

A

CAPT. AMARINDER SINGH

v.

PRAKASH SINGH BADAL & ORS.

(Transfer Petition (Criminal) No. 235 of 2008)

B

MAY 14, 2009

[K.G. BALAKRISHNAN, C.JI., P. SATHASIVAM AND J.M. PANCHAL, JJ.]

C

Code of Criminal Procedure, 1973: ss.406, 407 – Transfer petition – Maintainability of – Held: Maintainable when there is reasonable apprehension on the part of party to a case that justice would not be done – Mere allegations that there is apprehension that justice would not be done would not suffice – Assurance of fair trial is the first imperative of the dispensation of justice – When it is shown that public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under s.407 and anywhere in the country under s.406 – Free and fair trial is sine qua non of Article 21 of the Constitution – On facts, accused were Chief Minister and his relatives and friends - Information furnished showed that except one or two, others were businessmen, agriculturists, employed as Special Inspector in U.T. Chandigarh, and one as Hindi teacher – In that event, if transfer is ordered outside the State of Punjab, it would be difficult for the other accused to attend the Court proceedings on several occasions – Same hurdle would be for other witnesses both on the prosecution as well as defence – Transfer petitions dismissed – Administration of justice – Constitution of India, 1950 – Article 21.

G

The first accused was the Chief Minister of the State of Punjab during the period 1997-2002. The others accused were his family members and his close

H

associates. An FIR was filed against them for alleged acts of corruption committed during the tenure of first accused for collecting black money, owning/possessing Nammi and Benami movable and immovable properties in India and abroad. Summons were issued by the Special Judge, Ropar. The accused persons filed application before the Special Judge, Ropar raising question relating to the competence and jurisdiction of Special Court, which was dismissed. They filed writ petition which was also rejected. Aggrieved accused filed SLP before this Court, which was also dismissed.

As the outcome of the dismissal of SLP, the trial before the Special Court which was suspended all this while was to proceed. Election took place in 2007 and the first accused again assumed power as Chief Minister of Punjab.

The transfer petitions were filed before this Court on the ground that trial became a sham and a farce designed to meet the ends of the accused who were in the complete control of every aspect of it; the prosecution witnesses were becoming hostile; and the investigating officer virtually resiled from every aspect of investigation.

Dismissing the transfer petitions, the Court

HELD: 1.1. A criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of *mala fides* or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Cr.P.C. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice would not be done. It is one of the

- A principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether
- B apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension. [Para 12] [214-G-H; 215-A-C]

- C *Prakash Singh Badal and Ors v. State of Punjab and Ors.* (2007) 1 SCC 1; *K. Anbazhagan v. Superintendent of Police & Ors.* (2004) 3 SCC 767; *Abdul Nazar Madani v. State of TamilNadu and Anr.* (2000) 6 SCC 204; *Sri Jayendra Saraswathy Swamigal (II) T.N. v. State of T.N. & Ors.* (2005) 8 SCC 771, relied on.

- D 1.2. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the
- E public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. However, the apprehension of not getting a fair and
- F impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must
- G appear to the Court to be a reasonable one. [Para 13] [215-D-F]

- H 2. During the period 1997-2002, the first Respondent was the Chief Minister. An FIR was launched on 24.06.2003 and chargesheet was filed on 22.11.2003,

citing 138 witnesses to be examined. A supplementary chargesheet was filed on 04.01.2004 citing more witnesses. The first Respondent came back to power as the Chief Minister in February, 2007. Out of 138 witnesses only 59 were examined, out of which 35 turned hostile. Though, it was highlighted that the first respondent was Chief Minister and all other accused were his relatives and friends, the information furnished showed that except one or two, others were businessmen, agriculturists, employed as Special Inspector in U.T. Chandigarh, and one as Hindi teacher. In that event, if transfer is ordered outside the State of Punjab, it would be difficult for the other accused to attend the Court proceedings on several occasions. The same hurdle is there for other witnesses both on the prosecution as well as defence. [Paras 14 and 16] [215-G-H; 216-A; 219-E-F]

3.1. It is upon the presiding officer/Special Judge and not this Court to evaluate witnesses and arrive at a conclusion one way or other depending on the charges leveled against the accused. It would not be fair on the part of this court either to assess and arrive at an opinion about the same. Even after closing of the prosecution side by the Public Prosecutor, if the Court wants to examine some more witnesses from the list furnished by the prosecution, it is for the presiding Judge to take a decision in accordance with the law and issue appropriate direction. [Para 21] [222-H; 223-A-B]

3.2. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. When the complainant was examined as PW 56, he disowned his complaint and asserted that the complaint was not filed by him though he admitted his signature found therein.

A Further, all important witnesses particularly government officials informed that what they said before the Court was absolute truth and they were forced to make false statement at the time of registering the complaint. Similar transfer petition which was filed before the High Court ended in dismissal and it became final. The presiding officer of the Special Court is conscious of his power and how to conduct fair trial at the same place. The public prosecutor cannot act on the dictates of the State Government. He has to act objectively as he is also an Officer of the Court. The Special Court is free to assess whether prosecution has established its case. Considering the totality of all circumstances, in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding, the nature of the accusations made against them. In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done. Taking into consideration the entire facts and circumstances of the case and the materials on record, the petitioners have not made out a case that they have reasonable apprehension of not availing justice in the State of Punjab. [Paras 23 and 24] [223-E-H; 224-A-E]

Case Law Reference:

(2007) 1 SCC 1	relied on	Para 2
(2004) 3 SCC 767	relied on	Para 9
(2000) 6 SCC 204	relied on	Para 10
(2005) 8 SCC 771	relied on	Para 11

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition
(Criminal) No. 235 of 2008.

CAPT. AMARINDER SINGH v. PRAKASH SINGH 199
BADAL & ORS.

WITH

T.P. (CRL) No. 179 of 2008.

Altaf Ahmed, P.S. Narasimha, Gaurav Agarwal and Abhijat
P. Medh for the Appellant.

Harish N. Salve, Ashok Desai, Dr. Rajiv Dahavan, Ravi
Shanker Prasad, C.S. Vaidyanathan, Vikram Chaudhari, Nikhil
Jain, Aparajita Singh, Madhur Seth, D. Mahesh Babu Ajay Pal,
Jaishree Anand, Ajay Bansal, Kuldip Singh, Gagan Deep
Sharma and Sunil Kumar Jain for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These two transfer petitions have
been preferred under Section 406 of the Code of Criminal
Procedure, 1973 seeking transfer of the case titled as "State
of Punjab vs. Prakash Singh Badal and Ors." relating to FIR No.
15 dated 24.06.2003 filed under Sections 420, 467, 468, 471
and 120-B of the Indian Penal Code, 1860 read with Sections
7,8,9,10, 13 (1) and (2) of the Prevention of Corruption Act,
1988 pending in the Court of Special Judge, Ropar to any other
suitable Court of competent jurisdiction in New Delhi.

2. Capt. Amarinder Singh is the petitioner in Transfer
Petition No. 235 of 2008. M/s Jeet Mohinder Singh, Sukhpal
Singh, Gurpreet Singh and Mangat Ram Bansal who are all
members of Legislative Assembly are the petitioners in
Transfer Petition No. 179 of 2008. Respondent Nos. 1 to 10
are the accused in the case relating to FIR No. 15 and 11th
Respondent is the State of Punjab. Since, facts are common
in both the transfer petitions, we propose to dispose of the
same by this common judgment. For convenience, reference
to parties will be as arrayed in Transfer Petition No. 235 of
2008.

3. Brief facts, as stated in the Transfer Petition No. 235 of
2008, are as follows:-

- A (a) FIR No. 15 dated 24.06.2003 filed under Sections
B 420, 467, 468, 471 and 120-B of Indian Penal
C Code, 1860 read with Sections 7, 8, 9, 10, 13(1)
D and (2) of the Prevention of Corruption Act, 1988
was registered at the Police Station Vigilance
Bureau, Flying Squad, Mohali on the complaint of
one Mr. Balwant Singh son of Mr. Sukhdev Singh.
This FIR was filed for offences committed by Mr.
Prakash Singh Badal (Accused No.1), Mr. Sukhbir
Singh Badal (Accused No.2) and other family
members for alleged acts of corruption committed
during the previous tenure of Accused No.1 as
Chief Minister of the State of Punjab for the period
1997-2002, for collecting black money, owning/
possessing Nammi & Benami movable and
immovable properties both in India and abroad.
Summons were issued by the Special Judge,
Ropar, Punjab on 01.12.2003.
- E (b) Against the summons, Mr. Prakash Singh Badal
and Mr. Sukhbir Singh Badal filed a Special Leave
Petition being SLP (Crl.) No. 5252 of 2003. Along
with these proceedings, they also filed a Transfer
Petition before this Court being T.P. (Crl.) No. 307
of 2003 challenging, *inter alia*, the jurisdiction of the
Special Judge, Ropar. When both the petitions
came up for hearing before this Court on
12.12.2003, the Special Leave Petition as well as
the Transfer Petition were withdrawn by the
Accused-Petitioners. The above-said Transfer
Petition was withdrawn with liberty to file any other
Transfer Petition in future and the same will be
considered on its own merits as pleaded in that
petition.
- H (c) Mr. Prakash Singh Badal and Mr. Sukhbir Singh
Badal having withdrawn the above Special Leave

Petition and Transfer Petition, moved an application on 16.01.2004 before the Special Judge, Ropar raising question relating to the competence and jurisdiction of the Special Court. It was submitted that the Special Court had no jurisdiction in the matter of FIR No. 15 of 24.06.2003 and that it could neither proceed nor adjudicate upon the said matter. By order dated 29.05.2004, the learned Special Judge, dismissed the said application holding that it had the requisite jurisdiction in the matter. Aggrieved by that order, on 30.06.2004, the accused filed CWP No. 9410 of 2004 before the High Court of Punjab and Haryana at Chandigarh.

(d) The High Court heard the said Writ Petition and after considering all the legal issues raised by the accused, rejected the same by a detailed judgment dated 02.09.2004 directing the Special Judge to conclude the trial as expeditiously as possible and in any case not later than a year from the pronouncement of the said judgment. Being aggrieved by this judgment, the accused filed Special Leave Petition being SLP (Civil) No. 19640 of 2004 before this Court.

(e) By this time, on the issue of law relating to sanction for prosecution in such cases, several Special Leave Petitions were filed before this Court by various Politicians across the country in separate matters relating to the jurisdiction of Special Courts dealing with such allegations of corruption, the cognizance and trial of such offences relating to corruption and other issues as to the requirement of sanction for prosecution. The entire batch of matters and all issues on law were decided by this Court by a detailed judgment dated 06.12.2006 in

A the matter of *Prakash Singh Badal and Ors vs. State of Punjab and Ors.*, (2007) 1 SCC 1 and the said special leave petitions filed by the accused came to be dismissed by this Court. As a natural outcome of this dismissal, the trial before the
B Special Court, which had been suspended all this while was to proceed.

(f) Elections were to take place in the month of February, 2007 in the State of Punjab. Hence, the Accused (who were also contesting election) sought time before the learned Special Judge and requested that the trial be taken up after the election is over and the result is announced. Thereafter, Accused No.1 assumed power and position as the Chief Minister of Punjab the entire criminal trial took a completely different turn.

(g) On 15.02.2007, an application was moved by one of the Accused regarding crucial witnesses and on 21.02.2007 another application was filed by the accused for discontinuation/termination of further proceedings. Although both these applications would have serious ramifications on the case of the prosecution and the continuation of the trial, neither a cursory reply was filed by the public prosecutor to the above applications nor were they objected to. Thus at this primary stage itself it can be seen that the powerful position of Accused No.1 occupying the highest political chair in the State as Chief Minister of Punjab was being brought down in full measure on the prosecution.

(h) The allegations against the accused were primarily that of corruption and of amassing assets which were disproportionate to their income. To support this case, one of the primary documents being relied on by the prosecution was a report prepared

by the Income-Tax Department as regards the income/assets and other financial details of the accused. Despite this document being absolutely necessary to prove the case of the prosecution, on 23.02.2007 the Investigating Officer, Mr. Surinder Pal Singh, filed an affidavit before the Special Court/Trial Court stating that the report prepared by the Income-Tax Department ought not to be considered by the Special Court at the stage of framing of charge. The Investigating Officer, clearly to favour the accused, virtually throttled the case of the prosecution with his own hands by conceding before the Special Court/Trial Court that this crucial piece of evidence in the form of the Income-Tax report ought not to be considered.

(i) The prosecution and the free and fair trial of the matter was already being further compromised, is evident from the fact that while the public prosecutor continued to fail to tender a reply to the above crucial applications filed by the Accused. The accused themselves had stopped bothering to even appear before the Special Court. By this time, Accused No.1 Mr. Prakash Singh Badal had formally occupied the chair of Chief Minister of Punjab and was also holding the Portfolio of the Department of Home.

(j) When the matter came up for hearing on 01.03.2007 and the Special Public Prosecutor Mr. Amar Preet Singh Deol had closed his arguments, an application was moved by the Public Prosecutor Mr. Pardeep Mehta under Section 173 (8) of the Code of Criminal Procedure, 1973 seeking permission to conduct "further investigation". While strangely such an application was made after the Special Public Prosecutor had concluded his

A arguments, it was further made evident that the
 Prosecution was under the pressure of, inter alia,
 Accused No.1 who was now the Chief Minister of
 Punjab to seek a medium through which the case
 of the prosecution against the Accused could be
 B weakened. This would naturally be under the garb
 of such "further investigation" which had now
 become "necessary".

(k) Again when the matter came up for hearing on
 C 06.03.2007, neither of the accused was present in
 the Court in spite of the express directions of the
 Special Court. As far as the applications were
 concerned, a vague and perfunctory reply was filed
 by Mr. Pardeep Mehta, the Public Prosecutor,
 D which in fact did not even deal with the contentions
 set out in the said application. There was not even
 a word of objection or opposition to the said
 application. As a matter of fact, the reply filed by
 the prosecution requested the Court to adjourn
 these applications and keep them sine die.

E (l) The public prosecutor Mr. Pardeep Mehta, who had
 been protecting the interest of the Accused was
 now made "in charge" of the case, obviously by the
 Government headed by Accused No.1. Further it
 F may be important to note that by now, Accused
 No.1 was now in charge of Home Department and
 more particularly, the Vigilance Department.

(m) When the matter once again came up for hearing
 G on 07.03.2007, the Court was constrained to note
 that no proper/final reply had been filed by the
 Prosecution with regard to the applications filed by
 accused inter alia for discontinuation/termination.

(n) Despite a complete lack of assistance and interest
 H on the part of the prosecution, the Special Judge,

Ropar framed charges against the Accused A
including Mr. Prakash Singh Badal (Chief Minister
of Punjab), Mr. Shukhbir Singh Badal (Son of the
Chief Minister) and other members of the family and
known associates under Sections 13 (1)(a), 13(2),
13(1)(e), 8,9 and 14 of the Prevention of Corruption B
Act, 1988 read with Section 120-B of the Indian
Penal Code, 1860. On 09.03.2007, the Special
Judge dismissed the application filed by the Public
Prosecutor Mr. Pardeep Mehta for permission to
conduct "further investigation" under the provisions C
of Section 173 (8) of the Cr.P.C. along with various
other applications filed by the Accused with regard
to directing the prosecution to clear their stand on
the statements of the witnesses and application for
termination of further proceedings and the challan D
in view of the alleged infirmity in the proposed
charges to be framed against the accused.

(o) Despite all the damage that could have done
through the prosecution after the framing of the
charge, the Government of Punjab, Department of
Home Affairs and Justices issued Notification E
No.21/17/2000-3/JUDL (1)/1418 dated
10.05.2007/11.05.2007 canceling the
appointments of all existing special public
prosecutors in the case. Ironically the said F
Notification was said to be passed with immediate
effect in public interest. Thus Accused No.1 who
was holding charge of the Home Ministry portfolio
was in a position to actually decide as to who
should be his prosecutor. G

(p) All the eleven officials who appeared as witnesses
despite admitting to their respective signatures on
their statements under Section 161 of the Criminal
Procedure Code, 1973 resiled from the contents H

A thereof. It may be seen that if, fear of or a sense of
favour towards the Accused had driven the above
witnesses who are officials of Departments such as
the Vigilance Bureau, Irrigation and PWD
B Department to resile from their sworn statements,
there could be no hope of truth or assurance of
safety for the witnesses in the case.

(q) When the prosecution further continued on
20.08.2007, three more prosecution witnesses
were examined and they all resiled from the
C statements made before them.

(r) The conduct of the Prosecution and the manner in
which the Accused has struck at the heart of it and
made it defenceless can be seen from the fact that
D in the course of such trial, it is common practice for
the prosecution to require examination of the
investigating officer at the end of evidence so that
such investigating officer may prove the statement
of the other witnesses even if they were to have
E resiled from the same in the course of examination.
However, in the present case, despite the fact that
some prosecution witnesses had already started
resiling from their statements, the prosecution
deliberately made an application for examining the
F investigating officer Mr. Surinder Pal Singh,
prematurely and at the beginning of such
proceedings. If such Investigating Officer was to be
examined at this early stage, then there would be
nobody left to prove the statements of prosecution
witnesses who were resiling. However, this
G application was dismissed by the Special Court/
Trial Court vide order dated 20.08.2007.

(s) The manner in which the public prosecutor Mr.
Pardeep Mehta was covering up for the accused
and helping them is made further clear when the
H

State of Punjab actually appealed the above order of the Special Court/Trial Court dated 20.08.2007 dismissing the above application which was so done by challenging the order before the High Court of Punjab and Haryana at Chandigarh vide Criminal Misc. No.45232-M of 2007 under the provisions of Section 482 of Code of Criminal Procedure praying that the application moved by the prosecution to examine the investigating officer before proceeding further be allowed. By order dated 14.11.2007, the High Court directed the Special Court to consider afresh any such application that may be filed by the public prosecutor in the near future.

(t) The complete and deliberate breakdown of the prosecution case became further clear when on 17.01.2008 the Complainant Mr. Balwant Singh too resiled from his affidavit by stating that he had no knowledge of the contents of the Complaint which had led to registration of the said FIR No.15 dated 26.04.2006 and despite acknowledging his signatures on each and every document of the complaint and the accompanying affidavit, stated that he had in fact signed these papers for the purchase of a vehicle.

(u) Finally on 04.02.2008, the prosecution finally succeeded in persuading the trial Court to examine the Investigating Officer Mr. Surinder Pal Singh. The Investigating Officer Mr. Surinder Pal Singh in his examination-in-chief has virtually resiled from every aspect of the investigation; stated that he did not record the witness statements in question and wherever his signatures appear on the record of the case was because "he signed where he was told to".

A (v) This trial is now a sham and a farce designed to
meet the ends of the accused who are in complete
control of every aspect of it.

B 4. As against the above allegations, the respondents have
filed response among which let us refer the stand taken by the
first respondent, namely, Mr. Prakash Singh Badal:

C (a) The transfer petition is grossly belated. No
explanation has been offered as to why the
petitioner has chosen to wait until the entire
prosecution evidence which commenced from
18.07.2007 stood concluded in March, 2008. The
case is now at the stage of consideration of
recording statements under Section 313 of Criminal
Procedure Code. The petition is clearly politically
D motivated and an attempt to scuttle the trial which
is at its fag end.

E (b) A close relation of Capt. Amarinder Singh, namely,
Mr. Simranjit Singh Mann, had filed a transfer
petition in the High Court being CWP No. 11399/
2007 for transfer of the case from Ropar to any
other Court outside the State of Punjab on the basis
of similar contentions, regarding the alleged
impossibility of a free and fair trial in the State of
Punjab. The said transfer petition was dismissed
F by the High Court, vide judgment and final order
dated 25.09.2007, observing that there is no basis
for the apprehension expressed by the writ
petitioner. This judgment and final order of the High
Court was never challenged.

G (c) All the alleged witnesses in the case were put up
by the present petitioner, as the then Chief Minister
of the State, in order to politically discredit the 1st
respondent and to create a defence for himself in
H respect of both civil and criminal proceedings for

defamation instituted by the 1st respondent against the petitioner herein. Viewed in this context, the deposition of the prosecution witnesses before the Trial Court is clearly truthful, as they have categorically exposed the manner in which they were cited as false witnesses and subjected to threat and coercion at the instance of the petitioner herein.

(d) Various events set out in para 7 of the affidavit establish that the entire prosecution is vitiated by mala fide. It is borne out from the record that the petitioner, after assuming the office of Chief Minister in February 2002, had embarked upon a witch hunt against the 1st respondent and his family members. To this end, he retained to himself the portfolios of Home and Vigilance. Various officials either working in the Vigilance Bureau or in various other Government Departments were pressurized and cited in the list of witnesses, and a wholly baseless challan was presented.

(e) In para 12, details were furnished about the number of prosecution witnesses, their status and their statements. In para 13, details have been furnished about various documents placed before the trial Court. The above-mentioned details reveal the mala fides behind the trial of the 1st respondent and other accused. The petitioner has filed the present petition to somehow scuttle the trial.

(f) The statement of official witnesses under Section 161 Cr.P.C. are never signed by the witnesses and had categorically stated that on 1st, 2nd and 03rd November, 2003 they did not go to any place for making any assessment. They had gone only in July, 2003 and submitted their reports. These reports, which would have established the correct

A value of the property of the 1st respondent did not
find approval with the Vigilance Bureau and the
same have been concealed.

B (g) As regards the allegation of non-appearance of the
accused in the Court, Smt. Surinder Kaur Badal,
wife of Mr. Prakash Singh Badal was granted
permanent exemption from personal appearance
by the trial Court, way back on 21.02.2004 when
C the petitioner Mr. Amarinder Singh himself was
heading the Government. The first respondent had
appeared on several dates including 13.03.2007
and 04.07.2007 when charge sheet and amended
charge sheet was served upon him. Thereafter, he
D had been seeking exemption from personal
appearance by making appropriate application. He
had been granted exemption on specific dates of
hearing by the trial Court after due application of
mind. Mr. Sukhbir Singh Badal appeared on most
of the dates of hearing in the trial Court barring a
few where he was granted exemption from personal
E appearance by the trial Court.

F (h) Regarding the allegation of manhandling Mr. Amar
Preet Singh Deol, the 1st respondent has
specifically denied the same and neither Mr. Amar
Preet Singh Deol nor any other person ever raised
any issue before the trial court. Even in the transfer
petition filed by Mr. Simranjit Singh Mann before the
High Court, no such averment was ever made
regarding the alleged manhandling of Mr. Amar
G Preet Singh Deol on 28.02.2007. Likewise, the 1st
respondent has denied the allegation that
supporters and party workers indulged in slogan
shouting leading to a terror filled atmosphere in
which no free and fair trial can ever proceed or
H conclude. It is pointed out that no complaint has

been made to the Presiding Judge nor there has been any report in the Press about the same. A

- (i) The entire matter is now under the judicial scrutiny before the trial Court. There is no allegation in the petition against the conduct of the proceedings in the Court or against the Presiding Officer. B

5. In the light of the above pleadings, we have heard Mr. Altaf Ahmed and Mr. P.S. Narasimha, learned senior counsel for the petitioners and Mr. Harish N. Salve, Mr. Ashok Desai, Dr. Rajiv Dhavan, Mr. Ravi Shanker Prasad and Mr. C.S. Vaidyanathan, learned senior counsel for the respondents. C

6. After taking us through the entire materials including the complaint, statement of witnesses, proceedings, various orders of the Court and steps taken and the alleged failure or lapse by the special Public Prosecutor, Mr. Altaf Ahmed and Mr. P.S. Narasimha, learned senior counsel appearing for the petitioners mainly submitted that in view of the fact that the first accused being the Chief Minister and his son being a Deputy Chief Minister, others are being either family members of the Chief Minister or his close associates, there cannot be any fair trial. They also contended that in view of the attitude of the Government terminating all the special counsel/special public prosecutors except one Mr. Pardeep Mehta, it is undesirable to continue the prosecution in any place in the State of Punjab. They finally contended that the conduct of the Investigating Officer, namely, Mr. Surinder Pal Singh in disowning his statement and conceding that he put his signature under pressure clearly shows that there cannot be a fair trial and nobody is interested to proceed with the prosecution case. On the other hand, learned senior counsel appearing for the respondents/accused disputed all the allegations/apprehensions raised by the petitioners in conducting fair trial. After taking us through the statement of the witnesses examined so far and documents placed, it is stated that it cannot be construed that there was any inaction on the part of H

- A the prosecution or public prosecutor. According to them, there is no basis for such apprehension and witnesses have clarified their statements and asserted that their statements before the Court are true. They also highlighted their position at the relevant time and confirmed that they had nothing to do with the
- B allegations made against them. It is further pointed out that those witnesses clarified that they were not under pressure. It is also pointed out that inasmuch as most of the witnesses so far examined resiled one after another and only in this context, public prosecutor informed the Court that there is no purpose
- C in continuing the prosecution.

7. The above transfer petitions have been filed under Section 406 of the Code of Criminal Procedure, 1973 which is reproduced below for ready reference:

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

- F (2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

- G (3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme 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
- H

application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case."

Sub-section (1) makes it clear that for the ends of justice it would be open to this Court to transfer any case or appeal from one High Court to another High Court or from one Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.

8. Before considering the rival claim of both parties, it is useful to refer some of the decisions of this Court relating to transfer of a criminal case from one State to another.

9. In *K. Anbazhagan vs. Superintendent of Police & Ors.* (2004) 3 SCC 767, this Court had an occasion to consider the transfer of a criminal trial from the State of Tamil Nadu to another State, a two Judge Bench, after going into the factual details, particularly, the change of Government, attitude of the public prosecutor and finding that there is justifiable and reasonable apprehension of miscarriage of justice as well as likelihood of bias, allowed the Transfer petition pending on the file of XIth Additional Sessions Judge (Special Court No. 1) Chennai, State of Tamil Nadu to the State of Karnataka. While directing the transfer this Court permitted the State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka to appoint a senior lawyer having experience in criminal trials as Public Prosecutor to conduct those cases. In the same order, the Court observed that the public prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused, who have resiled from the previous statement, may be again recalled. The Court further observed that the public prosecutor would be at liberty to apply to the Court to have these witnesses declared hostile and seek permission to cross-examine them.

10. In *Abdul Nazar Madani vs. State of Tamil Nadu and*

A *Anr.* (2000) 6 SCC 204, the issue dealt with was for transfer of criminal case from one State to another. In the said decision it was reiterated that 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 case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. However, 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. After perusing the figures furnished and considering all the materials, it was concluded that the transfer petitions were totally misconceived and dismissed the same.

11. In *Sri Jayendra Saraswathy Swamigal (II) T.N. vs. State of T.N. & Ors.* (2005) 8 SCC 771, this Court has held that if there is reasonable apprehension on the part of a party to a case that justice may not be done, he may seek transfer of the case. It also held that the apprehension and parties must be a reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.

12. It is a well-established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant.

However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Cr.P.C. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

13. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is *sine qua non* of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the Court to be a reasonable one.

14. In the light of the above principles, let us analyse the claim of both parties and find out whether the criminal trial is to be transferred to other State. It was pointed out that with respect to offences committed during the period between 1997-2002, the time when the first Respondent was the Chief Minister, an FIR was launched on 24.06.2003 and chargesheet

A was filed on 22.11.2003, citing 138 witnesses to be examined. A supplementary chargesheet was filed on 04.01.2004 citing more witnesses. The first Respondent came back to power as the Chief Minister in February, 2007. Out of 138 witnesses only 59 were examined, out of which 35 turned hostile. Mr. Altaf

B Ahmad, learned senior counsel for the petitioner pointed out that the aspect of selective calling up of witnesses, dropping crucial witnesses, most of the witnesses turning hostile one after another, non-examination of witnesses connected with the transaction and not citing certain witnesses hostile or cross

C examining them when they resile from the earlier statements, has virtually rendered the trial farcical. Though, in a transfer petition we are not expected to go into the veracity of the statement of the witnesses and their evidential value, since both side cited several instances, we may refer the same without expressing specific opinion on them. According to the counsel

D for the petitioners insofar as valuation of the properties of the accused, though, one Mr. Bharat Shah, Challan Witness No. 114 who had visited the properties of the Accused for the purpose of valuation and assessment of the assets of the accused and had recorded a statement under Section 161,

E was dropped by the prosecution. On the request of the police that they would not help the case of the prosecution it was pointed out that on the same reasoning Mr. Surinderpal Mitra, Challan Witness No. 116 and Mr. S.K. Srivastava were dropped by the prosecution. Likewise, it was pointed out that

F Mr. Sukhdip Singh Dhindsa, Mr. S.K. Jain, Mr. A.K. Goel, Mr. Gurpratap Singh, Mr. Sawtantar Singh, and Mr. Vinarjit Singh were not examined. In the same manner, in respect of allegation relating to Benami transaction some of the prosecution witnesses were either dropped or declared as hostile. It was

G contended that same was the position in respect of charge relating to bribery, flow of illegal wealth and black money of the accused persons.

15. Though, Mr. Altaf Ahmad and Mr. P.S. Narasimha took

H us through their evidence let in before the Special Court and

their statement recorded earlier under Section 161 Cr.P.C. Mr. A
Harish Salve, senior counsel appearing for one of the
Respondents by taking us through the same materials
demonstrated that there is no basis for the apprehension
expressed by the petitioners. It was pointed out that initially
Capt. Amrinder Singh was also a member of the same party B
along with Respondent No. 1 who subsequently left the
Shiromani Akali Dal on being denied to contest the Assembly
Election in 1997. Since then, the petitioner held Mr. Prakash
Singh Badal who was the president of the Shiromani Akali Dal
at that time, to be responsible for his fate. The petitioner had C
subsequently joined the Congress. It was further pointed out that
in September, 2001 in the Assembly elections in Punjab, the
petitioner wrote a letter to Mr. Badal alleging that the latter had
amassed properties in India and Abroad which were
disproportionate to his known sources of income. The said D
letter was published in the Press and wide publicity was given
for the purpose of electoral gain in February, 2002. A criminal
complaint for defamation was filed by Mr. Badal's son Mr.
Sukhbir Singh Badal, 2nd Respondent herein against the
petitioner. It was pointed out that in the same month i.e. in 2002, E
the Congress party came to power in Punjab and the petitioner
was appointed as the Chief Minister and retained with himself
the portfolio of Home and Vigilance. It was further pointed out
that on account of the persistence of the petitioner with his
defamatory allegations, the respondent herein also filed a
criminal complaint for defamation against the petitioner. In both F
the said criminal complaints, the petitioner had been the same
and served with notice of accusation by the Trial court to face
the trial. It is claimed that FIR dated 24.06.2003 is almost a
verbatim copy of the letter dated 04.09.2001 written by the
petitioner. In the counter affidavit filed before us the first G
respondent has highlighted various other proceedings between
the respondents and the petitioner. In the same counter affidavit
the evidence given by prosecution witnesses were catalogued
and asserted that those witnesses have not supported the case
of the prosecution and also emphasized the manner in which H

- A the prosecution set up the false witnesses, pressurized and threatened them. It is the claim of the learned senior counsel appearing for the petitioners that contrary to all known practice of a conduct of a trial in which the prosecution examines the Investigating Officer at the end of the prosecution evidence so
- B that the statements of hostile witnesses may be proved, in the cases on hand the public prosecutor, Mr. Pardeep Mehta prematurely filed an application for examining the Investigating Officer, Mr. Surinder Pal Singh. By pointing out the same, learned senior counsel for the petitioners contended that
- C prosecution was so keen that the Investigating Officer be examined out of turn. It is seen that the said application filed by the public prosecutor was dismissed by the trial Court by order dated 20.08.2007. The special Court after finding that in case other witnesses turned hostile then Investigating Officer
- D is to prove their statement, therefore, it will be appropriate if the Investigating Officer is examined after examination of the remaining material witnesses. By saying so, the special Court disposed of the application filed by the public prosecutor. Against the said order, the State of Punjab appealed before the High Court of Punjab & Haryana in Crl. Misc. Application
- E No. 45232-M/07. The materials placed show that in the meantime before the Special Court three more witnesses were examined and they also turned hostile. They are: 1. PW 34: Mr. Rajinder Singh Garewal, Deputy Director, Horticulture 2. PW 35: Mr. Rajinder Singh, Sub Divisional Engineer, Irrigation, Bhatinda and 3. PW 36: Mr. Vijay Kumar, Junior Engineer, Drainage. Ultimately, the High Court disposed of Crl. Misc. Application and passed an order to the effect that in the light of any changed circumstances and/or subsequent events, the public prosecutor deems it appropriate to seek permission of
- F the learned Special Judge to examine the Investigating Officer before the remaining witnesses are examined, he may move another application to this effect and if such an application is moved, the learned Special Judge was directed to consider and dispose of the same in accordance with law by ignoring
- G the previous order dated 20.08.2007. Even thereafter, three
- H

more witnesses were examined on 26.11.2007 & 27.11.2007 and they too turned hostile. They are – 1. PW 43: Mr. Amandeep Singh Brar, Executive Engineer, PWD 2. PW 44: Mr. Sukdhip Singh Dhindsa, Executive Engineer, PWD and 3. PW 46: Mr. Surender Singh, Cable Operator. It is further seen that on 04.01.2008 two more witnesses were examined who also turned hostile. They are – 1. PW 50: Mr. Jit Singh, Agriculturist and 2. PW 52: Mr. Gurinder Pal Singh, Inspector General of Police, Railways. It was highlighted that those witnesses i.e. PWs 9 to 14, 35 & 36 had not even seen Balasar Farm House, where their services were alleged to have been utilized. Likewise, the other witnesses PWs 1 to 7, 15, 23, 24, 27, 28, 43, 44 and 53 have denied their role in assessing the properties on 1st, 2nd and 3rd November, 2003 i.e. the date of the assessment alleged by the prosecution. Those witnesses filed separate affidavit in the High court stating that on 1st, 2nd, 3rd November 2003, when the alleged assessment said to be taken place, they were doing their official work at their respective offices. These witnesses admitted the fact that they assessed those properties in July, 2003, but their report did not find approval of the Vigilance Bureau.

16. Though, it was highlighted that the first respondent is a Chief Minister and all other accused are his relatives and friends, the information furnished show that except one or two others are businessmen, agriculturists, employed as Special Inspector in U.T. Chandigarh, and one as Hindi teacher. In that event, if transfer is ordered outside the State of Punjab, it would be difficult for the other accused to attend the Court proceedings on several occasions. The same hurdle is there for other witnesses both on the prosecution as well as defence.

17. It is relevant to point out that the complainant himself, namely, Mr. Balwant Singh who was examined as PW 56 resiled stating that the affidavit supporting his private complaint was not filed by him. He asserted that he had signed these papers for purchase of a vehicle. On the same day 17.01.2008/

- A 18.01.2008 when the complainant resiled, PW 53: Mr. Amarjit Singh, SP Vigilance Bureau and PW 55: Mr. Jagdish Singh Khaloan, SP, Ferozepur who were examined on the same date also turned hostile. On the next hearing date i.e. 05.02.2008 when the prosecution examined the Investigating Officer, in his examination in chief, he resiled from every aspect of the investigation stating that he did not record the witness statements, he signed when he was told to and even the charge sheet was prepared on the computer of a Senior Officer and merely signed by him. In those circumstances, in view of the fact that many of the officers asserted before the Special Court that neither they were in the respective position as claimed by the prosecution nor they made a statement as recorded under Section 161 which necessitated the public prosecutor closing the prosecution case by giving up remaining PWs as unnecessary.

- D 18. Coming to the allegation relating to removal of Special public prosecutors/special counsel and the conduct of the present Public Prosecutor Mr. Pardeep Mehta, on behalf of the State of Punjab, Chief Secretary has filed a counter affidavit dated 29.04.2008 explaining the correct position. It is stated that the political system prevailing in India is such that whenever Government changes or new political party forms the Government, all the officers including the Advocate General and the Law Officers tender their resignation and new ones, in whom the Government of the day has confidence are appointed by the new Government/Political Parties. The same was also done by the government headed by the petitioner herein which came in power in the year 2002. Relating to the allegations that have been made against the Public Prosecutor Mr. Pardeep Mehta, the Chief Secretary has explained that Mr. Pardeep Mehta had been posted as Deputy District Attorney in the Vigilance Bureau, Punjab on 26.09.2002. He was promoted as District Attorney by Order dated 29.05.2006. Pursuant to his promotion as District Attorney vide order 31.05.2006 passed by the Principal Secretary, Department of Home Affairs and Justice,

State of Punjab, he was appointed as District Attorney, Ropar. A
Soon after his appointment as Deputy District Attorney, B
Vigilance Bureau, Punjab, Mr. Pardeep Mehta had been
conducting the prosecution of almost all the cases registered
under the Prevention of Corruption Act at Mohali. He had also
been assisting various special public prosecutors in the C
conduct of the trial of the present case, as well as the
proceedings before the High Court and in this Court. He relied
on the order sheet of the Trial Court with effect from 19.12.2006
which, according to him, reveal that Mr. Pardeep Mehta
appeared on behalf of the prosecution on each and every date
of hearing.

19. With regard to allegation regarding appointment and
removal of other public prosecutors/special counsel, the Chief
Secretary has explained that on 28.11.2003 by separate D
Notification Mr. Amar Pal Singh Randhawa, Advocate, Mr. H.S.
Sandhu, Senior Advocate and Mr. Sukhdev Singh Tiwana,
Advocate were appointed as Special Public Prosecutor in the
present case. On the same day i.e. 28.11.2003, Mr. Pardeep
Singh, Advocate, Mr. Shiv Dutt Sharma, Advocate and Mr. E
Amar Ashok Pathak, District Attorney/PP were appointed to
assist the prosecution. Mr. U.U. Lalit, Advocate, (now Senior
Advocate) on 24.04.2004, Mr. Rajiv Dutta, Senior Advocate,
on 17.09.2004, Mr. Amar Preet Singh Deol, Advocate, on
22.12.2006 and Mr. R.S. Cheema, Senior Advocate (the then F
Advocate General, Punjab) on 18.01.2007 were appointed as
special public prosecutors respectively. It was further explained
that the order sheet of the Trial Court from time to time shows
that Mr. Amar Pal Singh Randhawa, Advocate had never
conducted the proceedings before the Trial Court. Mr. Rajiv
Dutta, Senior Advocate appeared on 18.09.2004 i.e. on one G
occasion only. Mr. U.U. Lalit, Senior Advocate, had appeared
on 24.04.2004, 29.04.2004, 04.05.2004, 15.05.2004,
28.09.2004 and 30.09.2004, and not thereafter.

20. As regards the allegation that Mr. Amar Preet Singh H

- A Deol, Special Public Prosecutor, was manhandled on 28.02.2007, Chief Secretary has stated that no complaint was filed by him in respect of any such alleged incident. On the other hand, it was pointed out that Mr. Amar Preet Singh Deol had himself written a letter on 12.03.2007 to the Secretary (Home), Punjab, Chandigarh, requesting, inter alia, for clearance of his fee bills, and even in this letter there was no mention of any such incident. It was further stated that Mr. H.S. Mattewal was appointed as Advocate General for the State of Punjab on 02.03.2007 and he assumed his office on the said date.

- C 21. As rightly highlighted by the learned senior counsel for the State of Punjab that there is no reason to disregard the above information furnished by the Chief Secretary of the State of Punjab. In those circumstances, the allegation relating to removal of Special Public Prosecutors and about Mr. Pardeep Mehta cannot be sustained. It is also relevant to point out that before the Court of Special Judge, Ropar, the present Public Prosecutor Mr. Pardeep Mehta made a statement on behalf of the State that on the basis of the police records he had given up prosecution witnesses Mr. Kuldeep Singh, Mr. Bharat Shah, D Mr. Amolak Singh and Mr. Surender Pal Mitra as they will not support the case of the prosecution and also stated that he wanted to examine only the witness Jatinder Singh, Sr. No. 5 in the supplementary challan, Mr. C. Paramjit Singh, Sr. No. 5, E main challan, Mr. Surinder Pal Singh, Sr. No. 137, in the main F challan, Mr. Amarjit Singh SP, Sr. No. 99, main challan, Mr. J.S. Kahlon, Sr. No. 34 of main challan, Mr. S. Chatopadhyaya, Sr. No. 135, main challan and Mr. B.K. Uppal, Sr. No. 136 of main G challan. We also verified the statement of the 59 witnesses of which 35 declared as hostile by Public Prosecutor. The perusal H leads to a conclusion that the presiding Judge has made an effort by putting relevant question to those witnesses and taking note of their assertion that they were forced to make incorrect statement at the time of preliminary investigation, the public prosecutor Mr. Pardeep Mehta has declared them as hostile. Ultimately, it is upon the presiding officer/Special Judge and

not this Court to evaluate those witnesses and arrive at a conclusion one way or other depending on the charges leveled against the accused. It would not be fair on the part of this court either to assess and arrive at an opinion about the same. Even after closing of the prosecution side by the Public Prosecutor, if the Court wants to examine some more witnesses from the list furnished by the prosecution, it is for the presiding Judge to take a decision in accordance with the law and issue appropriate direction.

22. Though, Mr. Altaf Ahmad, Learned senior counsel relied on the decisions of this Court in *K. Anbazhagan vs. Superintendent of Police & Ors.*, *S.K. Sukla & Ors vs. State of U.P. & Ors.* and *Jayendra Saraswati Swamigal vs. State of Tamil Nadu*, (supra) in view of the factual details as seen from the materials placed before the Special Court and the details shown in the form of reply affidavit on behalf of the Respondent No. 1 in response to the Transfer Petition No. 235 of 2008 as well as affidavit of the Chief Secretary placing certain factual details, we are of the view that those decisions are not helpful/applicable to the cases on hand.

23. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of other accused persons, the prosecution witnesses and the convenience of all concerned in the matter. For the sake of repetition, it is relevant to mention that when the complainant was examined as PW 56, he disowned his complaint and asserted that it (complaint) was not filed by him though he admitted his signature found therein. Further, all important witnesses particularly government officials informed that what they said before the Court alone is absolute truth and they were forced to make false statement at the time of registering the complaint. As stated earlier, similar transfer petition which was filed before the High Court ended in dismissal and it became final. We are satisfied that the presiding officer of the Special Court is conscious of his power

- A and how to conduct fair trial at the same place. We are also of the opinion that the public prosecutor cannot act on the dictates of the State Government, he has to act objectively as he is also an Officer of the Court. The Special Court is free to assess whether prosecution has established its case. We have already
- B pointed out that a mere allegation that there is apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring
- C free, fair and impartial trial to the accused, notwithstanding, the nature of the accusations made against them. In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that
- D justice will not be done.

24. Taking into consideration the entire facts and circumstances of the case and the materials on record, we are of the view that the petitioners have not made out a case that they have reasonable apprehension of not availing justice in the
- E State of Punjab. We would like to clarify that we have not expressed anything on the merits neither of the prosecution case nor the defence of the accused and whatever said in the earlier paragraphs are applicable only for disposal of transfer petitions and ultimately it is for the Special Court to decide the
- F issues in the light of the material placed and in accordance with the law. The inevitable conclusion is that both the transfer petitions filed by the petitioners deserve to be dismissed, which we direct.

D.G.

Transfer Petitions dismissed.