

110. In the present case, it must be noted that a large number of supporters of the appellant may create unrest in front of the court room and much larger security would be required to protect the witnesses, the officers of the Court and the appellant. Therefore, it is clear from the letter of the C Superintendent of Police of Siwan that it is not possible to hold the trials of the appellant in the open court. Holding of the trials of the appellant in open court may affect the trials of other civil and criminal cases that are going on in the same court building. Therefore, there is no violation of the principles of natural justice D in shifting the trials of the cases of the appellant from a regular court to a special court.

111. When there is no prima facie violation of the principles of natural justice then one must test whether there is need for E a judicial review of the orders of shifting the trials. The Privy Council in *Alfred Thangarajah Durayappah of Chundikuly v. W.J. Fernando & Others* (1967) 2 AC 337 laid down that it was neither possible nor desirable to classify exhaustively the cases in which a hearing is required but three factors must be borne F in mind—

(1) The nature of the property or office held or status enjoyed by the complainant.

(2) The circumstances in which the other deciding party G is entitled to intervene.

(3) When the latter's right to intervene is proved, the sanctions he can impose on the complainant.

112. The subject matter in the present case is the open H trials for the appellant. There is a claim that it is being vitiated

by holding the trial in the jail. Here again there is doubt as to whether the first requirement has been vitiated by the decision of the High Court. The appellant has merely stated that the trial of his case has been transferred from the Siwan Court to the Siwan Jail. This in itself does not prove that the trial has been closed to the public. In *Kehar Singh's* case, this court observed that for reasons of security, the public access to trial can be regulated. The relevant observations are reproduced as under:-

> "10. For security reasons, the public access to trial was regulated. Those who desired to witness the trial were required to intimate the court in advance. The trial Judge used to accord permission to such persons subject to usual security checks"
>
> 113. This was considered a valid trial in open court.

114. Even in the United States in *Samuel H. Sheppard v. E.L. Maxwell* 384 U.S. 333 (1966), the Supreme Court ruled that the right to a public trial is not absolute. Sometimes excess publicity can be harmful to the case and therefore public access may be restricted. In *Press-Enterprise Co. v. Superior Court* 478 U.S. 1 (1986), the court held that trials can be closed on account of there being:

> "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."

115. While the Oregon Court of Appeals overruled the trial held in prison in *State of Oregon v. James Donald Jackson* 178 Or App 233, 36 P3d 500 (2001) on the specific ground that the public did not have access to watch the trial; there is no ruling that all trials inside jails are void. In the case of *Stephen Gary Howard v Commonwealth of Virginia* 6 Va. App. 132 (1988) the appellant claimed that the trial inside prison was inherently prejudicial to his case. The Court of Appeals of Virginia held that there is no presumption of

A prejudice if a trial is held in prison. The court noted:

> "We find that the trial location did not erode Howard's right to a presumption of innocence."

116. In *Adolph Dammerau v. Commonwealth of Virginia* B 3 Va. App. 285 (1986), the Court of Appeal ruled:

> "Rather, the surroundings and circumstances of each situation must be examined to determine if the public was inhibited from attending the trial so that "freedom of C access" was effectively denied."

117. This clearly shows that the approach of the court that there is no presumption that a trial in prison is not an open trial.

118. In *The People v. Robert England the Court* 83 Cal. D App. 4th 772 (2000) of Appeals of California held that reasonable restrictions, like security checks should be allowed. The court found:

> "In this case, the court did not close the trial to the public. E Defendant argues only that it was more difficult for the public to attend because some people would be dissuaded from attending a proceeding held on prison grounds and some would resent having to identify themselves to prison officials to gain access to the F grounds. Neither concern impacts defendant's right to a public trial.
>
> As noted previously, because the courtroom was located outside the actual prison wires, there was little possibility that the public might come into contact with inmates or G otherwise be exposed to prison activities. That some people might not want to go to a courtroom located on prison grounds is irrelevant to determining whether a trial was public. *Other individuals might not want to go downtown to an urban courtroom, while others might not* H *want to drive long distances in rural areas to attend a*

courtroom located in another town. These individual predilections do not make what is otherwise a public trial any less public.

Nor does the fact that individuals have to identify themselves before entering prison grounds unlawfully curtail defendant's right to a public trial. Far more stringent security procedures have been permitted in other cases."

119. Therefore, to hold that the appellant's right to a public trial has been denied the appellant has to prove more than mere shifting of the location of the trial.

120. Lord Wilberforce in *Malloch v. Aberdeen Corporation* (1971) 1 W.L.R. 1578 laid down a test for courts before it interfered in the decisions of administrative authorities on the ground of violation of *audi alteram partem*. He stated:

"The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make. *A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain*"

121. In the present case, it has been shown by the respondents that no one had been denied from attending or watching the trial. The appellant is being represented by 38 lawyers. Apart from his lawyers, the press and those who want to attend the trial or case had free access to remain present during the court proceedings.

122. In *K.L. Tripathi v. State Bank of India & Others* (1984) 1 SCC 43 this Court held:

A "When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly...."

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In the same case this Court stated:

"it is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice..."

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123. In *George v Secretary of the State for the Environment* (1979) 77 L.G.R. 689 (1979), the court held that there must be some real prejudice to the complainant:

D "there is no such thing as a merely *technical infringement of natural justice*."

The court noted:

"The question is whether, as a result of any failure in E procedure or the like, there was a breach of natural justice.

On this approach, the position under the first limb is almost indistinguishable from that under the second limb. One should not find a breach of natural justice unless there has been substantial prejudice to the applicant as a result of F the mistake or error that has been made."

124. In *R. Balakrishna Pillai v. State of Kerala* (2000) 7 SCC 129, this Court observed regarding adherence to the Principles of Natural Justice. Relevant para is reproduced as G under:

"It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation H that there is apprehension that justice will not be done in

a given case is not sufficient." A

125. In *Jankinath Sarangi v. State of Orissa* (1969) 3 SCC 392, this court pointed out that there is no carte blanche rule of setting aside orders. Hidayatullah CJ, ruled:

> "There is no doubt that if the principles of natural Justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to *what actual prejudice* has been caused to a person by the supposed denial to him of a particular right." B C

126. In *Sahai Singh* (supra), the court noted that if the Executive Authorities were of the opinion that it would be unsafe to hold the trial elsewhere it could be held in jail.

127. In the present case, the letters exchanged between the police authorities and the request made to High Court clearly show that there was serious danger in producing the appellant in open court. The police authorities had shown that the large crowds were making a fair trial impossible and creating delays in deciding the cases. The relevant part of the letter dated 8.5.2006 written by the Superintendent of Police, Siwan reads: D E

> "With reference to the above, I have to respectfully inform you that more than forty cases are pending against Hon'ble Member of Parliament Mohd. Shahabuddin. Directions have been received from Hon'ble Patna High Court to dispose of cases as soon as possible. There is serious danger to public peace during the presence of Hon'ble Member of Parliament Mohd. Shahabuddin, in the court premises. His supporters and other co-criminals can attack the witnesses. Even the possibility of threat and attack on the public prosecutor/district prosecuting officer cannot be ruled out. Besides this, since he is wanted in many cases, therefore, other criminal groups can also attack him. Since F G H

A he is a sitting M.P. and looking to the number of his supporters, it will impair the working of other courts in Civil Court Siwan. His supporters can create disturbance during hearing after seeing that his defence gets weak and there is possibility that his supporters may disturb public peace
B in the court premises and nearby areas and can commit murder and other serious law and order problems....."

128. In *Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia & Others* (2005) 7 SCC 764, there
C was clear record that the employee had assaulted a doctor and it was not possible to run a hospital safely and as an emergency the employee was dismissed. The court held that the dismissal was valid in view of maintaining discipline of the hospital.

129. I have heard the learned counsel for the parties at
D length and carefully examined the provisions of law and the relevant Indian, English and American judgments. The judgments and other literature available on record favour public trial or open trial as a rule.

E 130. Cooley, J. in his well known book *Cooley's Constitutional Law, Vol I, 8th edn., at page 647* observed as under:

"It is also requisite that the trial be *public*. By this is not meant that every person who sees fit shall in all cases
F be permitted to attend criminal trials; because there are may cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial on the part of portions of the community would be of the worst character, and where a
G regard for public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a public trial is for the benefit of the accused; that the public may
H see he is fairly dealt with and not unjustly condemned, and

that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility into the importance of their functions; and the requirement is fairly observed if, without partiality of favouritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether."

131. Every criminal act is an offence against the society. The crime is a wrong done more to the society than to an individual. It involves a serious invasion of rights and liberties of some other person or persons. The people are, therefore, entitled to know whether the justice delivery system is adequate or inadequate. Whether it responds appropriately to the situation or it presents a pathetic picture. This is one aspect. The other aspect is still more fundamental. When the State representing the society seeks to prosecute a person, the State must do it openly. As Lord Shaw said with most outspoken words [*Scott & Another v. Scott:* 1913 A.C. 417]:

"It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice." "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial." "The security of securities is publicity." But amongst historians the grave and enlightened verdict of Hal-lam, in which he ranks the publicity of judicial proceedings even higher than the rights of Parliament as a guarantee of public security, is not likely to be forgotten: "Civil liberty in this kingdom has two direct guarantees; the

A open administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable; nor can the subjects of
B any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise...."

132. In dispensation of justice, the people should be satisfied that the State is not misusing the State machinery like
C the Police, the Prosecutors and other Public Servants. The people may see that the accused is fairly dealt with and not unjustly condemned. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and
D institutions of the State may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze.
E

133. Beth Hornbuckle Fleming in his article "*First Amendment Right of Access to Pretrial Proceeding in Criminal Cases*" (Emory Law Journal, V.32 (1983) P.619) neatly recounts the benefits identified by the Supreme Court of
F the United States in some of the leading decisions. He categorizes the benefits as the "fairness" and "testimonial improvement" effects on the trial itself, and the "educative" and "sunshine" effects beyond the trial. He then proceeds to state;

"Public access to a criminal trial helps to ensure the
G fairness of the proceeding. The presence of public and press encourages all participants to perform their duties conscientiously and discourages misconduct and abuse of power by judges, prosecutors and other participants. Decisions based on partiality and bias are discouraged,
H thus protecting the integrity of the trial process. Public

access helps to ensure that procedural rights are respected and that justice is applied equally. A

Closely related to the fairness function is the role of public access in assuring accurate fact- finding through the improvement of witness testimony. This occurs in three ways. First, witnesses are discouraged from committing perjury by the presence of members of the public who may be aware of the truth. Second, witnesses like other participants, may be encouraged to perform more conscientiously by the presence of the public, thus improving the overall quality of testimony. Third, unknown witnesses may be inducted to come forward and testify if they learn of the proceedings through publicity. B C

Public access to trials also plays a significant role in educating the public about the criminal justice process. Public awareness of the functioning of judicial proceedings is essential to informed citizen debate and decision-making about issues with significant effects beyond the outcome of the particular proceeding. Public debate about controversial topics, such as, exclusionary evidentiary rules, is enhanced by public observation of the effect of such rules on actual trials. Attendance at criminal trials is a key means by which the public can learn about the activities of police, prosecutors, attorneys and other public servants, and thus make educated decisions about how to remedy abuses within the criminal justice system. D E F

Finally, public access to trials serves an important "sunshine" function. Closed proceedings, especially when they are the only judicial proceedings in a particular case or when they determine the outcome of subsequent proceedings, may foster distrust of the judicial system. Open proceedings, enhance the appearance of justice and thus help to maintain public confidence in the judicial system." G H

A 134. In *Gannett Co. Inc. v. Danial A. DePasquale* (1979) 443 U.S. 368, the defendants were charged with murder and requested closure of the hearing of their motion to suppress allegedly involuntary confessions and physical evidence. The prosecution and the trial Judge agreed and said that closure B was necessary. The public and the press were denied access to avoid adverse publicity. The closure was also to ensure that the defendants' right to a fair trial was not jeopardized. The Supreme Court addressed to the question whether the public has an independent constitutional right of access to a pretrial C judicial proceedings, even though the defendant, the prosecution, and the trial Judge had agreed that closure was necessary. Explaining that the right to a public trial is personal to the defendant, the Court held that the public and press do not have an independent right of access to pretrial proceedings D under the Sixth Amendment.

135. Although the Court in *Gannett* held that no right of public access emanated from the sixth Amendment it did not decide whether a constitutional right of public access is guaranteed by the first amendment. This issue was discussed E in great detail in *Richmond Newspaper* (supra). This case involved the closure of the court-room during the fourth attempt to try the accused for murder. The United States Supreme Court considered whether the public and press have a constitutional right of access to criminal trials under the first amendment. The F Court held that the first and fourteenth amendments guarantee the public and press the right to attend criminal trials. But the *Richmond Newspapers* case (supra) still left the question as to whether the press and public could be excluded from trial when it may be in the best interest of fairness to make such an G exclusion. That question was considered in the *Globe Newspaper Co. v. Superior Court for the County of Norfolk* (1982) 457 US 596 : 73 L.Ed. 2d 248. There the trial Judge excluded the press and public from the court room pursuant to a Massachusetts statute making closure mandatory in cases H involving minor victims of sex crimes. The Court considered the

constitutionality of the Massachusetts statute and held that the statute violated the first amendment because of its mandatory nature. But it was held that it would be open to the Court in any given case to deny public access to criminal trials on the ground of state's interest. Brennan, J., who delivered the opinion of the Court said (at 258-59):

> "We agree with appellee that the first interest - safeguarding the physical and psychological well-being of a minor - is a compelling one. But as compelling as that interest is, it does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest. A trial court can determine on a case by case basis whether closure is necessary to protect the welfare of a minor victim. Among the factors to be weighed are the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victims, and the interests of parents and relatives. .... Such an approach ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State's interest.

136. It will be clear from these decisions that the mandatory exclusion of the press and public to criminal trials in all cases violates the First Amendment to the United States Constitution. But if such exclusion is made by the trial Judge in the best interest of fairness to make that exclusion, it would not violate that constitutional right.

137. It is interesting to note that the view taken by the American Supreme Court in the last case, runs parallel to the principles laid down by this Court in *Naresh Shridhar Mirajkar* case (supra).

138. In the present case, it is necessary to maintain the discipline of the court which is not only trying the case of the appellant but a large number of other cases which were getting

A delayed by the presence of a large number of supporters.

139. The appellant is claiming that his right to a public trial has been vitiated by the court being set up inside the jail. The State must demonstrate that: (a) nobody is being denied entry to the court room as long as they agree to the regular security B checks and (b) there is a clear and logical reason as to why the case was transferred from the Siwan courthouse to the Siwan Jail.

140. The second argument of the appellant is that the C notification was not made available to him on time and therefore the proceedings are void. In *Managing Director, ECIL, Hyderabad etc. etc. v. B. Karunakar etc. etc.* (1993) 4 SCC 727 a Constitution Bench took the view that before an employee is punished in a disciplinary enquiry, a copy of the enquiry report D should be furnished to him (i.e., wherever an enquiry officer is appointed and he submits a report to the Disciplinary Authority). It was held that not furnishing the report amounts to denial of natural justice. At the same time, it was held that just because it is shown that a copy of the enquiry officer's report is not E furnished, the punishment ought not be set aside as a matter of course. It was directed that in such cases, a copy of the report should be furnished to the delinquent officer and his comments obtained in that behalf and that the court should interfere with the punishment order only if it is satisfied that there has been F a failure of justice. (see para 25 of *State Bank of Patiala* (supra).

141. Therefore, to vitiate the entire trial on the ground that the notification was not sent to the appellant in time would not be in the interest of justice, and the High Court was correct in G ordering that a copy of the notification be supplied to the appellant.

142. On analysis of the provisions of law and the leading judgments which all in one voice say that in all civilized countries governed by the rule of law, all criminal trials have to be public H

trials where public and press have complete access. A

143. Public access is essential if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice.

144. Publicity is the authentic hallmark of judicial B functioning distinct from administrative functioning. Open trial serves an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Public trial restores the balance in cases when shocking crime occurs in the society. C

145. People have inherent distrust for the secret trials. One of the demands of the democratic society is that public should know what goes on in court while being told by the press or what happens there, to the end that the public may judge D whether our system of criminal justice is fair and right. Criminal trial is a public event. What transpires is a public property. Therefore, I have no difficulty in concluding that open trial is the universal rule and must be scrupulously adhered to. The right to public trial has also been recognized under section 327 of E the Code.

146. The importance of public trial in a democratic country governed by rule of law can hardly be over emphasized, but at the same time I cannot overlook the fact that primary function of the judiciary is to do justice between the parties which bring F their causes before it. Therefore, it is difficult to accede to the proposition that there cannot be any exception to the universal rule that all cases must be tried in open court. In a case of extraordinary nature, the universal rule of open trial may not be adhered to. This is the settled legal position crystallized by a G three-Judge Bench of this court in *Kehar Singh* case (supra). The High Court looking to the exceptional and extraordinary circumstances can take such a decision and no personal hearing is warranted before taking such a decision.

H

147. The test as laid down by this Court in *Kehar Singh's* case (supra) is whether public could have reasonable access to the court room. The court noted:

> "It may now be stated without contradiction that jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court. There should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court house. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice."

148. The question arises – whether the present case would fall in the category of those extraordinary or exceptional cases where universal rule of open trial can be given a go-bye.

149. It is alleged by the learned counsel appearing for the State that the appellant is involved in more than forty criminal cases. In the counter affidavit filed by the State it is mentioned that a reign of terror has been created by the appellant and his 'private army' in the last two decades is beyond imagination. Some of the notorious crimes committed by the appellant and his gang of criminals and the extent to which he has been interfering with the administration of justice, has been enumerated in detail in the counter affidavit.

150. During the raid conducted on 16.03.2001 in the house of the appellant, the appellant and his private army fired upon the raiding party and burnt the vehicles of the Deputy Inspector General of Police, Saran Range, District Magistrate Siwan and Superintendent of Police Siwan. These criminals fired more

than 100 rounds of ammunition from arms including AK 47 and AK 56 etc. In that firing, one constable was killed and several constables were injured. There are innumerable cases of the same kind in which the appellant is directly involved.

151. It is also stated in the counter affidavit that prior to the constitution of the Court in the jail premises, when the appellant was remanded to Siwan Jail in various criminal cases from time to time, he never co-operated and got himself produced in the concerned court, situated only about one kilometer away from Siwan Jail, on the dates fixed for his appearance. A large number of advocates and press people have attended the hearings and they have been regularly reporting this matter in the press.

152. In this case though the trials are taking place in jail but in fact no real prejudice has been caused to the appellant. All 38 counsel of the appellant, public and press people are permitted to remain present during the court proceedings. The court proceedings were regularly reported in the Press.

153. I would like to reiterate my main findings on following issues as under:-

I. Initially the copy of the notification was not given to the appellant but on the directions of this court the same was made available to the appellant. So there is no surviving grievance of the appellant as far as this aspect of the matter is concerned.

II. The decision to hold the trials of cases of the appellant in jail was taken in pursuance to the notification dated 20.5.2006 issued by the High Court of Patna. The State Government issued two notifications on 7th June, 2006 in pursuance to the notification of the High Court dated 20.5.2006. It became imperative for the State to issue the said notification because the new venue of the trial, i.e.,

A Siwan Jail was not within the control of the High Court.

III. I hold that these three notifications, one issued by the High Court dated 20.5.2006 and two issued by the State Government on 7.6.2006 are valid and were issued in consonance with the provisions of law.

IV. The High Court in view of the extraordinary facts and circumstances of a particular case is empowered to change the venue of the pending case/trial without hearing the appellant and this would not violate appellant's fundamental rights under Articles 14 and 21 or any other provision of the Constitution. This controversy is no longer *res integra* and is fully settled in view of the judgment of this court in *Kehar Singh's* case (supra).

V. In the instant case apart from appellant's 38 lawyers, the public and the press had access to the court proceedings. The Siwan Jail is only one kilometer from the Siwan Court. The court proceedings were regularly reported in the press. So in the instant case no real prejudice has been caused to the appellant.

F 154. I accept the main argument of the learned counsel of the appellant and reiterate that universal rule as recognized in all civilized countries governed by rule of law is that the criminal trial should be a public trial or open trial but in exceptional cases there can be deviation from the universal rule in the larger public G interest. The case in hand would fall in the category of those extraordinary and exceptional cases where in the interest of justice it became imperative to shift the venue of the trials for the reasons stated in the preceding paragraphs.

H 155. On consideration of the totality of the facts and

circumstances, this appeal lacks merit and is accordingly dismissed. A

156. Before parting with the case, I would like to place on record my deep sense of appreciation for the able assistance provided by the learned counsel for the parties. B

DR. MUKUNDAKAM SHARMA, J. 1. I have had the privilege of perusing the considered judgment of my esteemed brother Justice Dalveer Bhandari. However, in view of the fact that the present appeal involves several important and wide-ranging questions of law, I wish to record my own reasons for C the same, while, in essence, concurring with the conclusions arrived at by my learned brother. I may, however, add that since in the main judgment detailed facts have been delineated, I refrain myself from repeating the same, but refer only to those basic facts as would help in appreciating the issues discussed D hereinafter.

2. Main challenge in this appeal as it appears from the arguments advanced is to the legality and the validity of the three notifications one of which was issued by the Patna High Court on 20.05.2006 and the other two notifications dated 07.06.2006 were issued by the Government of Bihar. E

3. The appellant, who was a Member of Parliament from Siwan Lok Sabha Constituency, being aggrieved by the issuance of the aforesaid notifications filed a writ petition in the F High Court of Patna wherein he challenged the legality and validity of the aforesaid three notifications.

4. The appellant was arrested in connection with the Siwan P.S. Case No. 8 of 2001 and was remanded to judicial custody G on 13.8.2003 and he continued to remain in custody till 18.02.2005 till he was granted bail by the Patna High Court on 10.02.2005. A number of other cases came to be lodged against him and he was re-arrested and detained in Beur Jail, Patna under the provisions of the Bihar Control of Crimes Act, H

A 1981. Though the aforesaid order of detention was set aside, still the appellant continued to remain in custody in connection with other cases that had been lodged against the appellant.

5. The notification dated 20.05.2006 notified the decision of the Patna High Court that the premises of the District Jail, B Siwan would be the place of sitting of the Court of Session for the Sessions Division of Siwan for expeditious trial of sessions cases pending against the appellant namely Md. Shahabuddin. By issuing the other two notifications dated 07.06.2006, the Government of Bihar directed that the Court of Additional C District and Sessions Judge of Siwan, Sessions Division would hold its sitting inside the jail premises of District Jail, Siwan for trying the cases relating to the appellant herein. By issuing the third notification dated 07.06.2006, the Government of Bihar in exercise of power conferred under Section 11 of the Code of D Criminal Procedure (for short 'the CrPC') and in consultation with the Patna High Court ordered the establishment of a Court of Judicial Magistrate of First Class inside the District Jail, Siwan for holding its sitting for the trial of cases pending against the appellant. On issuance of the aforesaid notifications dated E 07.06.2006, the venue for holding the trial of the cases pending against the appellant was shifted to the premises of the District Jail, Siwan.

6. The appellant had earlier challenged and assailed the F legality and validity of the aforesaid notifications in the High Court of Patna by filing a Writ Petition. It was submitted on behalf of the present appellant before the High Court that the provisions of Section 9(6) of the CrPC do not empower the High Court to transfer the pending cases although such power might or could be exercised with regard to the newly instituted cases. G It was also submitted that since the State Government has no power and jurisdiction to exercise powers under Section 9(6), therefore, the notification issued by the State Government exercising powers under Section 9(6) by way of establishing a Sessions Court in District Jail, Siwan is without jurisdiction and H

violative of Articles 14 and 21 of the Constitution of India. It was next submitted that the rule of 'audi alteram partem' is applicable to transfer of any case to any court to which provisions of Section 407 of CrPC would apply. It was further submitted that since the power of transfer of a case is a judicial power, an opportunity of hearing should have been afforded to the appellant before exercising such powers and as the aforesaid notifications were issued without doing so, the said notifications were illegal, without jurisdiction and in violation of the principles of natural justice. It was further submitted that the expeditious hearing of cases is a concomitant of the principles of administration of justice and, therefore, the same could not be a valid criteria for transfer of cases and that also cannot be done in relation to one particular individual. It was also submitted that the trial held in the District Jail, Siwan cannot be said to be an open court and, therefore, there was violation of Section 327 of the CrPC as also violation of the right to have a fair and open trial.

7. All the aforesaid submissions made by the appellant before the High Court were considered by the High Court and by its impugned judgment and order dated 14.08.2007, the same were held to be without merit and consequently, the writ petition was dismissed.

8. Being aggrieved by the aforesaid judgment and order passed by the High Court, the present appeal was preferred by the appellant in which notice was issued. The learned counsel appearing for the parties argued the case in extenso and in conclusion of the same the judgment was reserved.

9. Mr. Ram Jethmalani, learned senior counsel appearing for the appellant made extensive arguments during the course of which he even travelled beyond the pleadings filed in the writ petition to which reference shall be made during the course of present discussions on the various arguments raised before this Court. On the basis of the pleadings and the arguments advanced and on consideration thereof, the following legal

A issues arise for consideration which have been dealt with hereinafter: -

(a) The scope and ambit of the power under Section 9(6) and Section 11 of CrPC.

B (b) While issuing the notification dated 20.05.2006, the High Court had no intention of creating a jail sessions court in exercise of its administrative power under Section 9(6) of CrPC because it left the same to be done by the State Government. C Further, the notification dated 07.06.2006 was void as the Governor of Bihar could not have exercised power under Section 9(6) of CrPC as such power lies exclusively with the High Court.

D (c) The notification dated 20.05.2006 was not supplied to the appellant and the same was not published in the Gazette and, therefore, the said notification is invalid.

(d) If issues of the aforesaid nature were neither raised E earlier in the writ petition nor argued in the writ petition nor decided in the writ petition and not also taken in the SLP, whether the same could be argued as a question of law on the ground that such legal issues could be amended at any time.

F

(e) Before issuing a notification was it necessary to provide an opportunity of being heard to the accused in compliance of the rule of 'audi alteram partem' which is an embodied rule under Section G 9(6).

(f) Section 9(6) of CrPC does not empower the High Court to transfer any pending case but it covers only new cases.

H (g) Reason for issuance of notification being only for

expeditious disposal which is even otherwise a necessary concomitant of administration of justice, the notification is void as no special reason to exercise power under Section 9(6) was spelt out and also particularly when the said power is exercised in the cases of only one individual.

(h) A trial conducted inside the jail premises, not being an open court, violates Section 327 of CrPC as well as Articles 14 and 21 of the Constitution.

(i) Whether mention of the words 'Civil Code' and 'Civil Court' in the notifications issued by the State vitiates the notifications.

10. First of all, let me deal with the scope and ambit of the power under Section 9(6) and Section 11 of CrPC. Since reference was also made by the counsel appearing for the appellant to Section 407 of CrPC, it would be appropriate to extract the aforesaid provisions in order to appreciate the issues raised before us. Section 9 (6) of the CrPC reads as follows: -

"9. Court of Session.

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(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein."

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A Section 11 of the CrPC reads as follows:

"11. Courts of Judicial Magistrates.

(1) In every district (not being a metropolitan area), there shall be established as many, Courts of Judicial
B Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

[Provided that the State Government may, after
C consultation with the High Court, establish, for any, local area, one or more Special Courts of Judicial Magistrate of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other court of Magistrate
D in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.]

(2) The presiding officers of such Courts shall be
E appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning
F as a Judge in a Civil Court."

Section 407 of the CrPC reads as follows:

"407. Power of High Court to transfer cases and appeals.

G (1) Whenever it is made to appear to the High Court-

(a) That a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) That some question of law of unusual difficulty is likely
H to arise; or

(c) That an order under this section is required by any provision of this Code, or will tend be the general convenience of the parties or witnesses, or is expedient for the ends of, justice,it may order- A

(i) That any offence be inquired into or tried by any court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence; B

(ii) That any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; C

(iii) That any particular case be committed for trial of to a Court of Session; or D

(iv) That any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower court, or on the application of a party interested, or on its own initiative: E

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(8) When the High Court orders under sub-section (1) that a case be transferred from any court for trial before itself, it shall observe in such trial the same procedure which that court would have observed if the case had not been so transferred." F

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11. Mr. Jethmalani, after referring to the aforesaid provisions, submitted that the power to transfer cases from one sessions division to other sessions division could be made only in respect of the pending cases of which cognizance has been H

A taken and evidence recorded only after resorting to the principles of audi alteram partem, that is, upon opportunity of hearing having been given to the party as the interest of the party to have a fair and open trial is involved in the case and consequently such a power could be exercised only under the B provisions of Section 9(6) of CrPC which could only be done after hearing the parties. Mr. Jethmalani also submitted that if the administrative power of the High Court is construed as applicable to a pending case and without any duty of affording an opportunity of hearing, Section 9(6) should be considered C as constitutionally invalid being opposed to Articles 14 and 21 of the Constitution of India. He also submitted that the power under Section 9(6) could not have been exercised either by the High Court or by the State Government and also that even if it is held that the High Court has such a power vested in it under D Section 9(6), the same could be exercised only in consonance with the intention of the legislature gathered from the provisions. Another connected issue which was raised was whether before issuing a notification under Section 9(6), was it necessary to provide an opportunity of hearing to the appellant in compliance with the rule of audi alteram partem which is embodied in E Section 9(6) of CrPC. Since both the aforesaid issues are interconnected and interrelated, both the issues are taken up together for consideration.

12. The aforesaid submissions of Mr. Jethmalani were F vehemently refuted by Mr. Ranjit Kumar, learned senior counsel appearing for the State of Bihar and also by Mr. P.H. Parekh, learned senior counsel appearing for the Patna High Court. They extensively relied upon the judgment rendered by this Court in the case of *Kehar Singh v. State (Delhi Administration)* G reported in 1988 SCC (3) 609, wherein the issue of change of venue of the trial from the Patiala House Court, Delhi to the Special Court established in the Tihar Jail, Delhi had come up for consideration.

13. This Court in the aforesaid case was also called upon H

to interpret Section 9 of the CrPC and after referring to the various provisions of the CrPC and the provisions of Section 9, it was held that Section 9(6) is divided into two parts – the first part thereof confers power on the High Court whereas the second part thereof endows power on the Court of Sessions.

14. A bare reading of the aforesaid provisions of Section 9(6) explicitly indicates that the power conferred on the High Court is the power to determine the place or places where the Court of Session shall ordinarily hold its sittings. The second part which immediately follows the first part opens with the word "but", thereby carving out an exception to the general rule that the venue of the Court of Session shall be the place notified by the High Court. That the power of the Court of Session to fix the venue is an exception to the aforesaid general rule is also indicated by the use of the word "ordinarily" in the first part of Section 9(6) of CrPC. Thus, by virtue of the provision contained in the second part of Section 9(6), the Court of Session is endowed with the power to hold its sittings at any place in the sessions division other than that notified by the High Court. However, being an exception, the CrPC specifically mandates in the second part for observance of a special procedure contemplating compliance of the rule of audi alteram partem and also for obtaining the consent of the parties before the Court of Session may hold its sittings at a place other than the place or places notified by the High Court. Being an exception to the general rule, the power of the Court of Session to change the venue of a trial is circumscribed and could be exercised by the Court of Session only on the fulfillment of the aforesaid condition and only on the ground that such change in the venue of trial will tend to the general convenience of the parties and witnesses and cannot be exercised for any other purpose or on any other ground. Moreover, the said power can be exercised only with reference to a particular case. The expression "particular case" as used in the second part of Section 9(6) connotes a single or specific case as opposed to a bunch or class of cases. Being an exception to the general

A rule, the conditions, subject to the fulfilment of which the power to shift the venue of the trial may be exercised by the Court of Session, have to be strictly construed. Thus, where the conditions specified under the second part of Section 9(6) of the Code are not complied with, the Court of Session has no B power to shift the venue. In such a case, the power of shifting the venue continues to lie with the High Court.

15. In the present case, the essential conditions ingrained in the second part of Section 9(6), as set out above, are not applicable inasmuch as neither inconvenience to the parties or C witnesses was ever perceived or recorded by the Court of Additional Sessions Judge nor was the venue of trial shifted for a particular case. On the contrary, it was shifted for the entire class of cases that were pending against the appellant. In light of the aforesaid, it may be said that the power to change the D venue of the trial of cases pending against the appellant, was exercisable by the High Court and not by the Court of Session. Furthermore, a careful reading of Section 9(6) reveals that the second part expressly requires the Court of Session to afford the prosecution and the accused an opportunity of hearing and E to obtain their consent beforehand. It is, therefore, not a case falling under second part of Section 9(6) but is a case falling under first part of Section 9(6) of CrPC.

16. Learned Senior Counsel appearing for the appellant F also contended that there was a "transfer" of cases pending against the appellant from the Sessions Court, Siwan to Jail Sessions Court, Siwan and as such there was a case of exercise of power under Section 407 of CrPC by the High Court which is a judicial power and thus compliance with the rule of G audi alteram partem was necessary. In my considered view, the argument is entirely misplaced as Section 407 of the Code deals with the power of the High Court to "transfer" cases and appeals. The key word in this section is the word 'transfer', which essentially consists of two steps: (a) removing a case or class of cases from the jurisdiction of the court where it/they H

is/are pending trial, and (b) putting it/them under the jurisdiction of another court (whether of equal or superior jurisdiction) for adjudication. Thus, every transfer involves two different courts. By issuing the said notification, the High Court cannot be said to have transferred the cases pending against the appellant, for the said notification simply notified the premises of District Jail, Siwan, to be the place of sitting for holding the trial of cases pending against the appellant. The notifications did not, in any manner, affect or abridge the jurisdiction of the Court of Session, Siwan, to try those cases. Thus, there was a shift simpliciter in the venue of the trial, without there being anything more. In such circumstances, the present case cannot be said to be a case of "transfer" to which the provisions of Section 407 are attracted.

17. Now what remains to be examined is whether the rule of audi alteram partem should have been complied with when the High Court notified a shift in the venue of the trial. The power of the High Court under section 9(6) to notify a particular place or places where the Court of Session shall ordinarily hold its sitting is an administrative power unlike the power of the Court of Session under second part of section 9(6) which is judicial in nature. Being so, the High Court was under no obligation to observe the rule of audi alteram partem. The said power undoubtedly is an administrative power exercisable by the High Court. This position was also made clear by the decision of this Court in *Kehar Singh* (supra) wherein it was observed as follows:

> *"171.* The argument that the first part of Section 9(6) should be read along with the second part thereof has, in the context, no place. The first part provides power to the High Court. It is an administrative power, intended to further the administration of justice. The second part deals with the power of the Court of Session. It is a judicial power of the court intended to avoid hardship to the parties and witnesses in a particular case. One is independent of and

A unconnected with the other. So, one should not be confused with the other. The judicial power of the Court of Session is of limited operation, the exercise of which is conditioned by mutual consent of the parties in the first place. Secondly, the exercise of that power has to be
B narrowly tailored to the convenience of all concerned. It cannot be made use of for any other purpose. This limited judicial power of the Court of Session should not be put across to curtail the vast administrative power of the High Court."

C 18. The intention of the legislature for providing an opportunity of hearing in the matters of transfer of criminal cases could be gathered from the language used in the provision wherein the legislature desired that there should be an opportunity of hearing that is so specifically stated in the
D language itself and where the legislature desired that there should be a power of the High Court to fix the place or places of sittings of a Sessions Court for holding its trial, it has so mentioned explicitly by excluding the rules of natural justice from its ambit thereby excluding the principles of *audi alteram*
E *partem.*

19. In *Union of India v. Col. J.N. Sinha,* (1970) 2 SCC 458, at page 460, this Court observed as follows:

F "8. Fundamental Rule 56(i) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this
G "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *A.K.*
H *Kraipak v. Union of India* "the aim of rules of natural justice

is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". *It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."*

(emphasis supplied)

20. In *Haradhan Saha v. State of W.B.* (1975) 3 SCC 198, at page 208, a five judge Bench of this Court reiterated the aforesaid view as follows:

"30. Elaborate rules of natural justice are excluded either expressly or by necessary implication where procedural provisions are made in the statute or where disclosure of relevant information to an interested party would be contrary to the public interest. *If a statutory provision excludes the application of any or all the principles of natural justice then the court does not completely ignore the mandate of the legislature.* The court notices the distinction between the duty to act fairly and a duty to act judicially in accordance with natural justice. The detaining authority is under a duty to give fair consideration to the

A representation made by the detenu but it is not under a duty to disclose to the detenu any evidence or information. The duty to act fairly is discharged even if there is not an oral hearing. Fairness denotes abstention from abuse of discretion."

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(emphasis supplied)

21. It has been the consistent view of this Court that an administrative order when passed by a competent authority may not necessarily be required to be issued only after due C compliance with the principles of natural justice. Reference in this regard may be made to the decisions of this Court in *Olga Tellis v. Bombay Municipal Corporation,* (1985) 3 SCC 545; *Carborundum Universal Ltd. v. Central Board of Direct Taxes,* (1989) Supp. 2 SCC 462; and *Ajit Kumar Nag v. G. M. (PJ), Indian Oil Corp. Ltd.,* (2005) 7 SCC 764. D

22. The second part of Section 9(6) of the CrPC expressly requires the Court of Session to afford the prosecution and the accused an opportunity of hearing and to obtain their consent beforehand whereas there is no such stipulation under first part E of Section 9(6). The omission of such a requirement in case of the High Court pertaining to first part of sub-section (6) of Section 9 is to be construed as a conscious decision on the part of the legislature for, it intended to exclude such a requirement when such power is to be exercised by the High F Court.

23. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute G is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal*

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Properties & Industries Ltd. v. State of Haryana (2009) 3 SCC 553. A

24. Further, it is a well established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is B enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such C cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision.

25. On a detailed and proper interpretation of Section 9(6) D of CrPC there can be only one opinion that it was not necessary for the High Court to observe or comply with the rule of audi alteram partem before notifying a shift in the venue of the trial, for such power of the High Court under Section 9(6) of the CrPC to notify a particular place or places where the Court of Session E shall ordinarily hold its sitting, is an administrative power unlike the power of the Court of Session under second part of Section 9(6) which is a purely a judicial power in nature. Consequently, the High Court was under no requirement to follow and to comply with the rule of audi alteram partem before issuing the F notification dated 20.05.2006.

26. As stated hereinbefore, a feeble attempt was made to argue the constitutional validity of Section 9(6). Significantly, no such plea was ever raised at any stage and even such G ground was not raised in the memo of appeal. An important question of constitutional validity of a provision in a Central Act cannot be permitted to be raised for the first time at the stage of final hearing. The Union of India is also not a party in the present proceeding and in its absence no such issue could be allowed to be raised, argued and decided. H

A 27. Now, I come to Section 11 of the CrPC which makes it explicitly clear that a Court of Judicial Magistrate could be established by the State Government after consultation with the High Court. The State Government is vested with the power, after due consultation with the High Court, to create or to B establish for any local area one or more Judicial Magistrate Court of the First Class so as to try any particular case or particular class of cases and that where such special court is established, no other court be created or established for such a case or any class of cases for the trial of which such a Court C of Judicial Magistrate has been established.

28. In terms of Section 9(6) and Section 11 of the CrPC, the venue of Court of Session for holding of trial of the cases pending against the appellant was shifted to, and Court of Judicial Magistrate First Class was established in, the District D Jail, Siwan.

29. It is the case of the appellant that while issuing the notification dated 20.05.2006, the High Court had no intention of creating a jail Sessions Court in exercise of its administrative E power because it left the same to be done by the State Government and further that the notification dated 07.06.2006 was void as the Governor of Bihar could not have exercised power under Section 9(6) of the CrPC. He further submitted that the notification dated 20.05.2006 was not supplied to the F appellant and the same was not published in the Gazette and, therefore, the said notification was invalid.

30. The aforesaid submission of the learned senior counsel appearing for the appellant was strongly refuted by Mr. Ranjit Kumar, learned senior counsel appearing for the State G of Bihar and also by Mr. P.H. Parekh, learned senior counsel appearing for the High Court of Patna.

31. Mr. Ranjit Kumar specifically submitted that neither such plea was raised in the writ petition nor argued before the High H Court nor any such issue was raised before this Court and,

therefore, such an issue cannot be raised for the first time at the time of hearing of the present appeal. Mr. Jethmalani, however, tried to repel the aforesaid objection taken by Mr. Ranjit Kumar contending, inter alia, that the aforesaid issue being a legal one, the same could be amended and could be raised by him at any point of time.

32. I find force in the submissions of Mr. Ranjit Kumar, the learned senior counsel appearing for the State of Bihar that the issue which was sought to be raised about the non-publication of the notification in the official Gazette is a mixed question of law and fact and, therefore, the same should have been raised specifically in the writ petition and at least in this appeal petition. It also does not appear to us from the material available on record that such an issue was ever raised by the appellant before the High Court. Therefore, the issue being raised, for the first time, at the time of hearing of the case before us which, according to us, cannot be permitted to be raised for the first time for the simple reason that the issue being whether the notification dated 20.05.2006 was supplied to the appellant and the same was published in the Gazette or not, is not a pure question of law but a mixed question of law and fact. The said facts were required to be urged evidentially before the courts below. Unless such a factual foundation is available it is not possible to decide such a mixed question of law and fact. Therefore, such a mixed question of law and fact should not be allowed to be raised at the time of final hearing of appeal before this Court. [Reference in this regard may be made to a recent decision of this Court in *Shakti Tubes Ltd. v. State of Bihar,* (2009) 7 SCC 673]. However, in order to do complete justice to the parties the parties were called upon to place their additional documents, relevant to the issues involved, if any, which were accepted during the course of arguments.

33. On going through the records, it is clear that before issuance of the notification dated 20.05.2006, a bunch of correspondences had taken place among the different

A authorities. The Superintendent of Police, Siwan under his letter No. 1493 dated 08.05.2006 wrote to the District Magistrate, Siwan that more than 40 cases were pending against the appellant. In the said letter, it was also indicated that there were directions issued by the Patna High Court to dispose of the B cases expeditiously. It was further indicated that there was a serious danger to public peace during the presence of the appellant in the court premises due to the fact that his supporters and other co-criminals could attack the witnesses and that even the possibility of threat and attack on the Public C Prosecutor and the District Prosecuting Officer could not be ruled out. It was mentioned in the letter that besides that, since the appellant was wanted in many criminal cases, other criminal groups could attack him. It was also mentioned in the letter that since the appellant was a sitting MP and had a large number D of supporters, there was every possibility of the working of the other courts in District Court, Siwan being impaired for, his supporters could create disturbance during hearing and that there could be murder and other serious law and order problems during the hearing of the cases of the appellant.

E 34. The District Magistrate after receipt of the aforesaid communication concurred with the report of the Superintendent of Police, Siwan and wrote to the Home Secretary, Bihar requesting for necessary action for construction of court rooms in District Jail for trial of cases relating to the appellant. The F Law Secretary, Government of Bihar thereafter by his letter No. 361/C/2006 dated 09.05.2006 wrote to the Registrar General of the Patna High Court by enclosing a photocopy of the letters of the Superintendent of Police, Siwan and the District Magistrate, Siwan. He alleged that Md. Shahabuddin, the G appellant was a high profile MP of Siwan having criminal antecedents, reportedly facing prosecution in more than 40 cases. He also mentioned in his report that his physical production in the court during the trial may be a source of menace to the public peace and tranquility, besides posing a H great threat to the internal security extending to other

prosecution witnesses and other prosecutors. It was also indicated in the report that it may also have adverse impact on inside court working condition making the situation surcharged during the trial. He suggested that to promote efficient conducting of trial as also to strengthen its efficacy, the trial of the appellant be conducted by constituting a special court inside the District Jail, Siwan which, according to him, was an imperative need of the time. He therefore, suggested that the Patna High Court may be requested to constitute special courts for the trial of the appellant inside the District Jail, Siwan.

35. The aforesaid records were placed before the Registrar General of the Patna High Court who put up a note upon which the Chief Justice of the Patna High Court directed the matter to be put up before the Standing Committee. A list of Additional Sessions Judges for the trial of sessions cases and a list of Special Magistrates were also placed for consideration before the Standing Committee. Consequently, the matter was placed before the Standing Committee in its meeting held on 11.05.2006. The Agenda for the said meeting is reproduced hereunder:

> "Letters received from the Law Secretary, Government of Bihar regarding designation of Special Court of Session and Court of Judicial Magistrate First Class for expeditious trial of the cases pending against Md. Shahbuddin and for notifying Siwan Jail a place for shifting of Sessions Court and Magisterial Court inside the jail for trial of such cases."

36. In the aforesaid meeting of the Standing Committee, a decision was taken to the following effect:

> "Upon due deliberation and consideration of the letters received from the Law Secretary, regarding designation of Special Court of Session and Court of Judicial Magistrate, 1st Class for expeditious trial of cases pending against Md. Shahbuddin and for notifying the Siwan Jail for sitting of Sessions and Magisterial Courts inside the

A Siwan Jail for trial of such cases. It is resolved to designate one Court of Additional District and Sessions Judge as Special Court for trying the cases triable by the Court of Session and one Court of Judicial Magistrate for trying the cases triable by the Court of Magistrate, First Class. The B matter of posting of the Officers i.e. ADJ and Judicial Magistrate, First Class, the matter is placed before the Sub Committee which has been entrusted the transfer and posting under the Annual General Transfer. It is also resolved that the Siwan Jail premises be notified as a C place of sitting of Sessions Court and Magisterial Court under provisions of Section 9(6) of Criminal Procedure Code".

37. Subsequent thereto, another note was prepared by the Joint Registrar (Establishment) on 17.05.2006 which was D placed before the Registrar General in which it was pointed out that Section 9(6) of the CrPC related only to the Court of Session and not to the Judicial Magistrate and, therefore, a request was made to place the matter before the court for necessary orders. After obtaining the order of the Registrar E General and the Chief Justice of the Patna High Court to the aforesaid extent the matter was placed before the Standing Committee which in its meeting dated 18.05.2006 decided as under:

F "It is resolved that the minutes of the proceeding of the last meeting of the Standing Committee held on 11th May, 2006, be approved, with the only modification that in the last line of agenda item No. (4) after section 9 sub-section (6) "and Section 11 sub-section (1) of the Code of Criminal G Procedure, 1973, respectively" be added".

38. Pursuant to the aforesaid decision of the Standing Committee of the Patna High Court, the notification dated 20.05.2006 was issued by the Patna High Court which reads as follows :

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"In exercise of powers conferred under Sub section (6) of Section 9 of the Criminal Procedure Code, 1973, the High Court have been pleased to decide that the premises of the District Jail, Siwan will be the place of sitting the Court of Session for the Sessions Divisions of Siwan for the expeditious trial of Sessions cases pending against Md. Shahabuddin." A B

39. By letter No. 5137/Admn. (Appointment) dated 20.05.2006, Mr. Gyaneshwar Shrivastav, Additional District and Sessions Judge was designated as the Presiding Officer (Special Judge) constituted inside the District Jail, Siwan for the expeditious trial of sessions cases pending against the appellant. Similarly, by letter No. 5139, the Registrar General informed the Law Secretary that Patna High Court had been pleased to accept the proposal of the State Government for the establishment of a Special Court of Judicial Magistrate First Class inside the District Jail, Siwan for the expeditious trial of cases pending against the appellant. C D

40. The Registrar General under letter No. 5141 dated 20.05.2006 informed the Secretary, Department (Personnel) that the Patna High Court has been pleased to recommend the name of Sri Vishwa Vibhuti Gupta, Judicial Magistrate, First Class, Siwan, for his designation as Presiding Officer (Special Magistrate) of the Special Court of Judicial Magistrate, First Class being constituted to function inside the District Jail, Siwan for expeditious trial of cases pending against the appellant. E F

41. The Registrar General under his letter No. 5145 dated 20.05.2006 wrote to the Superintendent, Secretariat Press, Bihar, Gulzarbagh, Patna with a request to publish the notification issued under Section 9(6) of the CrPC in the next issue of the Bihar Gazette. The issuing section was instructed to issue the same at once on the very same day under a sealed cover as per the direction of the Registrar General. However, the said notification which was directed to be published in the next issue of the Bihar Gazette came to be G H

published in Part – I of the Bihar Gazette dated 16.08.2006 along with other notifications of various dates. Thereafter, the Law (Judicial) Department, Government of Bihar, Patna published the two Notifications bearing No. 1452 dated 07.06.2006 with S.O. 80 and 82 in the Bihar Gazette (Extra Ordinary Edition) which were assailed by the appellant. The Personnel Department also issued the Notification Nos. 5556 and 5557 dated 12.06.2006 regarding appointment of Presiding Officer for the said two Special Courts.

42. It is therefore conclusively established that the High Court took all necessary steps to get the notification issued and published in the official gazette. If however the Government Press took some time to get the notification published in the official gazette, the High Court cannot be blamed for it nor could the notification be declared to be void particularly when it was so published in the official gazette, as it is established from the records placed before us, although after some delay. The appellant also failed to prove before us and had also failed to plead before the writ Court that the said notification issued by the High Court is void on the ground of non-publication of the same in the official gazette. The appellant has not even pleaded such ground in the writ petition or in the Memorandum of Appeal nor placed any evidence before us to show that any effective order which was prejudicial to him was passed in any of the criminal cases during the aforesaid period. Instead, he took part in all the proceedings without any protest and now at the time of argument is making an effort to take up such issues, which again involve questions of fact, and therefore, cannot be allowed to be raised only at this stage.

43. By issuing one of the aforesaid two impugned notifications the State of Bihar, in exercise of its powers conferred under Section 11 of the CrPC and in consultation with the Patna High Court, was pleased to establish a Court of Judicial Magistrate, First Class inside the District Jail, Siwan to hold its sitting inside the jail premises for the trial of cases

pending against the appellant in the Court of Judicial Magistrate, First Class. The said notification was challenged by the appellant on various grounds. But on consideration of the records of the case, I am satisfied that the impugned notification satisfies all the requirements and all the four corners as envisaged under Section 11 of the CrPC and, therefore, the said notification appears to us to be legal and valid inasmuch as, according to us, the same was issued by the competent authority and also in full compliance with the requirements and the safeguards provided in the said provisions.

44. So far the other notifications which were issued by the Government of Bihar are concerned, the same were issued on 07.06.2006 directing that the Court of Additional District and Sessions Judge of Siwan Sessions Division would now hold its sitting inside the District Jail, Siwan to try sessions cases pending against the appellant. The legality and validity of the same was challenged on the ground that the State Government has no power to issue such a direction under Section 9(6) and Section 11 of the CrPC. As already discussed hereinbefore that the power under Section 9(6) is vested in the High Court and in exercise of the said power the High Court had issued a notification on 20.05.2006 which was also published in the official Gazette. The subsequent notification issued by the State of Bihar appears to be a surplusage, which was issued for making available the jail premises for the purpose of holding the Sessions Court. The competent authority as envisaged under law having issued a notification for constituting and establishing a Sessions Court within the District Jail, Siwan, any further notification by the State Government making the jail premises available for the said purposes cannot be said to be illegal and void.

45. I am, therefore, of the considered view that there is no infirmity in establishing both the Special Courts i.e. the Court of Additional District and Sessions Judge to try sessions cases pending against the appellant and the Court of Judicial

A Magistrate, First Class to try the cases pending against the appellant in the Court of Judicial Magistrate, First Class, inside the premises of the District Jail, Siwan as the notification under Section 9(6) was issued in accordance with the provisions of law by the High Court of Patna and subsequent notification was
B also issued by the Government of Bihar in consultation with the Patna High Court.

46. Another issue which was raised by the learned senior counsel appearing for the appellant was that the notification dated 07.06.2006 issued by the State Government apart from
C referring to the provisions of Section 9 of the CrPC also refers and relies upon the provisions of Section 14 (1) of the Bengal, Assam and Agra Civil Courts Act, 1887. It was submitted that since the aforesaid reference was made in the notification, the same pinpoints to the fact of non-application of mind by the
D competent authority and on that ground the notification was illegal and void.

47. I am unable to accept the aforesaid submission for the simple reason that if the notification quotes a wrong section and
E refers to a wrong provision, the same cannot be held to be invalid if the validity of the same could be upheld on the basis of some other provision. In *N. Mani v. Sangeetha Theatre,* (2004) 12 SCC 278, at page 279, a three judge Bench of this Court succinctly observed as follows:

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> *"9.* It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power
G does exist and can be traced to a source available in law."

48. It is a well-established law that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision
H if it can be shown to be within its power under any other

provision or rule, and the validity of such impugned order must be judged on a consideration of its substance and not its form. The principle is that we must ascribe the act of a public servant to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, this Court will always rely upon Section 114 Ill. (e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. [Reference in this regard may be made to the decisions of this Court in *P. Balakotaiah v. Union of India,* AIR 1958 SC 232; *Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer,* (1966) 1 SCR 120; *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India,* (1992) 2 SCC 343; *B.S.E. Brokers' Forum, Bombay v. Securities And Exchange Board of India,* (2001) 3 SCC 482]

49. Although the State Government could not have exercised powers under the provisions of Sections 13 and 14 (1) of the Bengal, Assam and Agra Civil Courts Act, 1887 for making available the jail premises for the purpose of holding the Sessions Court, the provisions of the CrPC would be applicable under sub-section (6) of Section 9 of the CrPC. The aforesaid contention, therefore, is also without merit and is rejected.

50. The next contention which was raised by the learned senior counsel appearing for the appellant was that the aforesaid power and jurisdiction could not be exercised by the High Court in respect of the trials relating to one particular individual pending in one Sessions Division. It was further contended that if at all such power was exercisable, it could be exercised only with regard to new cases. If the power could be exercised by the High Court for establishing a new court, the same could be created for a group of cases or a class of cases. There were about 40 cases pending against the

A appellant and they were being tried in different courts creating difficulties for conducting the cases at various courts both for the prosecution as also to the appellant. That also created a number of problems as mentioned in the letter dated 08.05.2006 of the Superintendent of Police, Siwan which was
B affirmed by the District Magistrate. The Law Secretary, Government of Bihar had also affirmed the said reasons. Therefore, in order to dispose of all the cases pending against the appellant most expeditiously at one place without being in any manner disturbed by the factors mentioned in the letter of
C the Superintendent of Police could be said to be a reasonable ground.

51. Expeditious disposal of cases is also a factor and a necessary concomitant to administration of justice and the hallmark of fair administration of justice. Since the venue of the
D trial of a group or a class of cases was shifted by establishing and constituting a Court within the District Jail, Siwan, the same cannot be said to be void or invalid in any manner. The aforesaid issue, therefore, stands answered accordingly along with the issue which was argued by the learned senior counsel
E appearing for the appellant that reason for issuance of notification being only the expeditious disposal of the cases pending against the appellant which is even otherwise a necessary concomitant of the administration of justice, the notification was void as no special reason to exercise such
F power under Section 9(6) of the CrPC is spelt out and also particularly when the said power is exercised in the cases of only one individual. I have dealt with the aforesaid issue as well and have given my reasons for rejecting the aforesaid submission for, according to me, the said submission is devoid
G of any merit.

52. The correspondences spell out as to why the trial of all the cases of the appellant should be held at one place. The reasons given in the aforesaid communications were sufficient to arrive at a conclusion which was rightly done by the High
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Court to have the trial of all the cases of the appellant pending against him. So far the contention as to whether or not such power as envisaged under Section 9(6) of the CrPC could be exercised in a pending case, there is no reason as to why the said power should not be applicable even to pending cases and, therefore, the said contention is also without any valid substance.

53. The next issue which arises for consideration is based on the submissions of the learned senior counsel appearing for the appellant is that a trial must be conducted in an open court and the constitution of a special Sessions Court in the jail premises of District Jail, Siwan amounts to violation of Articles 14 and 21 of the Constitution of India as also of the provision contained in Section 327 of CrPC. This issue was extensively argued by the learned senior counsel appearing for the appellant. However, learned senior counsel appearing for the respondent vehemently repelled the aforesaid submission and submitted that the grievance of the appellant with regard to a fair trial not being meted out to him in the jail is unfounded. It was further submitted that only because the trial is being conducted against the appellant in the jail premises, it cannot be said that the same was not open and public.

54. According to Black's Law Dictionary (6th Edition, 1990, p. 1091), an "open court" means a court to which the public have a right to be admitted. This term may mean either a court which has been formally convened and declared open for the transaction of its proper judicial business, or a court which is freely open to spectators. In *R. v. Denbigh Justices,* (1974) 2 All ER 1052, 1056 (QBD), it was held that the presence or absence of the press is a vital factor in deciding whether a particular hearing was or was not in the open Courts. It was further held that if the press has been actively excluded, the hearing is not in the open Courts. On the other hand, even if the press is present, if individual members of the public are refused admission, the proceedings cannot be considered to go on in open Courts. In my considered view an 'open court' is

A a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings. Although the general rule still remains that a trial must be conducted in an open court, it may sometimes become B necessary or rather indispensable to hold a trial inside a jail. Considerations of public peace and tranquility, maintenance of law and order situation, safety and security of the accused and the witnesses may make the holding of a trial inside the jail premises imperative as is the situation in the present case. The C legal position as regards the validity of a trial inside the jail premises is well settled. In *Kehar Singh* case (supra) Shetty J. in his concurring judgment, after going through a number of authorities, on this issue observed thus:

> D "45. It may now be stated without contradiction that jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court. There E should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding F Judge must have full control of the Courthouse. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice."

G 55. It is evidently clear from the aforesaid decision that a trial inside a jail does not stand vitiated solely because it is conducted inside the jail premises. However, at the same time, there must be compliance of the provisions contained in Section 327 of the CrPC which guarantees certain safeguards to ensure that a trial is an open trial. Section 327 of CrPC is reproduced as hereunder:

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"327. Court to be open.

(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court."

56. Learned counsel appearing for the respondent brought to our notice that on the direction of the Presiding Judge, a general notice inviting the public to witness the trial of the appellant was affixed on the jail gate, the appellant was represented by 38 advocates who regularly attended the court in jail premises, the day-to-day proceedings of the court were reported in the newspapers daily and that the entry was allowed to all persons after entering their personal details into a register

A maintained by the jail authorities. Furthermore, a retired judicial officer who was a relative of the appellant had attended all the proceedings of the court. All the aforesaid facts have not been controverted by the appellant. We have also not been shown or made aware of any fact that any permission sought for by B any intending person to witness the proceedings was refused by the authority. As a matter of fact, presence of a press person in the audience present on one occasion at least was vehemently objected to by the appellant himself. In view of the aforesaid, I find that there was sufficient compliance with C Section 327 of the CrPC.

57. After referring to the decision of this Court in the case of *West Bengal v. Anwar Ali Sarkar,* AIR 1952 SC 75, the learned senior counsel appearing for the appellant assailed the impugned notifications on the ground that the object of D expeditious trial of cases does not amount to a valid criterion for shifting the venue of the trial. In my considered opinion, the aforesaid decision has no application to the present case as in *Anwar Ali* case (supra) the West Bengal Special Courts Act, 1950 was enacted which provided for differential treatment for E the trial of criminals in certain cases and for certain offences. On the contrary, in the present case, the notifications issued by the Patna High Court and the Government of Bihar simply shifted the venue of the trial of cases pending against the appellant in the different courts to the premises of the District F Jail, Siwan. I wish to point out that it is well settled law that a classification may be reasonable even though a single individual is treated as a class by himself, if there are some special circumstances or reasons applicable to him alone and not applicable to others. The reasons which necessitated the G shifting of the venue of the trial of cases pending against the appellant only have already been discussed hereinbefore. It must be noted that no special procedure was prescribed and the cases were to be conducted and disposed of in accordance with the ordinary criminal procedure as prescribed under the H CrPC. I am, therefore, of the considered opinion that no

prejudice was caused to the appellant while shifting the cases to the Special Courts situated inside the premises of District Jail, Siwan. Therefore, I am of the considered view that there is no violation either of Section 327 or of Articles 14 and 21 of the Constitution. A

58. In light of the aforesaid discussion, although aforesaid issues were raised before us for challenging the legality and the validity of the three notifications which were issued by the respondents for holding the trial of cases pending against the appellant in one Sessions Division and for constituting and establishing two Special Courts i.e. the Court of Additional District and Sessions Judge to try sessions cases pending against the appellant and the Court of Judicial Magistrate, First Class to try the cases pending against the appellant in the Court of Judicial Magistrate, First Class, within the premises of the District Jail, Siwan, I find no merit and force in the submissions of the learned senior counsel appearing for the appellant. B C D

59. Having held, thus, in the foregoing paragraphs of this judgment, all the issues that were framed in paragraph 9 above, on the basis of the arguments of the parties stand discussed and answered. E

60. That being the position, I uphold the legality and the validity of all the three notifications. Consequently, the trial can proceed as against the appellant in all the pending cases and it would continue to be held in terms of the notifications in accordance with law. F

61. In view of the foregoing, the order passed by the High Court is upheld and consequently the appeal filed by the appellant stands dismissed. The parties are left to bear their own costs. G

R.P. Appeal dismissed.

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