

(2016) 10 RAJ CK 0117
In the Rajasthan High Court
Case No : Criminal Writs (Crlw) No. 31 of 2016

State of Rajasthan

APPELLANT

Vs

Manjeet Singh

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 407(1)(a), Section 407(b), Section 407(c)

Citation : (2017) CriLJ 1268

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Dr. P.S. Bhati, Additional Advocate General with Mr. Sajjan Singh, Mr. Narendra Gehlot and Mr. Mukesh Rawal, Advocates, for the Petitioner; Mr. R.K. Charan, Advocate, for the Respondent; Mr. Sambhoo Singh, Mahaveer Singh, Advocates, for the Applicant

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J.—State has preferred this criminal writ petition under Article 226 of the Constitution of India with the aid of Section 482, Code of Criminal Procedure, 1973 (Cr.P.C.) praying therein undermentioned reliefs:

(i) By appropriate writ order or direction the various trials going in five different districts viz. Jhunjhunu, Jaipur, Nagaur, Churu and Bikaner, bearing Case No.50/2001 pending before learned Judicial Magistrate, Navalgarh, Case No.173/2001 pending before learned A.D.J., Didwana, Case No.33/2014 pending before learned A.D.J., Didwana, Case No.24/2011 pending before the learned A.D.J., Sujargarh, Case No.61/2011, pending before the learned A.D.J., Sujargarh and Case No.41/2014 pending before the learned A.D.J. No.3, Bikaner may be transferred to TADA Court, Ajmer.

(ii) By appropriate writ, order or directions the trials of all such Hardcore Criminals like Manjeet Singh and others who are presently lodged at High-

Security Central Jail, Ajmer which are pending at different trial courts and whose transportation to the trial courts are full of risk and dangerous to the public at large and police officials may kindly be ordered to be transferred at TADA Court, Ajmer.

(iii) Any other appropriate order or direction which this Hon"ble Court deems fit and proper may kindly be passed in favour of the Petitioner.

2. The relief craved for vis-`-vis Sessions Case No.61/2011, earlier pending before Addl. District & Sessions Judge, Sujangarh, District Churu, is abandoned by the petitioner after its decision and desired relief is confined to remaining five cases pending against the respondent before subordinate Courts at five districts.

3. In order to substantiate and authenticate its case for seeking indulgence of the Court, the petitioner State has projected special and extraordinary circumstances which the security agencies are encountering in transit and safety of respondent - hardened criminal to ensure his presence during trial in all these pending cases before various subordinate Courts. A fact significant to show genuine concern of the State for safety and security of general public in transit when respondent is taken from one place to another to attend Court proceedings is also highlighted. State has also vouched to assert with full emphasis that besides security concerns taking respondent from one place to another on the appointed date of hearing in respective criminal case is heavily costing exchequer not only in pecuniary terms but deployment of the State resources. Safety of the police sleuths and other officials in this regard also find mention in the pleadings to strengthen case of the State for achieving cherished mission.

4. While referring to dubious credentials of the respondent, an alleged hardened criminal, State has harped on his close proximity with dreaded criminal, now a fugitive Anand Pal Singh. [Entire police force and State administration has miserably failed to apprehend Anand Pal Singh since last so many months.] Petitioner has stated that respondent Manjit Singh, a sibling of Anand Pal Singh, is running a criminal gang operating in various parts of State. Buttressing with full vehemence nefarious designs and criminal activities of Anand Pal Singh, State has pleaded that he is involved in grave and serious offences like murder, extortion, blackmailing and robbery etc. Reflection of the general perception of the petitioner portrays fugitive Anand Pal Singh, a potential threat to the society at large.

5. Facts, showing the relevant circumstances, under which Anand Pal Singh succeeded in dodging police to escape from the custody, are highlighted in the petition by the State for granting relief. As per petitioner, Anand Pal Singh absconded from police custody in transit when his gang attacked police convoy and overpowered them. Petitioner State has also made an attempt to show close proximity of Anand Pal Singh and his gang with many followers all over the western part of Rajasthan. Sympathy of followers is also pleaded in the petition

with a positive assertion that they are helping Anand Pal Singh to evade/avert his arrest. A welfare State has also ventured to whisper in the petition that some police personnel are possibly providing aid and assistance to hardened criminals, in the guise of security and transporting, when they are taken from one place to another.

6. State has made an attempt to express its reasonable apprehension of impending gang war between Gang of Anand Pal Singh and Raju Tehat since escapement of Anand Pal Singh from custody. Thus, on these facts and grounds, relief of transferring all the cases to TADA Court, Ajmer is precisely edified by the petitioner.

7. A very vital fact concerning respondent Manjeet Singh that presently he is lodged at high security Central Jail, Ajmer also finds mention in the pleadings to claim relief. Security concern of the State vis-à-vis general public is further reiterated while laying emphasis on relative distance of Ajmer from various places where cases against respondent are pending. A chart showing Gang Wars between Anand Pal Singh v. Raju Tehat is also placed on record.

8. In totality, besides facts pleaded in the petition, the grounds are simply reiteration of events. There is no whisper in the entire petition about legal rights of the State much less fundamental right to maintain this petition nor there is any impugned order in the matter.

Petitioner State later on filed additional Affidavit of Addl. Chief Secretary, Home Department, Government of Rajasthan, purportedly in compliance of oral direction of the Court order dated 24.05.2016. The affidavit reads as under:

"Affidavit In Compliance of Directions

Dated 24.5.2016

I, Anirban Mukhopadhyaya s/o Late Sh. Satya Ranjan Mukerji, aged about 58 years, presently working as Additional Chief Secretary, Home Department, Govt. of Rajasthan do hereby take oath and swear.

1. That I am working on the post of Additional Chief Secretary, Home Department, Govt. of Rajasthan.

2. That the Govt. of Rajasthan has taken a conscious decision to file this writ petition to seek transfer of trial cases of hardcore criminal Manjeet Singh s/o Sh. Hukum sing R/o village Sanwraad PS Jaswantgarh, District Nagaur to a competent court at District HQ Ajmer to avoid the heavy deployment of police force and other resources for the safety of the criminal and public at large.

3. That this is a fit case to be considered under section 407 Cr.P.C. and it will be in the interest of the State that the trial of cases may be transferred to Ajmer as requested.

4. That instructions have been issued to ensure appropriate security

arrangements for the witnesses concerned with the cases proposed to be transferred to Ajmer. A copy of the case is enclosed as Annexure A.

Sd/

Deponent

Verification

I, above named deponent, do hereby verify that the contents of para 1 to 4 of the above affidavit are true and correct. Nothing has being concealed therein and no part of it is false, So help me God.

Sd/

Deponent"

9. On 01.06.2016, a Coordinate Bench was pleased to pass following order:

"This criminal writ petition has been filed by the State with a prayer that the trials of the five criminal cases pending in the various Courts of Districts Jhunjhunu, Jaipur, Nagaur, Churu and Bikaner, details of which is provided in the prayer clause (i) of the writ petition, be transferred to TADA Court, Ajmer.

Pursuant to the oral direction given by this Court on 24.05.2016, an affidavit of the Additional Chief Secretary, Home Department, Government of Rajasthan is filed, wherein it is mentioned that the Government of Rajasthan has taken a conscious decision to file this writ petition seeking transfer of the trial of the cases mentioned in the writ petition.

Learned counsel appearing for the sole respondent has submitted that before ordering transfer of the trial of the cases mentioned in the writ petition, all the accused persons involved in those criminal cases are required to be heard.

Learned Additional Advocate General appearing for the State has argued that all the accused persons involved in the cases mentioned in this writ petition are not required to be heard. It is submitted that the State is facing great difficulties in transporting the accused respondent, who is lodged in Ajmer jail, and other accused persons, who are lodged in different jails, to various Courts for the purpose of producing them on the date of hearing. It is submitted that the accused persons involved in the cases are hardcore criminals and having enmity with the other gangs and there are all possibilities that during the course of their transportation to the different Courts either they may be attacked by the rival gangs or they may abscond from the custody of the police as already has happened in the case of hardcore criminal Anand Pal Singh, who happened to be the brother of the respondent. It is also submitted that at the time of production of those accused persons, involved in the cases mentioned in the writ petition, in different Courts, the State is required to deploy heavy police arrangements which is a great financial burden on the State. It is also argued that it is very risky to transport the accused persons, involved in the cases, from one place to another

place and looking to their enmity with the rival gangs, there is always great danger to the safety of the accused persons, police personnels as well as general public.

Having considered the facts and circumstances of the case and for the purpose of deciding whether before passing of final order in this writ petition, the other accused persons are required to be heard or not. List this matter on 11.07.2016. In the meantime, the trial in the following cases:-

1. Criminal Case No.50/2001 pending before Judicial Magistrate, Navalgarh, District Jhunjhunu
2. Sessions Case No.173/2001 pending before ADJ, Didwana, District Nagaur
3. Sessions Case No.33/2014 pending before ADJ, Didwana, District Nagaur
4. Sessions Case No.24/2011 pending before ADJ, Sujangarh, District Churu and
5. Sessions Case No.41/2014 pending before ADJ No.3, Bikaner, District Bikaner shall remain stayed till next date of hearing except the Sessions Case No.61/2011 of ADJ, Sujangarh, District Churu because as per the learned Additional Advocate General the said case has already been decided."

10. The sole respondent has filed reply to the writ petition raising certain preliminary objections. In the form of first preliminary objection, respondent has resisted the petition on the plea of non-joinder of necessary parties namely other co-accused facing trial with him at various places. That apart, the respondent has also contested the petition on the anvil of inconvenience/safety of witnesses as a consequence of shifting of trials.

11. While advertng to the progression of trial in each case and stage of the trial, respondent has submitted in the return that in compliance of orders passed by this Court in case No.34/2011 (State v. Ram Singh & Ors.) trial is proceeding on day to day basis. Likewise, in respect of Case No.22/2006 (State v. Sanjay Pandey & Ors) as per version of the respondent, trial is at the fag end and it is proceeding on day to day basis. Respondent has also made a positive assertion in the return that trial in Case No.34/2002 (State v. Surpat Surana) is at the stage of final arguments. As per the version of respondent, petitioner has concealed all these material facts to mislead the Court. Taking a dig at the stand of petitioner State that it is taking all botheration to take accused persons at the place of trial, respondent has submitted in the counter that for last four years none of the accused were taken to the Court in respect of trial under Section 3/25 of the Arms Act pending at Navalgarh, District Jhunjhunu. It is also clarified in the reply that respondent has voluntarily consented to record statement of witness without his physical presence in some of the cases. Concealment of this vital fact by the petitioner is also pleaded in the return for non-suiting it.

12. The respondent has also made an attempt to castigate the petitioner State and its other agencies for falsely implicating him in many criminal cases solely

for the reason that he is brother of Anand Pal Singh. Resisting the petition with full emphasis, respondent has alleged in the counter that the same has immensely diminished chances of fair and dispassionate pending trials against him. On the relief craved by the State, respondent has pleaded that grant of such a relief would put his valuable right of fair trial to jeopardy.

13. A plea is also sought to be raised by the respondent against transfer of his trials at Ajmer on the anvil of incurring huge expenditure in engaging defence lawyers at various places. Therefore, respondent has made sincere endeavour to set out a plausible defence against the instant petition. Prayer of transferring trials from different places to Ajmer is also opposed by the respondent by suggesting trial through video conferencing which is need of the hour in the modern era of information technology to save money of State Exchequer. Lastly, the respondent has objected to maintainability of the writ petition at the behest of State sans requisite grounds of transfer of trials/appeals envisaged under Section 407 Cr.P.C.

14. Heard learned counsel for the parties and perused the materials available on record.

15. State as a prosecuting agency has laid this writ petition but essentially its endeavour is to invoke powers of this Court enshrined under Section 407 Cr.P.C. to transfer cases and appeals. Therefore, for explicating its afflictions, it is imperative for this Court to examine threadbare power of the Court to transfer cases and appeals. For convenience, complete text of Section 407 Cr.P.C. is reproduced as infra:

407. Power of High Court to transfer cases and appeals.- (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 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, 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;

(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;

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

(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:

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 application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under subsection (1) shall be made by motion, which shall, except when the 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 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 copy of the grounds on which it is made; and no order shall be made on of 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.

(6) Where the application is for the transfer of a case or 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 subsection (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.

16. A bare perusal of above quoted Section 407 Cr.P.C. makes it abundantly clear that the case set out by the petitioner is not covered within the four corners of clause (a) & (b) of sub-section (1) of Section 407. If the case of the State is examined in the light of clause (c) of sub-section (1) of Section 407, then too the prayer for transferring of cases is falling short of the requirements envisaged

therein. Therefore, the petitioner has essentially laid emphasis on the words "is expedient for the ends of justice" mentioned in clause (c) of sub section (1) of Section 407 Cr.P.C. The term "is expedient for the ends of justice" has different connotations depending on facts and circumstances of each case and there cannot be any straight jacket formula to define the said term. As in the instant case, State is a suitor, which has made endeavour to invoke extraordinary jurisdiction of the Court thriving on these words for the desired relief, it is very much desirable to find out the grounds set out in the petition.

17. Indisputably, the petitioner has not attributed any bias against the Presiding Officer of the Court and furthermore it has not ventilated any grievance in progression of the trial for each case. The solitary ground, which is canvassed in the petition, is alleged threat to security of general public in transit when respondent is taken from one place to another to attend court proceedings besides safety of police sleuths and officer officials deployed for the said mission. Maintaining law & order is a solemn duty of a welfare State and State cannot be allowed to shirk from its responsibility. Although the petition depicts an embellished version of the State's concern for the safety and security of general public and safety of police sleuths and other officials, but I am afraid, no cogent material is available on record to substantiate this plea. No specific untoward incident is quoted in the entire petition to justify the apprehension of the State in this behalf. While it is true that petitioner has labelled the respondent a dreaded criminal and real brother of a known fugitive Anand Pal Singh, the requisite facts showing threat to safety and security of general public and safety of police sleuths and other officials in transit when respondent is taken from one place to another to attend court proceedings is per se based on mere conjectures and surmises. State's plea, that during transit huge amount is incurred by the State besides deployment of State resources, appears to be quite alluring but not of substance so as to make out a case within the four corners of the term "expedient for the ends of justice". Perpetuation of alleged gang wars and the facts highlighted in this behalf, I am afraid, cannot be construed as a ground with legal foothold for transferring sessions case from one district to another inasmuch as in the considered opinion of this Court, it is a glaring example of utter failure on the part of the State administration to maintain law & order. A welfare State cannot be allowed to cite such instances for camouflaging its failures to make out a ground for transferring case from one district to another. If the affidavit submitted by Addl. Chief Secretary, Home Department, Rajasthan, is examined in that background, then it would ipso facto reveal that the same is conspicuously silent and not spelling out any plausible ground for transferring cases from other districts to Ajmer district.

18. In *Ranbir Yadav v. State of Bihar* [(1995) 4 SCC 392], on which State has placed reliance, Supreme Court has taken into consideration administrative power of the High Court under Article 227 of the Constitution to transfer a case after commencement of trial on the ground of administrative exigency without prejudicially affecting the rights of the parties. While approving the same, the

Court has finally concluded that the order is not without jurisdiction. The Court held:

"Before considering the above contentions of Mr. Jethmalani, we may mention that in spite of sufficient opportunities given, the order of transfer passed by the High Court was not produced before us. Needless to say, had it been produced we would have exactly known the facts and circumstances which promoted the High Court to pass that order and clearly appended the source of power. However, from the material on record which we have already detailed, it appears that the order was passed by the High Court in its administrative jurisdiction. Under Article 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appears that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the courtroom as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the court was so crowded that even clerks of the lawyers were not being allowed to enter the courtroom to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which, we assume had a bigger and better arrangement to accommodate the accused, lawyers and other connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. Mr. Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. According to Mr. Jethmalani, if the former was not contained, the latter would be nugatory.

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 and 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."

19. There remains no quarrel that High Court can exercise power of superintendence under Article 227 of the Constitution over all Courts and Tribunals subordinates to it and in appropriate cases may exercise administrative power to transfer cases from one district to another to meet administrative exigency. However, in the present case, the endeavour of the State is to seek judicial intervention of the Court for seeking transfer of cases from one district to another and for which undeniably necessary compliance with all the procedural formalities envisaged under Section 407 Cr.P.C. is pre-requisite besides providing adequate opportunities to the parties of a proper hearing. Therefore, the ratio decidendi of the verdict cannot render any assistance to the cause of the petitioner, rather the verdict mandates that judicial order of transferring case from one district to another is not permissible de hors the provisions of Section 407 Cr.P.C.

20. In *Mohd. Sahabuddin v. State of Bihar & Ors.* [(2010) 4 SCC 653], Supreme Court was called upon to make judicial review of the administrative power of Patna High Court under sub-section (6) of Section 9 of the Criminal Procedure Code, 1973. The High Court in exercise of its administrative power was pleased to decide that the premises of District Jail, Siwan as 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. Therefore, essentially, it was a case of transfer of a trial to District Jail, Siwan, which was decided by the High Court in exercise of its administrative powers and the Supreme Court declined to interfere in the matter by observing that an administrative decision of the High Court may not necessarily be required to be issued only after due compliance of principles of natural justice. However, while maintaining that it is only if Sessions Court is moving the place of trial that parties may have a right to hearing. Therefore, the ratio decidendi of that case nowhere renders any assistance to the cause of the petitioner and on the contrary it reiterates the principle that if Sessions Court is moving the place of trial, parties are required to be heard. The Court held:

"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 order of the High Court notifying the trial is not a judicial order but an administrative order. The court held as under:(SCC p.671, para 95)

"95 . . . 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."

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, Administrative Law, 6th Edn., 2004 at p. 288]

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."

21. Speaking for the Court, Justice Shri Dalveer Bhandari has also observed:

"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. 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."

22. While partly disagreeing on law, Dr. Justice M.K. Sharma has completely ruled out applicability of principles of natural justice in the matter of administrative decisions and observed:

"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 Sessions 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 Sessions shall be the place notified by the High Court. That the power of the Court of Sessions 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) CrPC.

Thus, by virtue of the provision contained in the second part of Section 9(6), the Court of Sessions 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 with the rule of audi alteram partem and also for obtaining the consent of the parties before the Court of

Sessions 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 Sessions to change the venue of a trial is circumscribed and could be exercised by the Court of Sessions only on the fulfilment 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 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 Sessions, 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 Sessions has no power to shift the venue. In such a case, the power of shifting the venue continues to lie with the High Court."

23. Therefore, this verdict was essentially confined to power of judicial review of the Court in respect of administrative powers exercised by the High Court to change venue of the trial without changing the place of trial, as such, the same cannot render any assistance to the cause of the petitioner and is clearly distinguishable.

24. In Harbans Singh & Ors. v. Central Bureau of Investigation [2000 (2) RCC 943], a learned Single Judge of this Court, while considering a transfer application under Section 407 Cr.P.C., has allowed the same taking into consideration convenience of all the accused persons as well as witnesses. Taking note of the fact that all the accused and witnesses are residents of Sri Ganganagar, the Court was pleased to allow the transfer application by transferring case from Addl. Chief Judicial Magistrate (CBI) Cases, Jodhpur to the Court of competent jurisdiction at Sri Ganganagar. The fact situation in the instant case is quite different and this judgment is therefore of no assistance to the petitioner.

25. Supreme Court in Abdul Nazar Madani v. State of Tamilnadu & Anr. (AIR 2000 SC 2293), rejected transfer petition of the accused in bomb blast case under Section 406 Cr.P.C. by observing that fair and speedy trial of the case would be possible at the place of incident. The Court also brushed aside the apprehension of accused that at the said place no patriotic lawyer would appear and plead for him. The Court also dilated on the vital aspect of the matter that convenience of the parties including the witnesses to be produced at the time of trial is also a relevant consideration for deciding a transfer petition. The Court held:

"The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can

seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 of the Cr. P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.

In G.X. Francis's case (AIR 1958 SC 309 : 1958 CriLJ 569) (supra) this Court felt that where public confidence in the fairness of the trial is likely to be seriously undermined under the circumstances of the case, transfer petition could be allowed. On finding that "there is uniformity of testimony from both sides about the nature of surcharged communal tension in that area," the Court found that the local atmosphere was not conducive to a fair and impartial trial which justified a good ground for transfer. The court rejected the contention of the petitioner therein regarding the wild allegations made to the effect that no court in the State of M.P. would be unbiased or impartial for dispensing justice. In the peculiar facts and circumstances of the case, the trial was transferred to an adjoining court. The mere existence of a surcharged atmosphere without there being proof of inability for holding fair and impartial trial cannot be made a ground for transfer of a case. Alleged communally surcharged atmosphere has to be considered in the light of the accusations made and the nature of the crime committed by the accused seeking transfer of his case. It will be unsafe to hold that as and when accusations are made regarding the existence of a surcharged communal atmosphere, the case should be transferred from the area where existence of such surcharged atmosphere is alleged. This Court had not concluded so generally in Francis's case as has been argued before us on behalf of the petitioner.

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

fair and impartial trial against the petitioners. If such a situation is shown to be existing, the State Government has no constitutional and moral right to rule the State as it would amount to perpetuating the continuance of a Government against the provisions of the Constitution which ensures and guarantees of a secularly democratic system of governance. The respondents have very emphatically submitted and we have no reason to doubt that the atmosphere in the State is not communally surcharged to the extent that holding of criminal trial against the petitioners and others is not possible in any part of the State. Even if some communal tension is shown to be in existence as perhaps is likely to be in view of the nature of offence committed and the accusations made against the petitioner and other accused persons, it is the obligation of the State Government to ensure the safety and security of the accused persons to stand free and impartial trial. It is true that in the detention order dated 7-7-1998 against the petitioner, the Commissioner of Police has mentioned that on account of the communal riots the Coimbatore City had become communally hypersensitive but those averments cannot be stretched to hold firstly that the whole State of Tamil Nadu has become communally surcharged and secondly that Coimbatore City itself continues to be so communally hypersensitive till date that the trial against the petitioners and other accused persons is not likely to be free, fair and impartial. In the counter affidavit the respondents have specifically stated:

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

26. Therefore, this judgment too is of no assistance to the petitioner.

27. In *Vijay Pal & Ors. v. State of Haryana & Anr.* [(1999) 9 SCC 67], Supreme Court has observed that application for transfer requires consideration on merits for justifiable reason. The Court held:

"What is more disturbing is the fact that the learned Judge disposed of that application without considering the merits of the application. We have quoted earlier that part of the judgment which states so. It was not a consent order. No finding was recorded to the effect that the prosecution witnesses were terrorised or were likely to be terrorised or influenced in any other manner. The learned Judge failed to appreciate that in absence of any justifiable reason it was not proper and legal to exercise the power under Section 407 Cr.P.C. and transfer the sessions case."

28. There is yet another aspect of the matter that in the petition initially the State has prayed for transferring six cases from different districts to Ajmer but later on confined to five cases without impleading all the accused persons as respondent in the petition. Respondent Manjeet Singh has raised a preliminary objection in this behalf by urging that in criminal cases besides prosecution, accused persons and witnesses are also stakeholders and therefore their inconvenience cannot be overlooked. It is also submitted by the respondent that notice and opportunity of being heard is necessary to the other accused persons also as they are necessary and proper party to the litigation. There cannot be two opinion that in a criminal trial rights of the accused are at stake and therefore for ensuring a fair trial to an accused, legislature in its wisdom has engrafted Section 303 Cr.P.C. which envisage right of person against whom proceedings are initiated to be defended. That apart, under Section 304 Cr.P.C., an accused is entitled for free legal aid at the State expense in certain cases.

29. It goes without saying that in many authoritative pronouncements Supreme Court has also held that accused is entitled for a fair and speedy trial being his fundamental right. Therefore, in the considered opinion of this Court, transferring a case from one district to another, may in a given case, cause inconvenience to the accused person or at times adversely affect his rights to defend his cause effectively. The principles of natural justice enshrined in the maxim audi alteram partem cannot be given go by while considering an application for transfer of the case. Cumulative reading of Section 407 Cr.P.C. and its purposeful construction also makes it crystal clear that it is bounden duty of the Court to ensure a fair and impartial inquiry or a trial in any criminal Court subordinate to it. My aforesaid view is also fortified by a judgment of Supreme Court in *Nirmal Singh v. State of Haryana* (AIR 1996 SC 2759) wherein the Court held:

"The accused (appellant Naib Singh) has, in the Memorandum of his Appeal in this Court challenging the directions of the High Court stated that the order of transfer had been made behind his back and without any notice to him or affording him any opportunity to oppose it. It is also stated that while ordering the transfer the learned Single Judge of the High Court did not take into consideration the financial constraints and the inconvenience which would be caused to the accused, who may have to engage new counsel at Chandigarh. The objections raised by the other accused in their appeals are of a similar nature. These objections cannot be said to be devoid of force or merits. Even if the learned Single Judge was of the opinion that the case should be transferred in the interest of justice, it should not have been done without notice to the parties. This we say on the plainest consideration of fair play and justice. We are, therefore, of the opinion that the suo moto directions given by the learned Single Judge for transfer of the case to the Court of Sessions Judge, Chandigarh cannot be sustained more particularly in view of the difficulties expressed by some of the appellants to face the trial at Chandigarh, where they may have to engage other counsel at fresh fee etc.

However, with a view to ensure a fair trial of the case, we consider it appropriate, while setting aside the directions dated 28.5.1996 to direct that the case arising out of FIR No.89 dated 16th July, 1994 shall be tried by the senior most Additional Sessions Judge, Ambala, and not by Shri A.S. Garg, Sessions Judge from whose court it was ordered to be transferred by the learned Singh Judge. The case shall be tried by the transferee court from the stage, in which it was when the same was ordered to be transferred by the High Court. The learned Sessions Judge, Chandigarh shall send the record of the case back to the Court of Sessions Judge, Ambala without any delay. The learned Sessions Judge, Ambala shall then forward the record to the transferee Court (senior-most Additional Sessions Judge, Ambala) and the transferee court shall dispose of the trial of the case expeditiously and as far as possible within three months from the date of receipt of the case file."

30. In yet another judgment, Supreme Court, in case of Shyam Sunder v. State of Rajasthan [(1981) 2 SCC 672], found the order of the High Court transferring appeal of an accused from Rajasthan High Court, Jodhpur to Jaipur Bench of the High Court unsustainable and remanded the matter back for deciding it afresh in accordance with law after hearing the appellant as also the counsel for the respondent. The Court held:

"This appeal in our opinion must succeed on a short point. The admitted facts are that the criminal appeal filed by the appellant before the Rajasthan High Court was initially presented in Jodhpur which is the headquarter of the High Court. A Counsel from Jodhpur was engaged by the appellant to argue the appeal. While the appeal was pending in the Jodhpur Bench it was transferred to the Bench at Jaipur without serving any notice on the appellant. The appellant has stated in affidavit that even his counsel at Jodhpur did not inform him that the appeal had been transferred to Jaipur and will be heard there. In these circumstances, the appeal was heard by the Bench at Jaipur in the absence of the accused, as would appear from the judgment itself. Counsel for the State of Rajasthan has not denied these facts and has conceded that as the appeal had been decided without hearing the accused he would not have any objection if the appeal is remitted to the High Court at Jaipur for re-hearing in presence of the accused. Although the High Court at Jaipur has given reasons for dismissing the appeal the fact remains that as the accused was not represented the possibility of the appellant having persuaded the High Court to take a different view cannot be reasonably excluded. In these circumstances, therefore, we allow this appeal, set aside the judgment of the High Court Bench at Jaipur and remand the appeal to the High Court at Jaipur for disposal in accordance with law after hearing the appellant as also the Counsel for the respondent. The appellant will now immediately engage his counsel and appear before the High Court for further directions on March 16, 1981. The High Court will fix a short date and dispose of the appeal as soon as possible."

31. Therefore, without impleadment of the accused persons as party to the

petition, in my opinion, relief craved for by the State cannot be granted.

32. From the facts averred in the reply of the respondent, it is also discernible that trial in Case No.34 of 2011 (State v. Ram Singh & Ors.) has materially progressed and going on day to day basis. Likewise, in Case No.22/2006 (State v. Sanjay Pandey & Ors.) the trial is at the fag end and proceeding on day to day basis. Similarly, Case No.34/2002 (State v. Surpat Surana) is also at the stage of final arguments. All these facts are not controverted by the State inasmuch as no rejoinder has been filed. Therefore, taking into consideration the stage of the trials in various cases, I am constrained to observe that it is not desirable to transfer the cases from various districts to District Ajmer. Allowing trials to continue at the places as such, in my opinion, would be expedient for the ends of justice. Thus, I am not impressed to accede to the prayer of the State in the peculiar facts and circumstances of the instant case.

33. In *Dara Singh and Ors. v. Republic of India* (2002 Cr.L.J. 1754), Orissa High Court has held that prayer for transfer of the case when the trial is likely to be concluded or almost close should not be allowed.

As a matter of fact, transfer of a case from one Court to another indirectly casts shadow on the competence and integrity of the Judge from whom the case is sought to be transferred. Therefore, mere presumption or possible apprehensions are not sufficient for seeking transfer and transfer can only be ordered on good and sufficient grounds. If the Court is satisfied that the ground for transfer is not substantiated or as such does not exist, it is not desirable to transfer the case. All that is pleaded in the petition and sought to be canvassed before the Court are unsubstantiated pleas, which I am afraid are not satisfying the grounds for transfer set out by the legislature under Section 407 Cr.P.C.

34. The entire basis of the petition clearly demonstrates utter failure of the State Home Department in apprehending a fugitive and to combat his nefarious designs, which in the opinion of the Court cannot be countenanced. August judicial forum cannot be utilized by the State for putting premium over its serious lapses and omissions. A very vital fact, that respondent has voluntarily consented in some of the pending cases to record statements of witnesses in his absence and in the modern era of information technology where trial through video conferencing is advisable, cannot lose sight of the Court to non-suit the petitioner in its pursuit sans plausible grounds to transfer the case.

35. The upshot of above discussion is that the instant petition fails and same is hereby dismissed. In view of dismissal of the writ petition, no orders are required on the application of the applicant.

36. The stay petition is also dismissed.