
(1991) 09 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 513 of 1991

Kewal Ram Chauhan

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 299, 317, 407, 446

Citation : (1992) 1 ShimLC 234

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : D.D. Sood, for the Appellant; R.M. Bisht, Law Officer, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—In this petition u/s 407, Code of Criminal Procedure the petitioner, Sh. Kewal Ram Chauhan, has prayed for transfer of eleven criminal cases, which are being tried jointly, from the Court of Special Judge (District and Sessions Judge)(Forests), Shimla, to any other Special Judge. He is one of the accused in these cases. He has enumerated number of instances in his petition, which according to him raise reasonable apprehension in his mind that he will not get fair trial from the Special Judge. Before I deal with these instances and decide about them, I shall refer to a few judgments laying down the criterion for transfer from one Court to Anr. within the jurisdiction of the High Court.

2. Special Bench of three Judges of Allahabad High Court In the matter of three In Re: three vakils of Jhansi observed:

...It is the duty of Courts, not only to be impartial, but also to inspire confidence in the administration of justice. It is therefore not necessary, when supporting an application for transfer, to establish that there is any actual bias in the mind of the Magistrate concerned. Incidents which are calculated to raise a reasonable apprehension in the mind of an ordinary accused person that he will not get a

fair trial may justify a transfer although no actual bias in the mind of the trying Magistrate can be proved. It is the cumulative effect likely to be produced on the mind of an ordinary reasonable accused person that has to be seen. The question whether sufficient grounds are made out for a transfer is often a matter of opinion, and depends on inferences to be drawn from facts that have happened....

3. In Division Bench Judgment of Bombay High Court in Emperor Vs. Usman Haroon, Chief Justice Stone speaking for himself and Justice Lokur, said:

...the principle is quite clear, that apart from the susceptibilities of the accused, if circumstances do exist or events have happened, which are calculated to create in the mind of the accused the reasonable apprehension that he will not be fairly treated at his trial, the transfer should be made.

The Supreme Court in Gurcharan Das Chadha Vs. State of Rajasthan, held in Paragraph 13 of the judgment that:

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

4. Chief Justice I.D. Dua of Delhi High Court in Shakti Raj Jangi Ram Vs. State, was examining whether a Magistrate would be influenced by the report of the P.S.I. regarding delay being caused by the accused in committal proceeding, which was sent to him by the District Magistrate with forwarding letter of Deputy Inspector General of Police (Range). It is important to note that during those days, the District Magistrate in Delhi used to have complete control over all subordinate Magistrates both in regard to executive and judicial functions. In this context, the learned Judge observed:

...One important object in transferring cases, it may be emphasised is, to clear away everything which might engender suspicion and distrust of the Tribunals and to take steps to promote the feeling of confidence in the administration of justice because this is essential to social order and security...Common human failings and likely re-action of incidents, like the present, on an average human mind, may appropriately be taken into account when considering the question of expediency in the ends of justice for the purpose of transferring cases from one

competent Court to Anr. . It is not unreasonable to think that the learned Magistrate would look upon the P.S.I. not as an ordinary Counsel appearing in his Court to prosecute the case on behalf of the State, but as a person whose report may influence the impression of the superior authorities of the learned Magistrate. Such an impression on the mind of the learned Magistrate cannot advance the cause of justice. And then, the accused person, assuming he has been so far unaware of these communications, may not remain ignorant of them and on coming to know of the report and the letters, he may well have a reasonable apprehension that he would not get an impartial and fair treatment in the Court of the learned Magistrate....

5. So far the present case is concerned, the petitioner has started his tale of woes from 10-11-1988 when the prosecution moved an application for cancellation of his bail and surety bond on the ground that he was trying to win over prosecution witnesses, more particularly, Sh. Mangat Ram. The petitioner resisted the application but it was allowed and the Special Judge vide his order dated 27-4-1989 directed that the petitioner be kept in judicial lock up for a period of fifteen days during which period prosecution evidence would be examined. This order was maintained by the High Court vide its judgment dated 4-5-1989 (Crl. Revision No. 29 of 1989) and also by the Supreme Court which dismissed the SLP on 19-6-1989. Therefore, the petitioner can have no legitimate grievance against the order dated 27-4-1989.

6. According to the petitioner, he developed severe pain in his chest and abdomen as a result of shock that his bail was cancelled. On 29-4-1989 he got himself examined in Indira Gandhi Medical Hospital, Shimla, and the Doctors advised ten days rest. As his condition deteriorated, he was rushed to P.G.I. Chandigarh, but owing to strike of doctors there, he was not attended to and proceeded to Delhi for treatment. He was admitted in Ram Manohar Lohia Hospital on 3-5-1989 but discharged on the next day. He was prescribed medicines and further investigations for suspected heart ailment. In support of these contentions, the petitioner has placed on the record admission, discharge and investigation slips of Indira Gandhi Medical Hospital, Shimla, and Ram Manohar Lohia Hospital, Delhi, as Annexure P-A to the petition. The State has denied these averments and has asserted that from 27-4-1989, the petitioner was absconding and could be arrested only on 1-9-1989.

7. Further allegations of the petitioner are that as due to his sudden illness he could not attend the Court of Special Judge, his son moved an application for adjournment on 30-4-1989 (Annexure P-B to the petition). The application was rejected on 5-5-1989 on the flimsy ground that the nature of illness of the petitioner did not justify his absence. Simultaneously, on 5-5-1989, the Special Judge issued non-bailable warrants against the petitioner and also notices u/s 446 Code of Criminal Procedure On the next date of hearing, that is, 16-5-1989, the prosecution moved an application Under Sections 82 and 83, Code of Criminal Procedure for declaring the petitioner as proclaimed offender which was

allowed without giving any opportunity to the petitioner or considering the fact that he was ailing. As ordered, proclamation was issued in the daily Newspapers and copies of proclamation were affixed on conspicuous part of the house of the petitioner where he ordinarily resided. Strangely enough, besides this, proclamation was made by beat of drums and announcement on the loudspeakers at Shimla, Nerwa, Chopal, Balag and Paonta Sahib. The property of the father of the petitioner was also ordered to be attached without ascertaining whether the petitioner had any share in it or not. This tarnished the reputation of the petitioner in the general public as he was taken as a criminal involved in heinous criminal offences. The petitioner has averred that these orders were not justified as he has been a lawyer of long standing, an M.L.A. and a public man and had been himself cross-examining the witnesses and was also represented by Counsel, S/Sh. Narender Thakur, Tulsi Ram Chandel and P.N. Lau through whom he had previously obtained exemption from personal appearance.

8. In reply to these averments, the State has enumerated orders dated 1-5-1989, 2-5-1989, 4-5-1989, 5-5-1989 and 16-5-1989 to assert that the Special Judge took action in accordance with law against the petitioner to procure his presence as he was intentionally evading to appear before the trial Court to defeat the ends of justice. According to the State, the petitioner was hiding himself and was not traceable from 4-5-1989 to 1-9-1989. It is denied that the petitioner was represented by Counsel as alleged by him. In fact, he had engaged Counsel on selected occasions.

9. From the order dated 1-5-1989 and the application, Annexure P-B to the petition, it is clear that adjournment of three weeks was sought by the petitioner on the ground of illness. Prescription slips and other documents that he was examined by the doctors on 30-4-1989 and was advised rest were produced alongwith the application. The Public Prosecutor had opposed the application and also moved a separate application for examination of the petitioner by a medical board to ascertain whether he was unable to attend the Court due to his illness. The matter was adjourned for the next day, that is, 2-5-1989 and Varinder Chauhan, son of the petitioner, was given an opportunity to file reply to the application. On 2-5-1989, the Special Judge at the request of Sh. Varinder Chauhan, and despite opposition of the prosecution, granted further time of two days to either produce the petitioner or documentary evidence that the petitioner was admitted in some hospital.

10. On 4-5-1989, again the case was adjourned to the next day on the affidavit filed by Varinder Chauhan that the petitioner was shifted to Delhi and medical certificate for production in the Court was not received till then. On 5-5-1989, the Special Judge passed a detailed order dismissing the application for adjournment. On that day Anr. son of the petitioner, Sh. Surender Chauhan had produced photo copy of the medical certificate which showed that he was being treated at Ram Manohar Lohia Hospital, Delhi, as an out door patient and was advised rest for one week from 3-5-1989. Despite this, according to the Special

Judge if the petitioner could undertake journey from Shimla to Chandigarh and thereafter to Delhi and was being treated as an out-door patient and advised only one week's rest by the doctors of Ram Manohar Lohia Hospital, he was not seriously ill as to prevent him from attending the Court at Shimla. The Special Judge took the view that since the order dated 27-4-1989 cancelling the bail of the petitioner was upheld by the High Court, the petitioner was intentionally abstaining from the Court. The Special Judge cancelled the bail of the petitioner on the ground that he had committed breach of the order that he will not leave Shimla without the permission of the Court. Notices u/s 446, Code of Criminal Procedure were also issued against the petitioner and his sureties. Further while issuing non-bailable warrants, the Special Judge observed that since the petitioner was not represented by any Counsel, his presence could not be exempted. He directed the prosecution to produce the witnesses present in the Court for recording their evidence on the day when they will be able to produce the petitioner. At the request of the prosecution, the case was adjourned to 16-5-1989.

11. On 16-5 1989, non-bailable warrants were received unexecuted with the report that the petitioner was not traceable, the prosecution moved an application Under Sections 82 and 83 Code of Criminal Procedure which was supported by an affidavit of Sh. B.S Thind, Superintendent of Police (Enforcement) for declaring the petitioner as a proclaimed offender. It was alleged by the prosecution that the petitioner was absconding as well as concealing himself and despite the best efforts of the officers of the Enforcement he could not be apprehended. Believing these allegations, the Special Judge allowed the application and ordered publication of proclamation in the daily Newspapers requiring the petitioner to appear on the next date of hearing. The proclamation was also ordered to be affixed at some conspicuous part of the house of the petitioner as well as the town or the village in which the petitioner ordinarily resided. A perusal of these orders shows that no order of proclamation by beat of drums and announcement on loudspeakers and attachment of the property of the father of the petitioner was made as alleged by him. It is correct that it was for the Special Judge to adjourn the case or to decide how to procure the presence of the petitioner or to declare him absconding if he was satisfied, on the material on record, that the adjournment asked for was not bona fide and the petitioner was intentionally absconding and concealing himself. But the serious question arises whether orders of the Special Judge were proper, just and inspire confidence on the peculiar facts of the case that the sons of the petitioner were appearing on his behalf in the Court and requesting adjournment for three weeks on the ground of illness of the petitioner by producing prescription slips, medical certificates and other documents showing that he was undergoing treatment in Ram Manohar Lohia Hospital, Delhi, besides the petitioner being not only a permanent resident of District Shimla but practising lawyer of long standing as well as an M.L.A. and a public man.

12. The petitioner has further pointed out that in the SLP filed against the order

dated 4-5-1989, the Supreme Court in its ad" interim order dated 23-5-1989 observed that on the application made by the petitioner, the trial Court may consider exemption of his personal attendance. In view of this, on 30-5-1989, the petitioner filed application for dispensing with his personal appearance as well as for recalling the order of his arrest and declaring him a proclaimed offender through his Counsel Sh. Tulsi Ram Chandel, Advocate. The application, dated 30-8-1989, is brought on record as Annexure P-C to the petition. A perusal of this application shows that the petitioner had also prayed to the Special Judge for staying the proceedings as he had moved the Supreme Court for transferring his cases outside the State of Himachal Pradesh on the allegations made against the then Chief Minister, Sh. Vir Bhadra Singh, the Investigating Officer, Sh. B.S. Thind, the Public Prosecutor, Sh. S.D. Vasudeva and the Presiding Officer, Sh. R.K. Mahajan. On 30-5-1989 three more applications were made for adjournment on the ground of illness. It was stated in these applications that medical certificate would be produced as soon as the petitioner recovered. All these applications were rejected by the Special Judge on 2-6- 1989. It was held that since the petitioner was not represented by any Counsel and non-bailable warrants were issued against him and he was absconding his personal presence could not be exempted According to the Special Judge, Sh T.R. Chandel, Advocate was engaged only for these applications and not for the trial. For not recalling the order of non-bailable warrants it weighed with the Special Judge that the order dated 27-4-1989 cancelling his bail was confirmed by the High Court and was not stayed by the Supreme Court in the SLP filed by the petitioner. Above all, the Special Judge held that relief?s sought for, for staying the proceedings and recalling the orders of arrest and declaration of proclaimed offender, could not be granted u/s 317, Code of Criminal Procedure. It was also noticed that the petitioner had not placed on the record any proof of his illness after the second week of May. 1989 From all these facts, the Special Judge concluded that the petitioner was hiding in Delhi to evade his arrest and wanted to delay the trial of the cases against him.

13. Another application for adjournment as well as for recalling the order passed Under Sections 82 and 83, Code of Criminal Procedure met the same fate The Special Judge not only dismissed the application vide his order dated 6-7-1989 but proceeded to pass orders u/s 83 Code of Criminal Procedure and attached his immovable property mentioned therein. The Special Judge also ordered that evidence be recorded in the absence of the petitioner as provided u/s 299, Code of Criminal Procedure According to the petitioner, when he was represented by Counsel who were making applications on his behalf for adjournment as well as for exemption from personal attendance on the ground of illness, there was no occasion for the Special Judge to pass further orders u/s 83 as well as u/s 299, Code of Criminal Procedure.

14. The petitioner has alleged that, in fact, he was suffering from serious malady involving his brain but the doctors were not able to diagnose it. For some time he remained admitted in Vaish Nursing Home where he started developing paralytic

attack and was rushed to Delhi. At Delhi, the petitioner was examined in Loke Naik Jai Parkash Hospital and G.B. Pant Hospital and it was found that he was having malignant brain tumour, and required immediate surgery. According to the petitioner, he had been filing all medical record regarding his illness in the Court of Special Judge to show that he was forced to stay away from the Court and had no intention to be absent and delay the proceedings. The State has denied all these allegations and it is averred that the petitioner was not suffering from any serious ailment from 4-5-1989 to 1-9-1989 during which period he intentionally went into hiding to avoid his arrest, delay trial in the cases pending against him and to win over the prosecution witnesses. It is further alleged that prosecution had moved Under Sections 82 and 83, Code of Criminal Procedure as a last resort when it failed to apprehend the petitioner at likely places of his residence; at Chopal, Shimla, Paonra Sahib, Dehradun, Chandigarh and Delhi.

15. The next grievance of the petitioner is that when he was admitted in Indira Gandhi Medical Hospital at Shimla on 1-9 1989, he was arrested on the application of the prosecution and the Special Judge ordered fourteen days remand despite the advice of Doctor Professor D.J. Dasgupta that he was not fit to attend the Court. Not only this, before passing the order of remand, the Special Judge himself visited the hospital in the company of Additional Advocate General, Sh. S.D Vasudeva, and Police Officers to personally verify from Doctor Professor D.J. Dasgupta and to enquire from the petitioner whether he was fit to attend the Court or not. The State in its reply has tried to justify the arrest and order of judicial remand on the ground that as the petitioner was already declared as a proclaimed offender, it had no alternative but to arrest him and produce him in the Court or to request the Special Judge to go to the hospital to decide their application seeking Police remand. According to the State, the Special Judge had passed the order of remand keeping in view the past behaviour and conduct of the petitioner.

It is further alleged by the petitioner that while he was admitted in Indira Gandhi Medical Hospital, Shimla, his condition deteriorated and he was rushed to P.G.I. Chandigarh under Police escort. Dr. Professor V.K. Kak who examined the petitioner in P.G.I. Chandigarh, advised immediate brain surgery to save his life. In the circumstances, the petitioner moved Cr. M.P (M) No. 706 of 1989 in this Court for bail as well as for seeking permission to go to United States, where the brother of the petitioner is working as a Doctor, for brain surgery. The State contested this application but it was allowed by this Court on 8-9-1989. The State filed SLP in the Supreme Court challenging this order but before it could be finally decided, the petitioner was operated upon in emergency at P.G.I. Chandigarh itself. The petitioner was discharged from P.G.I. Chandigarh on 15-10-1989, and was advised complete rest for three months, in the first instance, besides regular medication for brain malady as well as other ailments from which he was suffering. The petitioner has pointed out Anr. instance by which he feels aggrieved that though to the knowledge of the Special Judge as well as to the prosecution he was admitted in the Intensive Care Unit in P.G.I.

Chandigarh and was undergoing treatment for serious ailment, yet, the Special Judge issued a notice for his appearance in the Court on 16-10-1989 in Cr. M.P. S/4 of 1989. The notice has been placed on the record as Annexure P-J (the petitioner has referred to this document as warrant of arrest). The State in its reply has not denied all these facts except justifying the issuance of notice, Annexure P-J, to the petitioner by averring that there was no medical certificate before the Special Judge to show that he was in the Intensive Care Unit in P.G.I. Chandigarh.

16. Further grievance of the petitioner is that when he was convalescing after the operation, the prosecution moved an application for issuing warrant of arrest of the petitioner alleging that he was hale and hearty and fit to face the trial. In support of their allegations, video tape was also played before the Special Judge showing the petitioner performing his chores and meeting people. It is alleged by the petitioner that the Special Judge allowed the application after consultation with the Additional Advocate General, Sh. S.D. Vasudeva and the Superintendent of Police (Enforcement) Sh. B.S. Thind, in his chamber. These allegations have been denied by the State in its reply-affidavit. It is urged that after his discharge from P.G. I, Chandigarh, the petitioner was pursuing his normal activities and was in sound health and fit to face the trial of cases. Therefore, in order to procure his presence and to proceed with the trial of pending cases, the order dated 15-11-1989 was passed by the Special Judge on the application of the prosecution. It is denied that the Special Judge passed the order after consultation with the Additional Advocate General, Sh. S.D. Vasudeva, and the Superintendent of Police (Enforcement) Sh. B.S. Thind, in his chamber. Both, Sh. S.D. Vasudeva and Sh. B.S. Thind, have filed separate affidavits denying that they had ever remained closeted in the chamber with the Special Judge before he passed the order against the petitioner. It is asserted that orders were announced in the open Court after hearing arguments and watching the video tape in the open Court. While issuing warrant of arrest, the Special Judge has observed that the petitioner was required to surrender in the Court or obtain further orders from the High Court after his SLP was dismissed on 6-11-1989 whereby the order of the High Court passed in Cr. M.P. (M) No. 706 of 1989 was set aside. According to the Special Judge, in these circumstances, the order dated 24-7-1989 whereby the bail of the petitioner was cancelled by him stood revived. On the averments made in the application which was supported by the affidavit of the Superintendent of Police (Enforcement) Sh. B.S. Thind, and the video tape, the Special Judge was satisfied that the petitioner was physically and mentally fit to face the trial. From all these facts, a very serious question does arise that whether in the background of serious illness and major brain operation of the petitioner, it was right to directly issue his warrant of arrest without giving him an opportunity to show that he was fit to face the trial.

17. Thereafter the petitioner filed Cr. M.P. (M) No. 906 of 1989 in this Court challenging the order dated 16-11-1989 of Special Judge as well as for granting bail and stay of further proceedings before the Special Judge. This Court vide

order dated 17-11-1989 stayed the order dated 16-11-1989. This application was finally decided on 2-7-1991 releasing the petitioner on bail and directing that the petitioner will remain at Chandigarh or at Delhi during the period the prosecution evidence is recorded in order to obviate the apprehension of the prosecution that he may not influence their witnesses. The petitioner was also granted exemption from personal appearance. While passing this order, the Court considered the medical certificates issued by Indira Gandhi Medical Hospital, Shimla, P.G.I. Chandigarh, All India Institute of Medical Sciences, New Delhi where the petitioner was examined and was taking treatment after this order, the petitioner appeared before the Special Judge on 10-7-1991 and Anr. chapter of his grievances opened. He is not right in asserting that the Special Judge has placed his own interpretation on the order dated 2-7-1991 of this Court in asking bail bond in the sum of Rs. 1,00,00 with one surety in the like amount in all the pending cases and by directing the petitioner to remain out of Shimla during the entire period of the trial. The order dated 2-7-1991 of this Court is clear in respect of personal and surety bonds but it needs clarification that whether the petitioner will remain outside Shimla at Chandigarh or at Delhi during the whole of the period when the prosecution witnesses are examined by the Special Judge or only during the period, those prosecution witnesses are examined regarding whom the prosecution has apprehension that the petitioner will influence them. From the order dated 27-4-1989 passed by the Special Judge and order dated 4-5-1989 passed by this Court in Criminal Revision Petition No. 29 of 1989, it is clear that the apprehension of the prosecution is in respect of only eleven witnesses, in particular, S/Sh. Mangat Ram and Sukh Chain Singh approvers. Therefore, it is made clear that the petitioner will remain outside Shimla as already directed during the period the statements these eleven witnesses are recorded. The Special Judge will examine these witnesses in the first instance continuously from day to day.

18. The Special Judge had fixed the cases for recording the prosecution evidence from 1-8-1991 to 20-8-1991. The present transfer application was filed on 27-7-1991 but during the course of hearing of this application, two affidavits dated 9-8-1991 have been filed by Sh. Varinder Singh son of the petitioner and one Mangal Singh. Sh. Varinder Singh has alleged in his affidavit that the Special Judge has become very irritable and does not allow him to instruct his Counsel during the course of cross-examination of the prosecution witnesses. He has also alleged that the Special Judge has been recording different version than the one given by the witnesses besides interfering in the cross-examination of prosecution witnesses in various ways. It is also in the affidavit that though the Special Judge allowed Mangal Singh to play the video tape recorded by him to contradict Mr. Sukh Chain Singh approver yet, the Special Judge has wrongly stated in his Zimny order that he did not know how to operate a video cassette on a Video Cassette Recorder. In his affidavit Mangal Singh has also made the same grievance. Though advance copies of these affidavits were given to the learned Counsel for the State, yet, no counter-affidavit was filed though it was

stated by him at the Bar that the averments made therein were not admitted, as mentioned in the order dated 12-8-1991.

19. The petitioner has also made a grievance that the post of Additional District and Sessions Judge-cum-Special Judge (Forests), Shimla, was upgraded to the post of District and Sessions Judge (Forests) and made personal to the Special Judge, Sh. B.S. Chauhan and Sh. S.D. Vasudeva, Additional Advocate General, was given extension after superannuation to try the cases of the petitioner as they are not favourably inclined to him but in my opinion these allegations are not relevant for the purpose of decision of the present application. Therefore, I need not refer to them. Before I draw my conclusion, I may refer to one more instances which, according to the petitioner, shows that the Special Judge has not been able to control the proceedings and has allowed the prosecution to harass and tempt the prosecution witnesses to elicit favorable statements from them. The instance of Sh. Misru Mal has been given who was declared hostile by the prosecution on 4-4-1988 and he was cross-examined up to 28-4-1989. Admittedly, the present Special Judge took over the charge of the cases in August, 1988. In the reply affidavit the State has explained that the cross-examination of this witness took inordinate time as he was required to be confronted with his previous statements u/s 161, Code of Criminal Procedure and 164 Code of Criminal Procedure recorded in nine cases in his capacity as an approver. Moreover, the delay was also attributable to the petitioner as he was adopting delaying tactics by filing frivolous applications.

20. Now the question arises what is the likely reaction of the above referred to series of events on the mind of a reasonable accused person? Does he apprehend that he will not get just, fair and impartial treatment in the trial by the Special Judge who passed the above referred to various orders. No doubt, his apprehension should be reasonable, not imaginary or actuated with some ulterior motive. For answering this question, this Court need not examine the orders and conduct of the Special Judge to find out whether the petitioner has, in fact, been not treated fairly, justly and impartially. The purpose of analysis of his orders and conduct is to form an opinion whether these repose confidence in the administration of justice or not. Justice must be rooted in confidence and confidence gets destroyed if a reasonable person apprehends that trial will not be fair, just and impartial. While deciding such a point, the Court cannot forget the oft repeated saying that "justice should not only be done but should manifestly and undoubtedly be seen to be done."

21. Keeping in view the above stated principle and criterion laid down by various High Courts and the Supreme Court in their judgments, I answer the above question in the affirmative. The rejection of the prayer of the petitioner made through his sons for adjournment for three weeks on medical grounds vide order dated 5-5-1989; declaring him proclaimed offender vide order dated 16-5-1989; rejection of applications for exemption of his personal attendance again on medical grounds vide order dated 2-6-1989 ; refusal to recall orders of his arrest

and declaring him proclaimed offender; passing orders u/s 83 Code of Criminal Procedure for attachment of his immovable property and recording of evidence in the absence of the petitioner as provided u/s 299 Code of Criminal Procedure vide orders dated 6-7-1989, are likely to create reasonable apprehension in the mind of the petitioner that he will not get fair, just and impartial trial at the hands of the Special Judge. The petitioner is a permanent resident of Shimla district, a practising lawyer of long standing, ex-M.L.A. and a public man. He was moving applications through his sons and Counsel and producing whatever little evidence of his illness he could procure at the relevant time, therefore, his was not a case of absconding and concealing himself to evade his arrest. His major brain operation in P.G.I Chandigarh and opinions of doctors who examined him as well as treated him which were placed on the record of Cr. M.P. (M) No. 906 of 1989 further show that he was not feigning illness. The order dated 1-9-1989 remanding the petitioner to judicial custody for fourteen days when he was admitted in Indira Gandhi Medical Hospital, Shimla, and issuance of notice to appear in the Court on 16-10-1989 when he was confined in P.G.I. Chandigarh and the order dated 15-11-1969 canceling bail and issuing warrant of his arrest when he was convalescing after his discharge from P.G.I. Chandigarh on 15-10-1989 without giving him notice, further inflamed the suspicion of the petitioner that he might not be treated justly, fairly and impartially in the trial by the Special Judge.

22. The learned Law Officer appearing for the State has argued that all these incidents are old and it is too late for the petitioner to make his complaint against them at this stage. According to him, the present application is malafide and has been filed to delay the trial before the Special Judge. I find no substance in this argument as from 16-11-1989 to 2-7-1991 the matter remained pending before this Court in Cr. M.P. (M) No. 906 of 1989 and the trial before the Special Judge was stayed. The case of the petitioner in that petition was that he was not in a fit state of health to face trial. The petitioner has also brought on record the conduct of the Special Judge during the course of the trial which started on 1-8-1991 showing that, in fact, he is not getting fair, just and impartial trial which is his basic right. As there is nothing on record to verify these allegations, I am not referring to them for arriving at my conclusion. The incidents up to 6-11-1989, which are mentioned hereinabove, are enough to form an opinion that the apprehension of the petitioner is reasonable and he is entitled to trial by some other Special Judge.

23. In view of the above discussion, the petition is allowed and the cases against the petitioner arising out of F.I.R. Nos. 12 and 13 of 1983, 21 to 27 of 1983, Nos. 29 of 1983 and 30 of 1983 presently pending before the Special Judge (Forests) (District and Session Judge), Shimla, are transferred to the Sessions Judge (Special Judge), Shimla, forthwith.