

Transfer

M. Cr. C. No. 2932 of 1992

Moolchand Shah and others

vs.

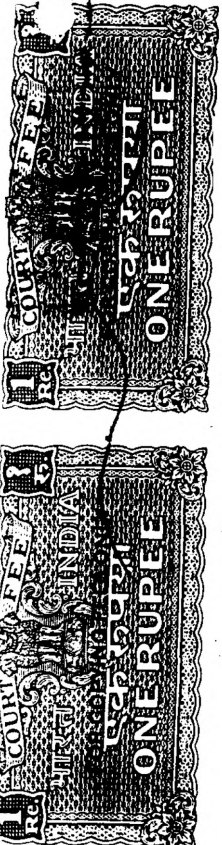
State of M.P.

O R D E R

Shankar Guha Niyogi, the Supremo of Chhatisgarh Mukti Morcha (hereinafter CMM for short) was shot dead from close range on 28-9-1991 while he was sleeping in his quarter at Bhilai. It was a dastardly cold blooded murder. The alleged assassin Ravi alias Mallah is still absconding. Another absconding accused Chandrakant Shah is the brother of petitioner nos. 1 and 2 owners of Simplex Group of Industries in Bhilai Industrial belt. The petitioners who are facing Sessions Trial No. 2931 of 1992 (State through C.B.I. v. Moolchand Shah and others) under sections 120-B read with sections 302, 302/34 I.P.C. and under section 27 of the Arms Act, pending in the Court of Sessions Judge, Durg pray for transfer of the trial to a Court outside Chhatisgarh region on the ground that they apprehend that they will not get a fair trial in any Court in Chhatisgarh where the CMM wields influence. Hence this petition under section 407 Cr.P.C.

2. CMM has a membership of approximately 25000.

This powerful trade union did not have good equation with inter alia the Simplex Group of Industries. The petitioners contend that this was due to illegal activities of CMM. However, there is no material to support it. It was contended by Shri K. Tulsi, learned Solicitor General of India who argued on behalf of the C.B.I. that the murder of Nivooi was a great State failure as he had been publicly proclaiming for quite some time that his life was in danger



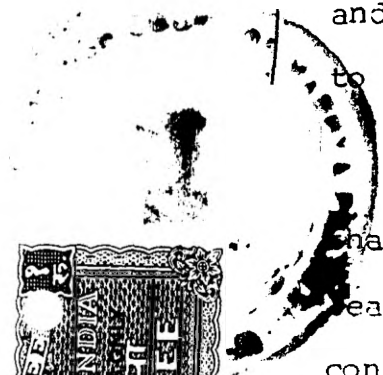
at the hands of those whose vested interests were hit by his lawful union activities. So much so that prior to leaving for Delhi he got his statement proclaiming this apprehension recorded on tape and as things turned out soon after his return from Delhi he was killed. After this murder when the Investigating agency could not make any headway for a considerable time wave of processions by CMM activists followed during which a Sub-Inspector of Police lost his life and on fire being opened by Security Forces on violent protestators who were blocking the Rail track some more people were killed. The persistent demand of CMM during all this course was, "arrest and punish the perpetrators of this heinous crime". As per the news paper cuttings (Annexures A-1 to A-7) filed by the petitioners these happenings took place during 1991. Thereafter the Investigation was handed over to C.B.I. and the case registered progress with arrests including that of the petitioners. It may be mentioned that while the alleged assassin Rave has not been found the other absconding accused, Chandramant Shah was duly arrested and then absconded from the hospital where he was taken for treatment. These facts are not in dispute.

3. As per the petitioners the mounting pressure of agitation by CMM resulted in transfer of the case to C.B.I. which instead of solving the mystery of this murder made up this false case to please their political bosses. The petitioner no.2 was assaulted by CMM activists resulting in grievous injuries on vital parts of the body. He was removed for treatment to Bombay. On report being made a criminal case has been registered by the police. Niyogi's

murder and the wave of violence which followed was widely covered by the local press as evidenced from the newspaper cuttings filed with the petition. Protestators persistently raised slogans in front of the Court. All this shows that the atmosphere at Durg is so vitiated by the media reports and CMM campaign that a fair trial in a detached environment is no longer possible necessitating this petition.

4. State's case is that the transfer of Investigation to C.B.I. was a routine business and not the result of pressure by CMM. The case rests on good evidence. The agitation took place in the wake of Niyogi's murder primarily to press their demand for arrest of culprits. Thereafter things have normalised and there is no reason to feel that the judiciary is likely to be overawed or influenced by any such things.

5. After hearing the parties I am of view that this petition must fail. Shri Rajendra Singh, learned Senior Advocate for the petitioners, vehemently contended that the violent protests of CMM members put so much of pressure that the State was forced to take a decision for transfer of the case to C.B.I. and the C.B.I. in its turn has prepared a false case by pitching some of the men who could be believed to be in some manner connected with Shah brothers to speak against them. Further it was pointed out that if sophisticated fire arms were procured in the Himalayan Kingdom of Nepal to eliminate Niyogi, as appears the case of the prosecution, how was it that ultimately



Niyogi was allegedly killed by a country-made pistol.

In fact the violence of CMM besides claiming life of a Sub-Inspector of Police has also resulted in murderous assault on petitioner no.2 and slogan shouting for days together near the Court premises and, therefore, it ~~was~~ is impossible to expect that the trial will proceed in a detached atmosphere essential for a fair trial. Reliance was placed on the following observations of the Supreme Court in Maneka Sanjay Gandhi v. Rani Jethmalani (A.I.R. 1979 S.C. 468) :

" Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from the place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raising masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer. "

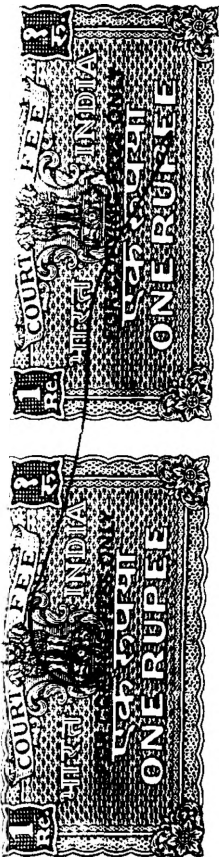
Another case cited by Shri Singh is G.X.Francis v. Banke Bihari Singh (A.I.R. 1958 S.C. 309), a defamation case against some Christians by a non-Christian and there was unanimity of testimony from both sides about the nature of surcharged communal tension in that area and in that context it was held :

" Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India, not because the Judge was unfair or biased but because the machinery of justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting and even if justice were done it would not be "seen to be done"

In reply, learned Additional Soliciter General highlighted that the affidavits filed by the Officers of the State go to

show that the transfer of the case to C.B.I. is not the result of campaign mounted by CMM in the wake of Niyogi's murder. Then, it was rightly asserted that the murder of a popular leader was bound to provoke protests for apprehension of the culprits. It was pointed out that Simplex Group of Industries is still there in Bhilai Industrial belt. None of its plants have been closed down or shifted elsewhere. Its owners are managing the affairs on the spot. None of them has left the area. The agitations took place in the wake of Niyogi's murder and particularly because the Investigating agency could not find any clue promptly but with arrest of the accused persons everything has calmed down and there is nothing to infer that the judiciary is likely to be overawed or influenced. Therefore, the facts and circumstances detailed in the petition neither singly nor cumulatively can be considered sufficient to warrant a conclusion that petitioners' apprehension of not getting a fair trial in any of the Courts in Chhatisgarh region is bonafide and well founded.

6. What is important is the timing of agitations and protests organised by CMM. As we gather from the newspaper cuttings (Annexure A-1 to A-7) all this happened in the wake of the murder and that too probably because no arrests could be made for a considerable period of time. In such circumstances were not the members of CMM justified for claiming justice in the matter of dastardly killing of their beloved leader? The protests turned violent is another matter. We may find fault with that. But there



was nothing unusual in the protests themselves.. As per the newspapers since it was a sensational murder the coverage had to be meticulous. There is nothing to support that the media transgressed its legitimate limits in reporting the events. In a democratic society such protests and coverage are signs of good health of the community. If these were to form the basis for transfer of important trials it will mean virtual end of the territorial concept of criminal justice. Therefore, even if the protestators then came in front of the Court and raised slogans demanding justice the same will make no material difference as far from the trial being in sight there was no breakthrough in the mystery of the murder at that time. Then it has to be noted that protestators never demanded arrests of any particular individual and while asking for justice they were only exercising their legitimate democratic right. I am, therefore, of considered view that none of these happenings which took place in the wake of Niyogi's murder in 1991 will furnish good ground for transfer of the trial on account of their remoteness in point of time as in all probability trial has yet to commence. It cannot be lost sight of that after the initial and justified upsurge of anger, anguish and violence things got settled down and thereafter once the Investigating agency achieved a breakthrough there has been no repetition of any such protest. The alleged murderous assault on petitioner no.2 was by CMM activists is not known with any amount of certainty, and even assuming that it was so, on account of its remoteness in time, it will not lead to an inference that the

petitioners will not get a fair trial at Durg. More so because the assailants have already been identified and are facing their trial. It was argued that Niyogi's wife and Niyogi's successor have named Shah brothers responsible for Niyogi's murder but there is hardly any material to support this contention, and even assuming that it is true, their personal views in this behalf is not sufficient material to apprehend that the trial will not be just and fair.

7. The majesty of law and demands of retributive justice referred to by the learned Additional Solicitor General are really not relevant factors in deciding the issue of transfer of this trial. None of these concepts is likely to get bruised if the trial stands transferred on facts and circumstances which do warrant an inference that petitioners' apprehension of inability to get a fair trial at Durg are bonafide and well founded. However, there are no such facts and circumstances in this case.

8. In result, the petition fails and is hereby dismissed.

Sd/- P.N.S. Chouhan
J U D G E

29-4-1993

