

Supreme Court of India

Attorney General Of India vs Mohd. Saleem Zargar Etc. Etc. on 6 January, 1994

Equivalent citations: AIR 1994 SC 952, 1994 CriLJ 1198

Bench: M V I.

ORDER

1. The Attorney-General of India has made these motions under Section 11(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. By the motion, the concurrence of the Chief Justice of India is sought to enable the Central Government to transfer three criminal cases, viz., T.P. (Crl.) No. 310/91 (Attorney-General of India v. Mohd. Saleem Zargar), T.P. (Crl.) No. 308/ 91 (Attorney-General of India v. Yasin Malik and Ors.) and T.P. (Crl.) No. 309/91 / (Attorney-General of India v. Mohd. Maqbool Tantry and Ors.) now pending trial and binding decision on the file of the Designated Court, Jammu, in the State of Jammu and Kashmir to another Designated Court in another State.

2. Section 11(2) provides :

(2) If, having regard to the exigencies of the situation prevailing in a State, the Central Government is of the opinion that

a) the situation prevailing in such State is not conducive to a fair, impartial or speedy trial, or

b) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge of the Designated Court or any of them, or

c) it is not otherwise in the interests of justice, it may, with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General), transfer any case pending before a Designated Court in that State to any other Designated Court within that State or in any other State.

3. It is submitted by Sri D.N. Dwivedi, learned Additional Solicitor General of India that the Central Government proposes to transfer these three cases from the file of the Designated Court Jammu, to the Designated Court at the Ajmer Jail in the State of Rajasthan for reasons of high security. Notices were ordered on these motions to the respondents so as to afford them an opportunity of being heard. Respondents are served but have remained unrepresented.

4. The Home Secretary, Union of India, in each these motions, has filed an affidavit indicating that the Central Government has formed the opinion that such transfer is necessary having regard to the exigencies of the situation prevailing in the State of Jammu and Kashmir. After setting out the facts of the case, the Home Secretary in paragraphs 5 and 6 of the affidavit says:

5. That on receipt of the recommendations of the Governor of J & K, the matter was further processed in the Ministry of Home Affairs. The Central Govt. was fully satisfied and was firmly of

the opinion that in view of the prevailing law and order situation in the State of J & K, marked by heightened militancy and terrorism, it was not feasible to have a smooth, fair, impartial and speedy trial of the accused in the State of J & K. The Central Govt. was of the opinion that in order to ensure the safety of the Presiding Judge the Counsels and the witnesses as well as to ensure the safe custody of the accused, it was imperative that the trial of the accused be shifted to a State other than Jammu and Kashmir where a Designated Court existed. After fully satisfying itself, the Central Govt. formed an opinion that in the exigencies of the situation, and in the interest of justice, it was necessary to request the Attorney-General for India to move a motion under Section 11(2) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, before the Hon'ble the Chief Justice of India for his concurrence as contemplated by the law. In pursuance of this decision, the officers of the Ministry of Home Affairs had consultations with the learned Attorney-General and the Govt. Advocate in the Central Law Agency and, thereafter, the Attorney-General after having gone through the records moved the requisite motion.

6. After the motion was moved, the situation in the State of J & K continues to be grim and the incidence of militancy continues unabated. The Central Govt. seeks to ensure the speedy trial of the accused and, therefore, in the interest of justice, I reiterate the Central Govt's opinion that the conditions in J & K are not conducive for the smooth, fair, impartial and speedy trial of accused and, therefore, in the interest of justice, it is essential to transfer this case outside the State of J & K.

5. Since the affidavit manifesting the formation of the requisite opinion was filed by the Central Government only on 24th December, 1993, I treat the motions in these three cases as having been made subsequent thereto. I have considered the prayer of the Central Government for my concurrence to their proposal for the transfer of the cases. There is nothing to hold that the formation of the opinion on the part of the Central Government as indicated in the affidavit of the Home Secretary is not arrived at and justified on the considerations relevant to Section 11(2) of the Act. The circumstances set out justify the formation of the opinion that the concurrence for the transfer should be accorded. It is ordered accordingly.

6. I also place on record the assurance of Sri D.N. Dwivedi, learned Additional Solicitor General, that in all these the accused will be provided facilities for the conduct of their defence effectively and that, wherever necessary, legal aid would be provided to the accused persons. He also submitted that if the accused engaged the services of counsel of their own choice from outside Ajmer, Government accommodation and facility for transport would be provided to the counsel at the expense of the Government.