

Rajesh Talwar vs C.B.I & Ors on 2 March, 2012

Equivalent citations: 2012 (4) SCC 217, 2012 AIR SCW 2326, 2012 CRI. L. J. 2217, AIR 2012 SC (CRIMINAL) 823, 2012 (3) ALL LJ 711, 2012 (2) RECCRIR 259.2, 2012 ALL MR(CRI) 1333, (2012) 112 ALLINDCAS 22 (SC), 2012 (2) SCC(CRI) 359, 2012 (3) SCALE 279, (2012) 2 CHANDCRIC 184, (2012) 2 MADLW(CRI) 842, (2012) 2 ALLCRILR 1, (2012) 1 CURCRIR 540, (2012) 1 DLT(CRL) 805, (2012) 2 MAD LJ(CRI) 662, (2012) 2 ORISSA LR 118, (2012) 51 OCR 1068, (2012) 2 RECCRIR 259(2), (2012) 2 ALLCRIR 2173, (2012) 3 SCALE 279, (2012) 77 ALLCRIC 162, 2012 (2) CRIMES 49 SN

Bench: Jagdish Singh Khehar, B.S. Chauhan

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"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

TRANSFER PETITION (CRL.) NO. 45 OF 2012

Rajesh Talwar

.... Petitioner

Versus

Central Bureau of Investigation & Ors.

.... Respondents

WITH

TRANSFER PETITION (CRL.) NO. 46 OF 2012

Nupur Talwar

.... Petitioner

Versus

Central Bureau of Investigation & Ors.

.... Respondents

ORDER

1. Dr. Rajesh Talwar has filed Transfer Petition (Crl.) no. 45 of 2012 and Dr. Mrs. Nupur Talwar has filed Transfer Petition (Crl.) no. 46 of 2012. These petitions have been filed under Section 406 of the Code of Criminal Procedure, 1973, praying for the transfer of Special Case No. 01/2011 pending before the Court of the Special Judicial Magistrate (CBI) Ghaziabad, U.P., to a Court of competent jurisdiction at Delhi/New Delhi. Both these petitions are being disposed of by a common order, because the prayers made are identical and are based on the same grounds, arising out of the same factual background.

2. Before dealing with the grounds raised by the petitioners, it is necessary to briefly record the sequence of events leading to the filing of the instant transfer petitions. The prosecution under reference pertains to the murder of Aarushi Talwar, daughter of the two petitioners, namely, Dr. Rajesh Talwar and Dr. Mrs. Nupur Talwar, on the night intervening 15.5.2008 and 16.5.2008. On 16.5.2008, Dr. Rajesh Talwar got a first information report registered at police station, Sector 20, Noida, alleging that their domestic help Hemraj had committed the murder of their daughter Aarushi Talwar. On the following day, i.e., on 17.5.2008, the body of Hemraj was also found on the roof of the petitioners' residence. Hemraj had also been murdered. On 23.5.2008, Dr. Rajesh Talwar was arrested by the State Police. On 24.5.2008, Dr. Rajesh Talwar was produced before the Chief Judicial Magistrate, Gautam Buddh Nagar. On 27.5.2008, the Chief Judicial Magistrate, granted police custody of Dr. Rajesh Talwar till 30.5.2008. Even though the matter was originally investigated by the State Police, on 29.5.2008, investigation was transferred to the Central Bureau of Investigation (hereinafter referred to as "the CBI"). The CBI then recorded a separate first information report. On 30.5.2008, Dr. Rajesh Talwar was sent to judicial custody.

3. Having concluded the investigation, the CBI filed an application (purported to be an application under Section 169 of the Code of Criminal Procedure), asserting lack of incriminating evidence against Dr. Rajesh Talwar. In the application it was also asserted, that further judicial custody of Dr. Rajesh Talwar was unnecessary. Accordingly, on 11.7.2008, the Special Judicial Magistrate (CBI)

Ghaziabad, ordered the release of Dr. Rajesh Talwar, on bail.

4. On 29.12.2010, a closure report was submitted by the CBI before the Special Judicial Magistrate (CBI) Ghaziabad. It was contended therein, that sufficient evidence was not available to prove the guilt of Dr. Rajesh Talwar, in the murder of his daughter Aarushi Talwar. Accordingly, a prayer was made for the closure of the case due to insufficient evidence. Since Dr. Rajesh Talwar was the author of the first information report dated 16.5.2008, notice of the aforesaid application came to be issued to him. On 25.1.2011, Dr. Rajesh Talwar filed a detailed protest petition. By an order dated 9.2.2011, the Special Judicial Magistrate (CBI) Ghaziabad, rejected the prayer made by the CBI for closure of the case due to insufficient evidence. Simultaneously, the Magistrate summoned Dr. Rajesh Talwar and Dr. Mrs. Nupur Talwar to face trial under Section 302 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code. The summoning order dated 9.2.2011 was assailed by the petitioners by filing Criminal Revision no. 1127 of 2011 before the High Court of Judicature at Allahabad. The aforesaid challenge made under Section 482 of the Code of Criminal Procedure, was rejected by the High Court on 18.3.2011. Dr. Rajesh Talwar assailed the order passed by the High Court by filing Special Leave Petition (Crl.) No. 2981 of 2011, whereas, the said order was assailed by Dr. Mrs. Nupur Talwar by filing Special Leave Petition (Crl.) No. 2982 of 2011. The challenge raised by the petitioners was declined by this Court vide an order dated 6.1.2012 (in Special Leave Petition (Crl.) No. 2982 of 2011 filed by Dr. Mrs. Nupur Talwar) and on 9.1.2012 (in the Special Leave Petition (Crl.) No. 2981 of 2011 filed by Dr. Rajesh Talwar). The aforesaid rejection order dated 9.1.2012 is being extracted hereinbelow:-

"We have heard learned counsel for the parties. It appears that pursuant to the order of this Hon'ble Court in Criminal Appeal No. 68 of 2012 titled "Dr. Mrs. Nupur Talwar versus C.B.I. Delhi & Anr.", whereby this Hon'ble Court upheld the order dated 9.2.2011 of the Special Judicial Magistrate (CBI), Ghaziabad in Special Case No. 01 of 2011 whereby cognizance was taken, the petitioner herein would appear before the Special Judicial Magistrate (CBI), Ghaziabad on 4.2.2012 which, we understand, is the date fixed for hearing.

It is also not in dispute that the petitioner Dr. Rajesh Talwar is on bail since 2008 virtually by an order dated 11th July, 2008 and he also furnished bail bond pursuant to that order. In that view of the matter, we direct the petitioner - Dr. Rajesh Talwar to remain on bail. It is understood that the petitioner has already deposited his passport and the same is lying with the Court of the learned Magistrate. In the meantime, the petitioner shall not leave the local Police Station without obtaining the permission of the learned Magistrate.

With this order, the present Special Leave Petition is disposed of. We make it clear that this order will not prevent either of the parties from moving such application as they are entitled to in accordance with law."

5. The instant two transfer petitions seeking transfer of the proceedings in Special Case No. 01/2011 from the Court of Special Judicial Magistrate (CBI) Ghaziabad, to a Court of competent jurisdiction

at Delhi/New Delhi, have been separately filed by Dr. Rajesh Talwar and Dr. Mrs. Nupur Talwar, primarily on the grounds of convenience and personal security. During the course of hearing, learned counsel for the petitioners raised the following contentions on the issue of convenience:-

(i) It was submitted, that after the murder of Aarushi Talwar on the night intervening 15.5.2008 and 16.5.2008, for the petitioners to reside in the same premises where the murder of their daughter had been committed, had become impossible. Consequently, they had shifted their residence from Noida to New Delhi. As such, it was submitted that it would be more convenient for the petitioners to face trial in Delhi/New Delhi rather than at Ghaziabad.

(ii) Ghaziabad, it was pointed out, was farther away from Noida (where the murder was committed) than New Delhi. In this behalf, it was submitted, that distance between Noida and Ghaziabad is 35 kms., whereas, the distance between Noida and New Delhi is only 17 kms. Based on the traffic situation between Delhi and Ghaziabad, it was submitted, that the petitioners would have to undertake several hours of travel time to attend Court proceedings on each date of hearing.

This inconvenience could be avoided if the proceedings in question were transferred from Ghaziabad to Delhi/New Delhi.

(iii) It was pointed out, that since the first information report was lodged by the CBI at New Delhi itself, there would be no difficulty in proceeding with the case at Delhi itself.

(iv) It was also contended, that holding trial before a Court of competent jurisdiction at Delhi/New Delhi would also be a matter of convenience to the prosecuting agency, inasmuch as, the counsel, as also the officials/officers of the CBI were Delhi/New Delhi based, and they too would not have to travel to Ghaziabad on each date of hearing.

(v) Lastly, it was asserted, that a large number of witnesses would also have to be summoned from outside U.P. It was also pointed out, that these witnesses would have to unnecessarily travel to Ghaziabad. Just like the petitioners, all outside witnesses would likewise face avoidable inconvenience, if the prayer made in the instant petition is accepted.

6. On the issue of personal security, learned counsel for the petitioners contended, that when the petitioners had gone to attend court proceedings at Ghaziabad on 25.1.2011, and whilst they were physically inside the court premises alongwith their lawyers, Dr. Rajesh Talwar faced a vicious attack at the hands of one Utsav Sharma, with a cleaver knife. It was submitted, that Dr. Rajesh Talwar suffered grievous injuries and was rushed to undergo several reconstructive surgeries in the intensive care unit of the Indraprastha Apollo Hospital, New Delhi. While explaining the assault, it was pointed out, that Dr. Rajesh Talwar was given three blows with the meat cleaver causing a grievous injury on the right side of his forehead, which also resulted in the rupture of a major artery, and also, serious injuries on both of his hands. It was also alleged, that Dr. Rajesh Talwar was rendered handicapped as a result of the injuries inflicted upon him by Utsav Sharma, for more than

two months. It was pointed out, that a first information report was registered by Dr. Dinesh Talwar (brother of Dr. Rajesh Talwar) at police station Kavi Nagar, Ghaziabad on 25.1.2011, in connection with the aforesaid assault. The aforesaid encounter within the court premises, according to learned counsel for the petitioners, has completely shaken the confidence of the petitioners. The petitioners are stated to be under deep fear of attending court-proceedings at Ghaziabad after the said assault. Relying on the judgment rendered by this Court in *Maneka Sanjay Gandhi Vs. Rani Jethmalani*, (1979) 4 SCC 167, it was asserted, that this Court had authoritatively held, that the safety of the person of an accused (as also, the complainant) is an essential condition for participation in a criminal trial. Where safety itself is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, it was submitted, a request as the one in the instant case, for transfer of proceedings should be acceded to. Insofar as the present case is concerned, it was submitted on behalf of the petitioners, that the circumstances in the present case have gone far beyond the possibility of a physical assault, inasmuch as, a brutal physical attack has actually been made on Dr. Rajesh Talwar (on 25.1.2011). Relying on the judgment rendered by this Court in *Zahira Habibulla H. Sheikh Vs. State of Gujarat*, (2004) 4 SCC 158, it was contended, that justice should not only be done but it should be seen to be done. It was pointed out, that where circumstances are such that render holding of a fair and impartial trial, uninfluenced by extraneous considerations impossible, an apprehension expressed by an individual seeking transfer, should be accepted as reasonable. Inviting the Court's attention to the incident of 25.1.2011, it was submitted, that there could be no doubt, that in the circumstances prevalent in the courts at Ghaziabad, the apprehension expressed by the petitioners, that they are unlikely to be subjected to a fair and impartial trial, uninfluenced by extraneous considerations, is not unreal. Relying on the judgment rendered by this Court in *Central Bureau of Investigation (CBI) Vs. Hopeson Ningshen*, (2010) 5 SCC 115, it was submitted, that in a case wherein the CBI itself felt that there was a real danger of the accused being physically attacked during the course of the trial, this Court came to be approached (by the CBI) for transfer of the venue of prosecution. The prayer made by the CBI was acceded to by this Court by observing, that there could be no quarrel, that there was a real possibility of a physical attack on the respondent-accused so long as he was at Manipur. Yet again, it is emphasized by the learned counsel appearing on behalf of the petitioners, that the present case stands on a far better footing, inasmuch as, a factual assault resulting in serious injuries has actually been suffered by Dr. Rajesh Talwar within the court premises at Ghaziabad. It is, therefore, contended, that the fear in the minds of the petitioners, is not imaginary. The fear in the minds of the petitioners, is very real and bonafide. In order to support the prayer of the petitioners on the facts delineated hereinabove, learned counsel for the petitioners placed reliance on the judgment rendered by this Court in *Ravir Godbole Vs. State of M.P.*, (2006) 9 SCC 786. The order relied upon by the petitioners is being extracted hereinbelow:-

"1. We have heard counsel for the parties.

2. The petitioner is being tried of an offence punishable under Section 307 IPC. The trial was to take place at Indore but, in view of the fact that the rival gang has been after his blood and two attempts were made on his life, the High Court transferred his trial to Bhopal. It appears that even during the trial at Bhopal he was attacked a third time and serious injuries were caused to him which necessitated his being admitted

to the hospital and an operation being performed to repair his damaged liver.

3. In these circumstances, the petitioner has prayed that his case may be transferred to any court outside the State of M.P. Counsel for the State does not dispute the fact that the petitioner has been attacked thrice during this period and he does face danger to his life. Of course, the State contends that it will provide him with protection such as is considered necessary. We notice that a gunman was deputed to provide security to the petitioner but despite that he was attacked a third time causing him serious injuries, and the gunman deputed to protect him could do nothing except to make himself scarce.

4. In these facts and circumstances, we transfer Sessions Trial No. 65 of 2004 pending before the Special Court (Atrocities), Bhopal Sessions Court, Bhopal to the Court of the District and Sessions Judge, Nasik who may try the case himself or assign the trial to a court of competent jurisdiction. The record of the case shall be immediately transmitted by the Bhopal Sessions Court to the Court of the District and Sessions Judge, Nasik.

5. This transfer petition is allowed."

(emphasis is ours)

7. It would be relevant to notice, that in the pleadings of the two transfer petitions, the petitioners have raised a third ground (besides those of convenience and personal security, referred to in the foregoing paragraphs). No submissions were addressed in connection therewith during the course of hearing. Reference to the third ground has been made in this order only because it was pointed out by the learned counsel representing the CBI, that the petitioners had alleged, that they were not likely to get justice, as it appeared to them, that the Ghaziabad court was proceeding with the matter with a pre-determined mind. The cause of the petitioners instant impression (as per the pleadings), emerges from an application filed by Dr. Rajesh Talwar on 28.2.2011 under Section 205 of the Code of Criminal Procedure. In the aforesaid application, Dr. Rajesh Talwar had sought exemption from personal appearance, on the ground that he had suffered a physical assault in the court premises on 25.1.2011, and had been advised bed rest. The Special Judicial Magistrate (CBI) Ghaziabad, had rejected the application for exemption, and issued bailable warrants against Dr. Rajesh Talwar. Insofar as Dr. Mrs. Nupur Talwar is concerned, she too had sought exemption from personal appearance on the ground, that she had to file an affidavit at Allahabad in a criminal revision petition, to assail the summoning order dated 9.2.2011 (refer to paragraph 4 above). It is submitted, that the application filed by Dr. Mrs. Nupur Talwar was also declined. In the order dated 28.2.2011 the Special Judicial Magistrate (CBI) Ghaziabad, ordered issuance of bailable warrants against the petitioners. From the aforesaid determination, it was sought to be inferred, that the petitioners were not likely to get justice, as the Ghaziabad Court was proceeding with the matter with a pre-determined mind.

8. During the course of hearing, another ground was also canvassed on behalf of the petitioners, although no mention thereof had been made in the pleadings of the two transfer petitions. During the course of hearing, our attention was invited by the learned counsel appearing on behalf of the petitioners, to an affidavit dated 24.2.2012 filed by Shri Praveen Kumar Rai, Advocate. The said Shri Praveen Kumar Rai, in his affidavit, inter alia deposed, that on 25.1.2011, the Special Judicial Magistrate (CBI) Ghaziabad, had noticed the sensitivity of the case and had, by invoking the court's inherent power under Section 327 of the Code of Criminal Procedure, directed, that no person would be allowed to enter the court- room except the parties to the case or their respective counsel; yet during the course of hearing on 4.2.2012, a lot of media-persons and advocates unrelated to the case, were present inside the court-room. While dilating on the court proceedings conducted on 4.2.2012, without disclosing the identity of any particular counsel/advocate, it was averred in paragraphs 5 and 6 (of the affidavit dated 24.2.2012) as under:-

"5. That one of the advocates, who on earlier occasion has been rebuked by the Ld. Magistrate and certain strictures have also been passed against him as well, was also present in the Court room. It is pertinent to mention here that on 7.1.2011 the said counsel had filed an application and thereafter during the course of arguments on the said application misbehaved with the Court and others therein. The Ld. Magistrate in her order dated 21.1.2011 while dismissing the application disapproved the behaviour of the counsel and passed strictures after warning him for future. However, the said warning and strictures have not affected him at all. He not only interfered in the case, but also attempted to stop the counsels for the petitioner herein from advancing their submissions. The deponent immediately brought this to the notice of the Ld. Magistrate but to no avail and the interruptions continued in the proceedings. It is germane to state that the concerned advocate does not represent either the prosecution or the accused persons and thus, no privilege of hearing can be extended to the concerned advocate. A true translated copy of the order dated 21.1.2011 is annexed herewith and marked as Annexure A-2.

6. That faced with such a perilous situation the counsels did not have any option but to file an application before the Ld. Magistrate for taking appropriate actions and passing necessary directions in the matter. The said application is still pending. A photocopy of certified copy of the said application dated 4.2.2012 is annexed herewith and marked as Annexure A-3."

It is also necessary to extract hereunder the application dated 4.2.2012 (appended as Annexure A-3 to the affidavit dated 24.2.2012) of Shri Praveen Kumar Rai, counsel for Dr. Mrs. Nupur Talwar:-

"Sir, It is most respectfully submitted that in the above noted case the applicants counsels appear before the Hon'ble Court today to move application in the light of order passed by Hon'ble Supreme Court in Transfer Petition. The counsel for applicants were restrained by some other Advocates who have no concern with the case during the course of their submission. This happened even when, the order passed by Hon'ble Court dated 25.1.2011 U/s 327 Cr.P.C. is still in force.

It is, therefore, most humbly prayed that in the above said reason and in the interest of justice Hon'ble Court may kindly restrained the persons and advocates who have no concerned in the case by entering in the Court room during the hearing of the case."

Based on the aforesaid factual position it is contended that the petitioners have strong reservations whether unimpaired proceedings are at all possible in the case in hand. It is therefore contended, that it would be in the fitness of the matter, to transfer proceedings in the case, from Ghaziabad to Delhi/New Delhi

9. We have recorded hereinabove the four different grounds under which the petitioners have sought to press their claim for transfer of the proceedings pending before the court of the Special Judicial Magistrate (CBI), Ghaziabad, U.P., to a court of competent jurisdiction at Delhi/New Delhi. It would be appropriate and in the fitness of matters to first record the response of the learned Senior Counsel representing the CBI to each of the issues. The submissions of the learned counsel representing the respondents are therefore being summarized hereinafter:-

10. As noticed in paragraph 5 hereinabove, the foremost contention seeking transfer of proceedings from Ghaziabad to Delhi/New Delhi is based on the inconvenience of the petitioners to travel from New Delhi to Ghaziabad on each date of hearing. In so far as the instant aspect of the matter is concerned, it was the contention of the learned counsel for the respondents, that shifting of the residence of an accused cannot be a valid justification for seeking transfer, nor is the place where the first information report was registered by the CBI relevant for the said purpose. It is submitted that the identity of the jurisdictional court is determined on the basis of the provisions of the Code of Criminal Procedure, wherein residence of the accused and the place of registration of the first information report are inconsequential. In so far as the inconvenience alleged by the petitioners to travel to Ghaziabad is concerned, it was brought to our notice that 72 of the witness likely to be produced during the course of the prosecution under reference, are located in the State of Uttar Pradesh, whereas, 61 witnesses are from Delhi or from outside U.P. Of the aforesaid 61 witnesses, 19 are CBI officials/officers; 16 are employees of the Central Forensic Science Laboratory or the All India Institute of Medical Sciences, New Delhi; 6 witnesses are from telephone companies, 20 witnesses have been examined earlier out of which some are relations of the petitioners themselves; and of the remaining two witnesses one is from Punjab and the other is from Haryana. It is also submitted, that none of the 61 witnesses, to be produced from Delhi or from outside U.P., have expressed inconvenience to depose before the Special Judicial Magistrate (CBI), Ghaziabad, U.P. It is contended, that the distance between Noida and Ghaziabad, as also, between Noida and Delhi depicted in the submissions advanced by the learned counsel for the petitioners are irrelevant. It is submitted, that the issue of jurisdiction is never determined on the basis of distance(s), but is based on the territorial jurisdiction of the court within which an offence has been committed. It is submitted that Dr. Rajesh Talwar and Dr. Mrs. Nupur Talwar have been attending court proceedings at Ghaziabad since 2008, i.e., for the last about three years. It is pointed out, that neither of the petitioners ever expressed inconvenience to participate in the court proceedings at Ghaziabad hitherto before. However, all these pleas are being raised only after the Special Judicial Magistrate (CBI), Ghaziabad, U.P., by his/her order dated 9.2.2011 had summoned the petitioners

to face trial under Section 302 read with Section 34 of the Indian Penal Code, and Section 201 read with Section 34 of the Indian Penal Code, in connection with the murder of Arushi Talwar. It is accordingly submitted that the plea raised by the petitioners for transfer of proceedings on the basis of inconvenience, is wholly trumped up and ought to be rejected.

11. In so far as the second issue canvassed at the hands of the petitioners on the ground of personal security is concerned (see paragraph 6 hereinabove), learned Senior Counsel representing the respondents invited our attention to the counter affidavit filed on behalf of the respondent-CBI, wherein, while repudiating the contention advanced at the hands of the petitioners, it has been pointed out that the attack on Dr. Rajesh Talwar in the court-premises at Ghaziabad on 25.1.2011 was at the hands of a psychologically disturbed person hailing from Varanasi, who had come to Ghaziabad from Ahmedabad (in Gujarat). It is therefore the contention of the learned counsel for the respondents, that the attack was not aimed at interfering with the petitioners right to defend themselves, but because of mental imbalance of the attacker. It is submitted, that the same person Utsav Sharma had also attacked DGP Rathore in a court- premises at Chandigarh, prior to having attacked Dr. Rajesh Talwar. It is therefore contended, that the physical attack on Dr. Rajesh Talwar was certainly not aimed at disrupting court-proceedings or interfering with the defence of the petitioners. As such, it is submitted that the aforesaid stray incident cannot be a justifiable basis for seeking transfer of proceedings under Section 406 Cr.P.C. from the court of the Special Judicial Magistrate (CBI), Ghaziabad, U.P. to some other court of competent jurisdiction in Delhi/New Delhi. Learned counsel representing the respondents also pointed out, from the counter affidavit filed by the CBI, that the Sessions Judge, Ghaziabad had personally reviewed the security arrangements in the entire court-premises at Ghaziabad, whereupon, security/police personnel have been deployed to prevent any similar untoward incident in future. It was also brought to our notice, from the counter affidavit filed by the CBI, that the venue of the proceedings relating to the petitioners, has been shifted to a new building, which has a proper boundary wall on all sides, with only one small entrance. The counter affidavit also records an assurance, that as and when the case of the petitioners will be fixed for hearing, proper police force will be deployed by the local administration, to ensure safety and security of the petitioners. It is therefore the contention of the learned Senior Counsel representing the CBI, duly supported by the learned counsel for the State of Uttar Pradesh, that all possible care will be taken, for the safety and welfare of the petitioners.

12. Even though learned counsel representing the petitioners did not canvass the third ground (see paragraph 7 hereinabove) during the course of hearing, yet learned counsel for the respondents had expressly drawn our attention to the same. The purpose of inviting our attention to the third ground was to demonstrate, that the petitioners have not even spared the presiding officer of the court. The petitioners have cast aspersions on the court itself. It has been averred in the pleadings, that the petitioners are not likely to get justice from the Ghaziabad court, because the Special Judicial Magistrate (CBI), Ghaziabad, U.P. by his/her order dated 28.2.2011 had declined the prayer made by the petitioners for exempting them from personal appearance, and since the petitioners had not appeared on 28.2.2011, the court had issued bailable warrants against the petitioners. This, according to the learned Senior Counsel representing the respondents, can never constitute a valid basis for drawing any inference against a court, specially when the challenge raised by the petitioners in assailing the order dated 28.2.2011 (declining exemption from personal appearance,

and ordering issuance of bailable warrants), before the High Court of Judicature at Allahabad was rejected. In fact, it is the contention of the learned Senior Counsel for the respondents, that the insinuation levelled on behalf of the petitioners is contemptuous in nature, and calls for initiation of proceedings against the petitioners under the Contempt of Courts Act, 1971. Based on all the submissions recorded hereinabove, it was the contention of the learned counsel for the respondents, that even the third ground raised by the petitioners for seeking transfer of proceedings under Section 406 of the Code of Criminal Procedure, cannot be accepted.

13. In so far as the last contention is concerned (see paragraph 8 hereinabove), the same was based on the affidavit of Shri Praveen Kumar Rai, Advocate, dated 24.2.2012. It was submitted at the hands of the learned counsel for the respondents, that there was no occasion for the respondents to repudiate the same, as the factual position depicted therein does not emerge from the pleadings of the transfer petitions filed by the two petitioners. It is therefore the contention of the learned counsel for the respondents, that the petitioners should not be permitted to press the instant ground for seeking transfer. Be that as it may, it is further the contention of the learned Senior Counsel representing the respondents, that the allegations contained in the affidavit dated 24.2.2012 are vague, as the identity of the counsel who attempted to stop the counsel representing the petitioners from advancing their submission, has not been disclosed. In the application allegedly filed on 4.2.2012 (appended as Annexure A-3, with the affidavit dated 24.2.2012) also, the identity of the counsel who restrained the counsel representing the petitioners, from making his submissions has also not been disclosed. Accordingly, it is asserted that the allegations made in the last submission being vague cannot be relied upon to accept the prayer of the petitioners for transfer of proceedings under Section 406 of the Code of Criminal Procedure.

14. We have noticed hereinabove the grounds of challenge canvassed at the hands of the learned counsel for the petitioners, as also, the response thereto at the hands of the learned counsel representing the respondents. In so far as the issue of transfer of criminal proceedings from one court to another under Section 406 of the Code of Criminal Procedure is concerned, it would be in the fitness of matters to examine the parameters laid down by this Court for transfer of proceedings. In this behalf reference may, first of all, be made to the decision rendered in Sri Jayendra Saraswathy Swamigal (II), Tamil Nadu v. State of Tamil Nadu, (2005) 8 SCC 771, wherein in paragraph 5, this court recorded the grounds on which transfer was sought and thereafter, recorded its own determination in paragraph 23. Accordingly, paragraphs 5 and 23 of the judgment are being extracted hereunder:

"5. The transfer of the case has been sought on several grounds and basically speaking they are as under:

(i) The State machinery in Tamil Nadu and specially the Special Investigation Team headed by Shri Prem Kumar, Superintendent of Police, has shown great zeal and has made extraordinary efforts, much beyond what is required under the law to anyhow secure the conviction of the accused and to achieve that object has procured and fabricated false evidence.

(ii) The Chief Minister of the State of Tamil Nadu, who is also holding the Home portfolio, has made statements on the floor of the House that the petitioner and the other co-accused are actually involved in the murder of Sankararaman and has also given some press statements and has thereby pre-empted a fair decision in the criminal trial, as statements of persons holding such high offices and specially those made on the floor of the House, are generally believed to be correct and thus the accused stand condemned even before the commencement of the trial.

(iii) A solatium of Rs 5 lakhs was paid by the Chief Minister of Tamil Nadu to Padma Sankararaman (widow of deceased Sankararaman) on 24-11-2004, long before completion of investigation and submission of charge-sheet, and this was given wide publicity in the electronic media and newspapers, etc., which shows that the State Government is taking special interest in the case and is too keen to secure conviction of the accused in order to justify the stand taken by it.

(iv) Concocted and false cases have been registered against 16 co-

accused. Even before their bail applications in the present case could be heard, detention orders were passed against them under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (for short "the Goondas Act") between 16-1-2005 and 6-2-2005 so that even after grant of bail by the Court they may remain in custody.

(v) The advocates appearing for the petitioner and other co-accused have been put under great threat on account of lodging of false and fabricated criminal cases against them and a situation has been created wherein they may not be in a position to defend the accused properly. This will also have a general effect as other lawyers would feel hesitant to conduct the case on behalf of the accused.

(vi) The Mutt and other associated and connected trusts have 183 accounts in banks, which were all frozen by SIT resulting in paralysing the religious and other activities of the Mutt and other connected bodies.

(vii) Criminal cases have been lodged against some leading journalists of the country and other prominent personalities, who had written articles criticising the arrest of the petitioner, which not only violates right of free speech but also creates an atmosphere of threat against anyone daring to speak or write in favour of the accused and thus the accused seriously apprehend that they would not get a fair trial in the State of Tamil Nadu.

(viii) Shri Prem Kumar, who is heading the Special Investigation Team, is not a fair and upright officer and superior courts have passed strictures against him several times in the past for his uncalled-for actions in going out of the way to implicate innocent persons in criminal cases.

23. We have discussed above many facets of the case which do show that the State machinery in Tamil Nadu is not only taking an undue interest but is going to any extent in securing the conviction of the accused by any means and to stifle even publication of any article or expression of dissent in the media or press, interview by journalists or persons who have held high positions in public life and are wholly unconnected with the criminal case. The affidavits and the documents placed on record conclusively establish that a serious attempt has been made by the State machinery to launch criminal prosecution against lawyers, who may be even remotely connected with the defence of the accused. The Superintendent of Police, SIT and the Police Inspector connected with the investigation even went to the extent of prompting the approver Ravi Subramaniam to make insinuation against a very Senior Counsel, who has been practising for over 43 years and is appearing as counsel for the petitioner. The other counsel had to file writ petitions in the Madras High Court for seeking a direction for transferring investigation of the criminal cases registered against them from the local police to CBI. The police submitted charge-sheet against two junior lady lawyers under various sections of IPC including Section 201 IPC when even accepting every word in the FIR lodged by Smt Chitra, wife of Ravi Subramaniam (approver) as correct, no offence under the said provision is made out. Clause (1) of Article 22, which finds place in Part III of the Constitution dealing with fundamental rights, gives a guarantee to a person arrested and detained to be defended by a legal practitioner of his choice. Section 303 of the Code of Criminal Procedure says that any person accused of an offence before a criminal court or against whom proceedings are instituted under the Code, may of right be defended by a pleader of his choice. Even under the British rule when the Code of Criminal Procedure, 1898 was enacted, Section 340(1) thereof gave a similar right to an accused. It is elementary that if a lawyer whom the accused has engaged for his defence is put under a threat of criminal prosecution, he can hardly discharge his professional duty of defending his client in a fearless manner. A senior and respected counsel is bound to get unnerved if an insinuation is made against him in court that he approached the wife of a witness for not giving evidence against the accused in the court. From the material placed before us we are prima facie satisfied that a situation has arisen in the present case wherein the lawyers engaged by the petitioner and other co-accused cannot perform their professional duty in a proper and dignified manner on account of various hurdles created by the State machinery. The lawyers would be more concerned with shielding their own reputation or their liberty rather than cross-examine the prosecution witnesses for eliciting the truth. The constant fear of not causing any annoyance to the prosecution witnesses specially those of the Police Department would loom large over their mind vitally affecting the defence of the accused. Passing of the detention order against 16 co-accused soon after grant of bail to the petitioner by this Court on 10-1-2005, which order could be of some support in seeking parity or otherwise for securing bail in the present murder case, is a clear pointer to the fact that the State wanted to deprive them of any chance to secure release from custody. Even though this Court has issued notice on the special leave petition filed by the State against the order of the High Court by which habeas corpus petition of the 16 co-accused was allowed, yet the observations made in the said order show in unmistakable terms that the even tempo of life was not disturbed, nor was public order affected by the murder of Sankararaman and the detention order was passed without any basis. Again, the action of the State in directing the banks to freeze all the 183 accounts of the Mutt in the purported exercise of the power conferred under Section 102 CrPC, which had affected the entire activities of the Mutt and other associated trusts and endowments only on the ground that the petitioner, who is the head of the Mutt, has been charge-sheeted for entering into a conspiracy to

murder Sankararaman, leads to an inference that the State machinery is not only interested in securing conviction of the petitioner and the other co-accused but also to bring to a complete halt the entire religious and other activities of the various trusts and endowments and the performance of pooja and other rituals in the temples and religious places in accordance with the custom and traditions and thereby create a fear psychosis in the minds of the people. This may deter anyone from appearing in court and give evidence in defence of the accused. Launching of prosecution against prominent persons who have held high political offices and prominent journalists merely because they expressed some dissent against the arrest of the petitioner shows the attitude of the State that it cannot tolerate any kind of dissent, which is the most cherished right in a democracy guaranteed by Article 19 of the Constitution." (emphasis is ours) Reference may also be made to the decision rendered by this Court in Central Bureau of Investigation (CBI) v. Hopeson Ningshen, (2010) 5 SCC 115, wherein this Court recorded its conclusion in the following paragraphs:

"18. CBI in its capacity as the investigating agency has clearly conveyed the risks associated with conducting the trial in Manipur. Even if one were to concede that the apprehension about social unrest and communal tension between the Meteies and the Nagas were a little exaggerated, there can be no quarrel that there exists a real possibility of a physical attack on the respondent-accused as long as he is in Manipur. It was precisely because of this consideration that the respondent-accused is being held in custody at a distant location in Delhi. Furthermore, conducting the trial in Manipur could also reasonably lead to more friction in the State of Manipur which in turn could affect the trial proceedings themselves.

19. We must especially take note of the fact that the killings took place in a region where opinions are sharply divided on the justness of the causes espoused by NSCN(IM) and that the respondent-accused is a member of the same organisation. This creates a risk of intimidation of the witnesses as well as undue prejudice seeping into the minds of those who may be involved in the legal proceedings in different capacities.

20. In this scenario, in our considered view it would be expedient in the ends of justice to conduct the trial in Delhi. We accordingly direct that the impugned cases be transferred from the Court of the Chief Judicial Magistrate, Ukhrul, Manipur to a Designated CBI Court (manned by a judicial officer of the rank of a Sessions Judge) in New Delhi."

(emphasis is ours) The scope of jurisdiction under Section 406 of the Code of Criminal Procedure was also considered by this Court in Surendra Pratap Singh v. State of Uttar Pradesh, (2010) 9 SCC 475, wherein this Court held as under:

14. Mr Gupta submitted that except for wild allegations made against the investigating authorities and the officials of the State Government, nothing substantial has been disclosed from the submissions made on behalf of the petitioner which would indicate that either the investigating agencies or the prosecuting agency

was in any way biased in favour of Respondent 2. On the other hand, upon a fair investigation undertaken by two separate agencies, which included CB CID, it had been found that Respondent 2 was not in any way connected with the alleged incident of 24-6-2005. In fact, at the relevant time, the party to which he belonged was not in power which would enable him to influence the course of investigation. Mr. Gupta submitted that no interference was called for with the investigation reports submitted both by the local police as also by CB CID, and the transfer petition was, therefore, liable to be dismissed.

15. We have carefully considered the submissions made on behalf of the respective parties. While the arrest of Respondent 2 may have been stayed by the High Court, the circumstances in which the incident had occurred on 24-6-2005 coupled with the fact that Respondent 2 was returned as an MLA in the same elections, does to some extent justify the apprehension of the petitioner that the perspective of the prosecution may become polluted. There is no getting away from the fact that Respondent 2 is an MLA and that too belonging to the present dispensation. Since justice must not only be done but must also seem to be done, this case, in our view, is an example where the said idiomatic expression is relevant.

16. It would not be proper on our part to dilate on this question further during the pendency of the trial. We are, however, of the view that in order to do fair justice to all the parties, the trial should be held outside the State of Uttar Pradesh and, accordingly, we allow the transfer petition and direct that the matter be transferred to the High Court of Madhya Pradesh which shall decide the place and the court before which the trial may be conducted." (emphasis is ours) The issue in hand was also examined by this Court in *Nahar Singh Yadav v. Union of India*, (2011) 1 SCC 307. Relevant extract including the parameters delineated by this Court which ought to be kept in mind while considering an application for transfer and the consideration of the factual matrix involved in the controversy dealt with are being extracted hereunder:

"21. Reverting to the main issue, a true and fair trial is sine qua non of Article 21 of the Constitution, which declares that: "21. Protection of life and personal liberty.--No person shall be deprived of his 'life' or 'personal liberty' except according to procedure established by law."

It needs no emphasis that a criminal trial, which may result in depriving a person of not only his personal liberty but also his life has to be unbiased, and without any prejudice for or against the accused. An impartial and uninfluenced trial is the fundamental requirement of a fair trial, the first and the foremost imperative of the criminal justice delivery system. If a criminal trial is not free and fair, the criminal justice system would undoubtedly be at stake, eroding the confidence of a common man in the system, which would not augur well for the society at large. Therefore, as and when it is shown that the public confidence in the fairness of a particular trial is likely to be seriously undermined, for any reason whatsoever, Section 406 CrPC empowers 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, to meet the ends of justice.

22. It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.

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29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.

30. Having considered the rival claims of both the parties on the touchstone of the aforestated broad parameters, we are of the view that the apprehension entertained by CBI that the trial of the case at Ghaziabad may not be fair, resulting in miscarriage of justice, is misplaced and cannot be accepted. From the material on record, we are unable to draw any inference of a reasonable apprehension of bias nor do we think that an apprehension based on a bald allegation that since the trial Judge and some of the named accused had been close associates at some point of time and that some of the witnesses are judicial officers, the trial at Ghaziabad would be biased and not fair, undermining the confidence of the public in the system. While it is true that Judges are human beings, not automatons, but it is imperative for a judicial officer, in whatever capacity he may be functioning, that he must act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision, which according to his conscience is the right one on the basis of materials placed before him. There is no exception to this imperative. Therefore, we are not disposed to believe that either the witnesses or the Special Judge will get influenced in favour of the accused merely because some of them happen to be their former colleagues. As already stated, acceptance of such allegation, without something more substantial, seriously undermines the credibility and the independence of the entire judiciary of a State. Accordingly, we outrightly reject this ground urged in support of the prayer for transfer of the trial from Ghaziabad.

31. As regards the plea that the Court of Special Judge, CBI, Ghaziabad is already heavily overburdened, in our opinion, that is again not a ground for transfer of trial. If at all the said court is overburdened, it will be open to the High Court to request the State Government to create another court of a Special Judge at Ghaziabad and we are confident that having regard to the nature of the case and the serious concern already shown by the State Government by issuing Notification dated 10-9-2008 promptly and expeditiously, the State Government will take appropriate steps in that behalf so that the guilty are brought to book at the earliest not only in this case but in other sensitive trials, stated to be pending in that court, as well.

32. For the aforestated reasons, as at present, we do not find any merit in the request of CBI for transfer of the trial from Ghaziabad to any other place. Accordingly, the prayer is declined. The trial court is directed to proceed with the case expeditiously."

(emphasis is ours) The issue of transfer of proceedings under Section 406 of the Code of Criminal Procedure was examined by this Court in *Vikas Kumar Roorkeval v. State of Uttarakhand*, (2011) 2 SCC 178, wherein this Court observed as under:

"23. It is true that there must be reasonable apprehension on the part of the party to a case that justice may not be done and mere allegation that there is apprehension that justice will not be done cannot be the basis for transfer. However, there is no manner of doubt that the reasonable apprehension that there would be failure of justice and acquittal of the accused only because the witnesses are threatened is made out by the petitioner.

24. This Court, on various occasions, had opportunity to discuss the importance of fair trial in criminal justice system and various circumstances in which a trial can be

transferred to dispense fair and impartial justice. It would be advantageous to notice a few decisions of this Court with regard to the scope of Section 406 of the Code of Criminal Procedure.

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29. From the averments made in the petition it is evident that the accused belong to a powerful gang operating in U.P. from which the State of Uttarakhand is carved out. The petitioner has been able to show the circumstances from which it can be reasonably inferred that it has become difficult for the witnesses to safely depose truth because of fear of being haunted by those against whom they have to depose. The reluctance of the witnesses to go to the court at Haridwar in spite of receipt of repeated summons is bound to hamper the course of justice. If such a situation is permitted to continue, it will pave way for anarchy, oppression, etc., resulting in breakdown of criminal justice system. In order to see that the incapacitation of the eyewitnesses is removed and justice triumphs, it has become necessary to grant the relief claimed in the instant petition. On the facts and in the circumstances of the case this Court is of the opinion that interest of justice would be served if transfer of the case from Haridwar to Delhi is ordered."

(emphasis is ours) Last of all reference may be made to the decision rendered by this Court in *Jahid Shaikh v. State of Gujarat*, (2011) 7 SCC 762. The observations made by this Court with reference to Section 406 of the Code of Criminal Procedure, are placed below:

"39. However, such a ground, though of great importance, cannot be the only aspect to be considered while deciding whether a criminal trial could be transferred out of the State which could seriously affect the prosecution case, considering the large number of witnesses to be examined to prove the case against the accused. The golden thread which runs through all the decisions cited on behalf of the parties, is that justice must not only be done, but must also be seen to be done. If the said principle is disturbed, fresh steps can always be taken under Section 406 CrPC and Order 36 of the Supreme Court Rules, 1966 for the same reliefs.

40. The offences with which the accused have been charged are of a very serious nature, but except for an apprehension that justice would not be properly administered, there is little else to suggest that the charged atmosphere which existed at the time when the offences were alleged to have been committed, still exist and was likely to prejudice the accused during the trial. All judicial officers cannot be tarred with the same brush and denial of a proper opportunity at the stage of framing of charge, though serious, is not insurmountable. The accused have their remedies elsewhere and the prosecution still has to prove its case.

41. As mentioned earlier, the communally surcharged atmosphere which existed at the time of the alleged incidents, has settled down considerably and is no longer as

volatile as it was previously. The Presiding Officers against whom bias had been alleged, will no longer be in charge of the proceedings of the trial. The conditions in Gujarat today are not exactly the same as they were at the time of the incidents, which would justify the shifting of the trial from the State of Gujarat. On the other hand, in case the sessions trial is transferred outside the State of Gujarat for trial, the prosecution will have to arrange for production of its witnesses, who are large in number, to any venue that may be designated outside the State of Gujarat.

42. At the present moment, the case for transfer of the trial outside the State of Gujarat is based on certain incidents which had occurred in the past and have finally led to the filing of charges against the accused. The main ground on which the petitioners have sought transfer is an apprehension that communal feelings may, once again, raise its ugly head and permeate the proceedings of the trial if it is conducted by the Special Judge, Ahmedabad. However, such an allegation today is more speculative than real, but in order to dispel such apprehension, we also keep it open to the petitioners that in the event the apprehension of the petitioners is proved to be real during the course of the trial, they will be entitled to move afresh before this Court for the relief sought for in the present transfer petition." (emphasis is ours) It is in light of the parameters recorded by this Court that we shall endeavour to determine the veracity of the prayer made by the petitioners for transfer of proceedings from the court of the Special Judicial Magistrate (CBI), Ghaziabad, U.P., to a court of competent jurisdiction in Delhi/New Delhi.

15. First and foremost we shall deal with the ground of inconvenience raised by the petitioners for seeking transfer of proceedings. In so far as the instant issue is concerned, besides the judgments referred to hereinabove, reference may be made to the decision rendered in *Bhairu Ram v. Central Bureau of Investigation*, (2010) 7 SCC 799, wherein the issue of inconvenience was considered, and this Court held as under:

"10. In the case on hand, except convenience, the petitioners have not pressed into service any other ground for transfer. In fact, Mr P.H. Parekh, informed this Court that the petitioners are willing to attend the proceedings at Delhi, if the case is transferred to Special Court, CBI, Delhi.

11. Mr H.P. Raval, learned Additional Solicitor General, after taking us through specific averments made in the counter-affidavit filed on behalf of Respondents 1 and 2 (CBI), submitted that the main accused Shri B.R. Meena is a very influential person in the State of Rajasthan and there is strong apprehension that due to influence of Shri B.R. Meena, there would be no fair trial at Jaipur or any other place in the State of Rajasthan. He also pointed out that the Court of Special Judge, CBI at Greater Mumbai has ample jurisdiction to try this case because various movable properties have been found in Mumbai and the main accused, Shri B.R. Meena, was posted in Mumbai from 2001 to the end of the check period i.e. 4-10-2005 and this is the period during which most of the properties were allegedly acquired by him and his

family members.

12. We have already adverted to the fact that against the main accused Shri B.R. Meena, (IRS 1977), Commissioner of Income Tax, Income Tax Appellate Tribunal, Mumbai, a case has been registered on 29-9-2005 under Section 13(2) read with Section 13(1)

(e) of the Prevention of Corruption Act, 1988 for possession of assets in his own name and in the name of his family members to the extent of Rs 43,29,394 which were disproportionate to his known sources of income and could not be satisfactorily accounted for. It further shows that Respondent 3, during the check period i.e. 1-4-

1993 to 4-10-2005, acquired assets disproportionate to his known sources of income to the extent of Rs 1,39,39,025.

13. The petitioners have been charge-sheeted for commission of offences under Section 109 read with Section 193 IPC read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 for having actively aided and abetted Respondents 3 to 4 by fabricating false evidence through preparation of false agreements to sell with the object to justify/explain the huge cash recoveries from the residential premises of Respondent 3. It further reveals that the petitioners entered into false transactions with Respondent 3 showing receipt of cash amounts against alleged purchase of immovable properties from him. The stamp papers were purchased against (sic after) registration of case and false agreements to sell were prepared in connivance with each other.

14. A perusal of the charge-sheet containing all these details clearly shows that witnesses to be examined are not only from Jaipur, Rajasthan, but also from various other places including Mumbai. Though the petitioners may have a little inconvenience, the mere inconvenience may not be sufficient ground for the exercise of power of transfer but it must be shown that the trial in the chosen forum will result in failure of justice.

15. We have already pointed out that except the plea of inconvenience on the ground that they have to come all the way from Rajasthan no other reason was pressed into service. Even, the request for transfer to Delhi cannot be accepted since it would not be beneficial either to the petitioners or to the prosecution. In fact, the main accused, Respondents 3 and 4 have not filed any petition seeking transfer. In such circumstances, the plea of the petitioners for transfer of the case from the Court of Special Judge, CBI, Greater Mumbai to Special Judge, CBI, Jaipur on the ground of inconvenience cannot be accepted." (emphasis is ours) The ground of inconvenience for transfer again came up for consideration before this Court in *Jyoti Mishra v. Dhananjaya Mishra*, (2010) 8 SCC 803, wherein the Court observed as follows:

"5. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings. But a criminal case is on a somewhat different footing. The accused may

not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic.

6. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife." (emphasis is ours) From the two judgments, referred to hereinabove, it clearly emerges that inconvenience cannot be a valid basis for transfer of "criminal proceedings"

from one court to another under Section 406 of the Code of Criminal Procedure. Be that as it may, we are of the view that the instant contention advanced at the hands of the learned counsel for the petitioner is wholly frivolous. According to the factual position depicted by the learned counsel for the petitioners themselves, the distance between Noida and Ghaziabad is 35 kms. whereas the distance between Noida and Delhi is 17 kms. Based on a simple mathematical conclusion the distance between Delhi and Ghaziabad must be approximately 52 kms. ($35+17=52$). It is understandable how a plea of inconvenience can be based to avoid travelling a distance of merely 52 kms. Even if it is assumed that a couple of hours would be consumed for travelling to and fro (from Delhi to Ghaziabad and back) the inconvenience would not be such as can be the basis for seeking transfer. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of Code of Criminal Procedure. Often either the complainant or the accused have to travel across an entire State to attend to criminal proceedings, before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances, in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal Procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience are inconsequential so far as the mandate of law is concerned. The instant plea therefore, deserves outright rejection.

16. In so far as the second contention advanced at the hands of the counsel for the petitioner is concerned, transfer has been sought on the issue of threatened personal security. The petitioners believed that their personal security is at risk on account of a vicious attack with a cleaver's knife on Dr. Rajesh Talwar, which resulted in his having suffered grievous injuries not only on his face but on both his hands as well. The injuries are stated to have rendered Dr. Rajesh Talwar handicapped for more than two months. The aforesaid incident has allegedly had the effect of making both the petitioners scared to attend any court-proceedings at the Ghaziabad court-complex. The case set up by the petitioners is, that the incident in question has completely shaken the confidence of the petitioners, and that, it is unsafe for the petitioners to appear before the Special Judicial Magistrate (CBI), Ghaziabad, U.P. to defend themselves. Whilst we are of the view that all preventive measures should have been in place to avoid any assault of the nature which Dr. Rajesh Talwar encountered on 25.1.2011, we appreciate the impossibility of the aforesaid task specially when the attacker is a

person suffering from a mental disability. Such an attack cannot be deemed to have been aimed at disabling the petitioners to defend themselves. The physical assault suffered by the petitioner was clearly unrelated to their court-proceedings. In the aforesaid view of the matter, the incident relied upon by the learned counsel for the petitioners to seek transfer of proceedings by invoking Section 406 of the Code of Criminal Procedure, is clearly misconceived. Even otherwise, the counter affidavit filed on behalf of the CBI is categorical on the issue in hand, to the effect that the Sessions Judge, Ghaziabad, has personally reviewed the security system in the entire court-premises, security/police personnel have been deployed so that no untoward incident occurs in future. Additionally, the venue of the court- proceedings of the petitioners has been shifted to a new building which has proper boundary walls on all sides, with only one small entrance. The building where the petitioners are required to attend the court proceedings is therefore totally safe. In the counter affidavit filed by the CBI it has been expressed, that whenever the case of the petitioners' is to be heard, adequate police force would be deployed by the local administration. The aforesaid undertaking (expressed in the counter affidavit, filed on behalf of the CBI has been endorsed by the learned counsel representing the State of Uttar Pradesh. Even though it has been pointed out that the petitioners have not moved any application either to the Special Judicial Magistrate (CBI), Ghaziabad, U.P. or to the police for seeking protection; we are assured, if such a request is made at the hands of the petitioners, the same will be duly considered in accordance with law. We have extracted a relevant part of the affidavit dated 24.2.2012 filed by Shri Praveen Kumar Rai, Advocate in paragraph 8 hereinabove. While perusing the aforesaid affidavit we noticed reference therein to an order dated 25.1.2011 passed in respect of the proceedings pending before the Special Judicial Magistrate (CBI), Ghaziabad, U.P. While dealing with the contention in hand, it is necessary to place on record the aforesaid order dated 25.1.2011, the same is accordingly being extracted hereunder:-

"Under the circumstances seeing the sensitivity of the case, by invoking inherent provisions under section 327 Cr.P.C. the court feels it in the interest of justice that during the proceedings of the instant case no person shall be allowed to enter in the courtroom except for the parties to the case and their respective counsels.

Sd/-

Special Judicial Magistrate (CBI),Ghaziabad"

The aforesaid order reveals the seriousness of the presiding officer concerned. So as to ensure not only the safety of the petitioners but also a free and fair trial, keeping in mind the sensitive nature of the case, an appropriate order has already been passed by the presiding officer. We have no doubt in our mind, that the order dated 25.1.2011 shall be enforced in letter and in spirit. In case of breach thereof we would expect the Special Judicial Magistrate (CBI), Ghaziabad, U.P. to take appropriate steps including coercive measures if necessary, to enforce the same. The majesty of law must be maintained at all costs. In the background of the aforesaid developments, we are of the view that the proceedings being conducted at the court-complex at Ghaziabad, cannot be termed as unsafe, so as to be considered as threatening the personal security of the petitioners. As such, we find no merit in the prayer for transfer of proceedings from Ghaziabad to Delhi/New Delhi even on the ground of personal security.

17. The third ground raised by the petitioners, noticed in paragraph 7 hereinabove, needs no adjudication at our hands on account of the fact that the same was not pressed by the learned counsel representing the petitioners during the course of hearing. The details depicting the third ground have been noticed only because the learned Senior Counsel representing the respondents insisted on inviting our attention to the fact that the petitioners had expressed baseless insinuations against the presiding officer of the court. Based on certain insinuations the petitioners had asserted, that they were not likely to get justice, as the concerned court was proceeding in the matter with a pre-determined mind. The insinuations levelled by the petitioners are based on an order passed by the Special Judicial Magistrate (CBI), Ghaziabad, U.P. dated 28.2.2011. Learned counsel for the petitioners advisedly refrained from pressing the instant ground during the course of hearing. Even raising such a ground in the pleadings, to state the least, can certainly be termed as most irresponsible. The impertinence of the petitioners in the instant case, is magnified manifold because the order dated 28.2.2011 was assailed by the petitioners before the High Court of Judicature at Allahabad, but the challenge failed. In this view of the matter, the insinuations can also be stated to have been aimed even at the High Court. Although we could have initiated action against the petitioners, yet in the peculiar facts and circumstances of this case, we refrain ourselves from doing so. However, we consider it just and appropriate to warn the petitioners from any such impertinence in future.

18. In so far as the last contention advanced at the hands of the learned counsel for the petitioners is concerned, the same was based on the affidavit of Shri Praveen Kumar Rai, Advocate dated 24.2.2012, as also, an application filed by the said counsel on 4.2.2012 (Annexure A-3 with the affidavit, independently extracted hereinabove). We find merit in the contention advanced at the hands of the learned Senior Counsel representing the respondents, that the application dated 4.2.2012 (Annexure A-3) as also the affidavit of Shri Praveen Kumar Rai, Advocate, dated 24.2.2012 are vague, and as such, cannot be the basis of a justifiable claim for supporting a prayer for transfer of proceedings, under Section 406 of the Code of Criminal Procedure. As pointed out by the learned counsel for the respondents, even though allegations have been levelled in the application (dated 4.2.2012) as well as the affidavit (dated 24.2.2012), that the petitioners counsel were prevented from discharging their responsibility appropriately; neither the application nor the affidavit disclose what the petitioners counsel were prevent from, as also, the identity of those responsible. Therefore, the last contention, in our considered view, is also devoid of any merit and as such deserves rejection.

19. For the reasons stated hereinabove, we find no merit in the Transfer Petitions separately filed by Dr. Rajesh Talwar and Dr. Mrs. Nupur Talwar. It is not possible in the facts and circumstances of this case for us to conclude, that the petitioners will be deprived of a free and fair trial at Ghaziabad. We are also satisfied that there is no well-substantiated apprehension, that justice will not be dispensed to the petitioners impartially, objectively and without any bias. It is also not possible for us to accept that the physical assault on Dr. Rajesh Talwar on 25.1.2011 at the hands of a psychopath can be a valid basis for transfer of the present proceedings from Ghaziabad to Delhi/New Delhi. In view of the measures adopted by the Sessions Judge, the CBI and the State Administration towards security arrangements in the court-premises generally, and also, the special arrangements which the respondents have undertaken to make, with particular reference to the petitioners, we are satisfied that justice will be dispensed to the petitioners in an atmosphere shorn of any fear or favour. We

have extracted the order passed by the Special Judicial Magistrate (CBI), Ghaziabad, U.P. dated 25.1.2011 in paragraph 16 hereinabove. We wish to reiterate, that the order dated 25.1.2011 shall be enforced in letter and in spirit. In case of breach thereof we would expect the Special Judicial Magistrate (CBI), Ghaziabad, U.P. to take appropriate steps including coercive measures if necessary, to enforce the same. The majesty of law must be maintained at all costs. We have no doubt, that the basis on which the petitioners are seeking transfer of proceedings are just speculative and unjustified apprehensions based inter alia on vague and non-specific allegations. The instant Transfer Petitions are accordingly dismissed. We also wish to caution the petitioners, from making any irresponsible insinuations with reference to court-proceedings. The proper course would be, to assail before a superior court, any order which may not be to the satisfaction of the petitioners, in accordance with law.

.....J. (B.S. Chauhan)J. (Jagdish Singh Khehar) New Delhi;

March 2, 2012