



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISC. CIVIL APPLICATION NO.52 OF 2021**

1. Hamid Narendra Dabholkar,
Age 41, Residing at Vivek
Bungalow, Gadoli, Satara.
 2. Nikhil Wagale, Age :
Residing at A-4, Lily Rose
Co-operative Housing Society,
Mogul Lane, Mahim,
Mumbai – 400 016
- ... Applicants

versus

1. Sanatan Sanstha,
A public Charitable Trust,
Registered under No.1/IV/2,
Ponda, Goa, Having its office
at “Sanatan Ashram”, Ramnathi,
Ponda, Goa, through its Managing
Trustee Shri Virendra Pandurang
Marathe, s/o Pandurang Marathe,
Major in age, Residing at Sanatan
Ashram, Ramnathi, Ponda, Goa.
2. Manoj Balraj Salunkhe,
Indian Inhabitant, Major in age,
Editor, Daily ‘Sakal’,
1243/82/A, E Ward, Near Parvati
Multiplex Shivaji Udyam Nagar,
Kolhapur – 416 008.
3. Sakal Papers Private Limited,
A company duly registered under the
Indian Companies Act, 1956, through
its Managing Director, Mr. Abhijit
Pratap Pawar, Indian Inhabitant,
Major in age, having its office at
1243/82/A, E Ward, Near Parvati

Multiplex Shivaji Udyam Nagar,
Kolhapur – 416 008.

4. Shriram Jaisinrao Pawar,
Publisher and Printer, Daily 'Sakal',
Printing Press, D-4, M.I.D.C.,
Shiroli, Kolhapur – 416 122. ... Respondent

**WITH
MISC. CIVIL APPLICATION NO.89 OF 2021**

Nikhil Wagale, Age 61 years,
Residing at A-4, Lily Rose
Co-operative Housing Society,
Mogul Lane, Mahim,
Mumbai – 400 016 ... Applicant

versus

1. Sanatan Sanstha,
A public Charitable Trust,
Registered under No.1/IV/2,
Ponda, Goa, Having its office
at "Sanatan Ashram", Ramnathi,
Ponda, Goa, through its Managing
Trustee Shri Virendra Pandurang
Marathe, s/o Pandurang Marathe,
Major in age, Residing at Sanatan
Ashram, Ramnathi, Ponda, Goa.
2. Jayant Mantri, Editor, Publisher and
Printer, Daily Tarun Bharat,
(Kolhapur Edition), having his office at :
1446, C-Deepak, Dasera Chowk,
Kolhapur.
3. Tarun Bharat Daily Pvt. Ltd.,
A company duly registered under
Indian Companies Act, 1956,
through its Managing Director,
Having office at, 3524, Narvekar

Galli, Balgaon, Karnataka.

**WITH
MISC. CIVIL APPLICATION NO.90 OF 2021**

Nikhil Wagale, Age 61 years,
Residing at A-4, Lily Rose
Co-operative Housing Society,
Mogul Lane, Mahim,
Mumbai – 400 016

... Applicant

versus

1. Sanatan Sanstha,
A public Charitable Trust,
Registered under No.1/IV/2,
Ponda, Goa, Having its office
at “Sanatan Ashram”, Ramnathi,
Ponda, Goa, through its Managing
Trustee Shri Virendra Pandurang
Marathe, s/o Pandurang Marathe,
Major in age, Residing at Sanatan
Ashram, Ramnathi, Ponda, Goa.
2. Ram Jagtap, Editor, Aksharnama,
Indian Inhabitant, having office at
264/3, Shanivar Peth, Anugrah
Apartments, Near Onkareshwar
Mandir, Pune – 30.
3. M/s. Diamond Publications,
Having its Office at C/o Aksharnama,
at 264/3, Shanivar Peth, Anugrah,
Apartments, Near Onkareshwar
Mandir, Pune – 30.

**WITH
MISC. CIVIL APPLICATION NO.124 OF 2021**

Nikhil Wagale, Age 61 years,
Residing at A-4, Lily Rose

Co-operative Housing Society,
Mogul Lane, Mahim,
Mumbai – 400 016

... Applicant

versus

1. Sanatan Sanstha,
A public Charitable Trust,
Registered under No.1/IV/2,
Ponda, Goa, Having its office
at “Sanatan Ashram”, Ramnathi,
Ponda, Goa, through its Managing
Trustee Shri Virendra Pandurang
Marathe, s/o Pandurang Marathe,
Major in age, Residing at Sanatan
Ashram, Ramnathi, Ponda, Goa.
2. Ram Jagtap, Editor, Aksharnama,
Indian Inhabitant, having office at
264/3, Shanivar Peth, Anugrah
Apartments, Near Onkareshwar
Mandir, Pune – 30.
3. M/s. Diamond Publications,
Having its Office at C/o Aksharnama,
at 264/3, Shanivar Peth, Anugraph,
Apartments, Near Onkareshwar
Mandir, Pune – 30.

**WITH
MISC. CIVIL APPLICATION NO.106 OF 2021**

Alka Dhupkar, Age 39 years,
102, Saidham CHS, Sector – 9,
Plot No.E85, Airoli, Navi Mumbai – 400 708

... Applicant

versus

1. Sanatan Sanstha,
A public Charitable Trust,
Registered under No.1/IV/2,

Ponda, Goa, Having its office at "Sanatan Ashram", Ramnathi, Ponda, Goa, through its Managing Trustee Shri Virendra Pandurang Marathe, s/o Pandurang Marathe, Major in age, Residing at Sanatan Ashram, Ramnathi, Ponda, Goa.

2. Ram Jagtap, Editor, Aksharnama, Indian Inhabitant, having office at 264/3, Shanivar Peth, Anugrah Apartments, Near Onkareshwar Mandir, Pune – 30.
3. M/s. Diamond Publications, Having its Office at C/o Aksharnama, at 264/3, Shanivar Peth, Anugrah Apartments, Near Onkareshwar Mandir, Pune – 30.

Mr. Amit Singh with Mr. Kabeer Pansare, Mr. Bhushan Bhadgale i/by Abhay Nevagi and Associates, for Applicants in MCA Nos.51 of 2021, 90 of 2021, 124 of 2021 and 89 of 2021.

Mr. Sandesh Shukla (through VC) with Mr. Vivek Patil, Ms. Anasamah Sayed, Mr. Devesh Sawant, Mr. Afsar Ansari, Mr. Amol Thorat i/by Vivek Patil and Associates, for Applicant in MCA No.106 of 2021.

Mr. Rajendra V. Pai, Sr. Advocate with Ms. Siddhi Bhosale, Ms. Ashesha Chheda, Mr. Saharsh Sahakhare, Mr. Akshay Pai, Ms. Bina R. Pai i/by Ms. Siddhi Bhosale, for Respondent No.1 in all MCAs.

Mr. Sachindra Shetye with Mr. Prabhakar M. Jadhav, Ms. Suchita R. Chavan, Mr. A.P.Mahadik, Mr. Akshay Pansare, Mr. Nipun Sawane i/by Mr. Prabhakar M. Jadhav, for Respondent Nos.3 and 4 in MCA No.52 of 2021 and for Respondent Nos.2 and 3 in MCA Nos.89 of 2021, 90 of 2021, 124 of 2021 and 106 of 2021.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 25 APRIL 2025
PRONOUNCED ON : 3 SEPTEMBER 2025

JUDGMENT :

1. These Applications are filed under Section 24 of the Code of Civil Procedure, 1908 ('the Code'), seeking transfer of Special Civil Suit Nos.14 of 2017, 15 of 2017, 35 of 2018, 26 of 2018 and 25 of 2018 instituted by Sanatan Sanstha, (R1) in all the applications, against the Applicant(s) in the respective applications and other Defendants, from the Court of Civil Judge, Senior Division, Ponda, Goa, to any Court of competent jurisdiction at Mumbai, Pune or Kolhapur or any other station in the State of Maharashtra.
2. As all the applications seek transfer of the respective suits on, by and large, similar grounds and the resistance thereto by the Respondent No.1 – Plaintiff proceeds on the similar lines and common questions of facts and law arise for determination in these applications, they were heard together and are being decided by this common judgment.
3. A common thread which permeates the abovenumbered suits instituted by the Respondent No.1 – Plaintiff is that the applicants and other co-defendants have made and/or published deliberate false and defamatory statements, and, thereby defamed the Plaintiff and, hence, the suits for award of damages for the injury caused to the reputation of Plaintiff.
4. For the sake of convenience and clarity, the facts in MCA No.52 of 2021 are noted as a lead application and in a little detail, followed by the facts in rest of the applications, in brief.

Facts in MCA No.52 of 2021 :

5. Hamid Dabholkar (A1) is the son of late Dr. Narendra Dabholkar, who was the founder of Maharashtra Andhashraddha Nirmulan Samiti (ANIS), an organization dedicated to eradicate superstition. Nikhil Wagle (A2) is a senior journalist. He claimed to have been actively involved in the field of journalism, Managing Editor of newspapers and periodicals and also a socio political commentator. Sanatan Sanstha (R1) is a public charitable trust and claims to be a Hindu spiritual organization with a large followers.

5.1 Late Dr. Narendra Dabholkar was murdered on 28 August 2013 by two then unidentified gunmen. Comrade Govind Pansare, another rationalist, was also shot at, in Kolhapur, and died on 28 February 2015. A programme was organized at Kolhapur in the memory of late Comrade Govind Pansare, titled “Shahid Govind Pansare Smriti Jagar Programme.”

5.2 Respondent No.1 – Plaintiff instituted a suit, being Special Civil Suit No.14 of 2017, with the assertions that, in the said programme, while addressing a public meeting, Applicant Nos.1 and 2 made defamatory statements against Respondent No.1. The defamatory statements were published in the newspaper ‘Sakal – Kolhapur Edition’ on 21 February 2017 under the title “स्वार्थापोटीच देशद्रोहाचा नवा दहशदवाद”. The Respondent alleged, the statements made by the Applicant Nos.1 and 2 (Defendant Nos.4 and 5) and published by Defendant Nos.1 to 3 (Respondent Nos.2 to 4 herein), were *per*

se defamatory. Those statements lowered the Plaintiff in the estimation of the public. Applicant Nos.1 and 2 made those statements and Respondent Nos.2 to 4 published and circulated those statements deliberately with the sole intention of lowering the reputation of the Plaintiff in the Society. Those statements were absolutely false and malicious. Hence, the suit for damages of Rs.10 Crores for the injury caused to the reputation of the Plaintiff.

5.3 The Applicants appeared before the Civil Court at Ponda and filed their Written Statement.

5.4 The Applicants have preferred this Application for transfer of the suit from the Court of Civil Judge, Sr. Division, Ponda, Goa, to any other Court in the State of Maharashtra, apprehending a serious and continuous threat to their lives and well being. The Applicants, *inter alia*, assert, in the past, the Respondent No.1 had initiated proceedings against late Dr. Dabholkar as well as Comrade Govind Pansare. The involvement of the followers of Respondent No.1 in the murder of late Dr. Dabholkar and Comrade Pansare has been established in the chargesheet filed by the Investigating Agencies against Virendra Tawade and supplementary chargesheet filed against Sanjeev Punalekar in Dr. Dabholkar's murder case and against Virendra Tawade and Sameer Gaikwad in Pansare murder case. Raids have been conducted by the investigating agencies at the establishments of the Plaintiff at Goa and Panvel. The shooters who allegedly killed Dr. Dabholkar and

Comrade Pansare were and are followers of the Plaintiff. The alleged shooters were still absconding.

5.5 It is further asserted that, the Plaintiff has been habitually and persistently adopting such method as to prevent the right minded citizens from exercising their fundamental right of freedom of expression. Chargesheets filed in the aforesaid cases reveal that the ideology of Dr. Dabholkar and his organization was opposed to the ideology of the Respondent No.1. The latter had opposed the Anti-Superstition Bill (promoted by Dr. Dabholkar and his organization), which was eventually passed by the Maharashtra State Legislature. Respondent No.1 believed that Dr. Dabholkar was the anti-Hindu and was the force behind 'Andhra Shraddha Nirmulan Bill 2005'.

5.6 After the murder of Dr. Dabholkar, the Applicant No.1 has been provided with 'X' category police security. The Applicant No.1 has been critical of the organizations like Respondent No.1. Applicant No.2 was also offered police protection for being critical of the ideology and activities of the Respondent No.1. However, Applicant No.2 has refused to take police protection. Both the Applicants are, however, under continuous threat to their lives and well being.

5.7 The Applicants subsequently amended the Application and with reference to the supplementary chargesheet filed by CBI against the accused

in Dr. Dabholkar murder case alleged that the said chargesheet and supplementary chargesheet filed by Anti-Terrorist Squad in Nalasopara Arms Seizure Case, indicate the involvement of the Plaintiff and its nexus with the murders of Dr. Dabholkar, Comrade Pansare, Prof N.M.Kalburgi and Smt Gauri Lankesh.

5.8 The Applicants aver, the accused arrayed in the murder of Dr. Dabholkar (2013), Comrade Govind Pansare (2015), Professor Kalburgi (2015) and Smt. Gauri Lankesh (2017) are associated with the Plaintiff or its allied organizations. Commonality with all the above four persons, who were murdered during the period 2013 to 2017, is that all those people expressed their views and opinions fearlessly, and, therefore, met the same fate. The Applicants have referred to the various orders passed by this Court and the observations of the Supreme Court in a Petition filed in connection with the murder of Smt. Gauri Lankesh to emphasise the gravity of the situation.

5.9 Since the Applicant No.1 is a strong supporter of Andha Shraddha Nirmulan Samiti and has always expressed his views against the ideology of Plaintiff and its allied organizations, and the Applicant No.2 has been equally vocal and had sought a ban on the Plaintiff and other right wing organizations and had also received threats from the Plaintiff, the Applicants apprehend serious and heightened threat to their life at Ponda, Goa, which is the headquarter of the Plaintiff.

5.10 The Applicants further aver that the Applicants have always expressed their opinion against the ideology of the Plaintiff, and the manner in which all the four murders were allegedly carried out, raises sufficient doubts about the safety and security of the Applicants, at Ponda, Goa, which has the overwhelming presence of Sadhaks / members of the Plaintiff. As the presence of the Applicants would be required during the trial of the suit, if it is tried at Ponda, Goa, it is highly likely that the Applicants would have to continuously face hostile environment, at the hand of the Plaintiff, as well as its members / sadhaks. The Applicants would be under constant fear for their life while participating in the said trial. The Applicants are also apprehensive that the overwhelming presence of sadhaks / followers of the Plaintiff during the trial would interfere with the fair trial therein and may lead to miscarriage of justice.

5.11 Conversely, the Respondent No.1 would not suffer any prejudice as it has its establishment in Maharashtra as well and, thus, can effectively prosecute the suit. It would, therefore, be just, necessary and expedient to transfer the proceedings in the suit from the Court of Civil Judge, Senior Division, Ponda, Goa, to any Court of competent jurisdiction in the State of Maharashtra.

Facts in other Misc. Civil Applications :

5.12 MCA Nos.89 of 2021, 90 of 2021, 124 of 2021 are filed by Mr. Nikhil

Wagle. In MCA No.89 of 2021, transfer of Special Civil Suit No.15 of 2017 instituted by the Respondent No.1 with the assertions that the Applicant (D1) had made a defamatory statement, which was published under the title “विचारांचा प्रतिवाद विचाराने करा” in the newspaper “Tarun Bharat” (Kolhapur Edition) dated 21 February 2017, by Respondent Nos.2 and 3 (Defendant Nos.2 and 3) is sought.

5.13 In MCA No.90 of 2021, Nikhil Wagale-the Applicant seeks transfer of Special Civil Suit No.35 of 2018 instituted by the Respondent No.1 with the assertion that the Applicant (D3) had made defamatory statement which was published under the title “दहशतदवादी सनातनला कोण वाचवतय?” in the online Portal ‘अक्षरनामा’ dated 11 October 2018 by Respondent Nos.2 and 3 (Defendant Nos.1 and 2).

5.14 In MCA No.124 of 2021, Nikhil Wagale – the Applicant, seeks transfer of Special Civil Suit No.25 of 2018 instituted by Respondent No.1 for the alleged defamatory statements made by the Applicant (Defendant No.3) and published in ‘अक्षरनामा’, under the title “सनातनांच्या मुसक्या कोण बांधणार?”, by Respondent Nos.2 and 3 (Defendant Nos.1 and 2).

5.15 Alka Dhupkar – Applicant in MCA No.106 of 2021, seeks transfer of Special Civil Suit No.26 of 2018 instituted by the Respondent No.1 for the alleged defamatory statement made by her and published in the news titled “सनातन संस्था ही ‘सेक्युलर’ भारताच्या सुरक्षेला धोका आहे.” in ‘अक्षरनामा’ on 11 October

2018, by Respondent Nos.2 and 3 (Defendant Nos.1 and 2).

5.16 As noted above, the allegations in these applications are, by and large, similar.

Resistance by Respondent No.1 :

6. Respondent No.1 resisted the prayers in the applications by filing affidavit/s in reply. All the allegations in the applications adverse to the interest of the Respondent No.1 were categorically denied.

6.1 The tenability of the applications for transfer was questioned on two counts. Firstly, in view of the provisions contained in Rule 3 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, the applications were required to be presented to the Registrar, High Court of Bombay at Goa, for disposal by the Judges sitting at High Court of Bombay at Goa. Therefore, the applications are not maintainable before the Principal Seat of the High Court at Bombay.

6.2 Secondly, the applications under Section 24 of the Code, are also not maintainable. Since the applicants are seeking transfer of the suits which are pending on the file of the Court in the State of Goa to the Court in the State of Maharashtra, the Applicants ought to have approached the Supreme Court by preferring an application under Section 25 of the Code, contends Respondent No.1.

6.3 On the merits of the applications, the Respondent No.1 contends that

the applicants have singularly failed to establish the nexus between the alleged threats received by the Applicants with the Respondent No.1. Moreover, the suits have been instituted in the years 2017 and 2018. The Applicants have appeared before the Civil Court at Goa and filed Written Statements and also participated in the proceedings before the said Court. At no earlier point of time, the Applicants have ever whispered about the so called apprehension to their lives and well being. The Applicants have preferred the applications with a view to delay the disposal of the suits when the trial in the suits was to commence by making vague and baseless allegations of threat to their lives and prejudice in the conduct of the trial at Goa. Respondent No.1 has categorically denied the allegations, imputations and insinuation about the involvement of the Respondent No.1 and its followers in the alleged murders of above named four persons.

6.4 In response to the amendment carried out by the applicants, Respondent No.1 filed an additional affidavit in reply. It was contended that the assertions made in the applications by way of amendment, in the context of the chargesheet and supplementary chargesheet in the cases, were factually incorrect. In fact, the trial in Dr. Dabholkar murder case concluded and Virendrasinh Tawade, Sanjiv Punalekar and Vikram Bhave, who were associated with the Respondent No.1, have been acquitted by the learned Sessions Judge.

6.5 At any rate, the statements and conclusions in the chargesheets reflect the opinion of the investigating agency and those statements cannot be accepted as established and proved, until adjudication by the Court. Therefore, no reliance can be placed on those statements in the chargesheet or documents filed by the investigating agency in those proceedings to lend credence to the non-exist apprehension of safety and prejudice in the trial of the suits.

6.6 Respondent No.1 contends that, there is no credible material to justify the apprehension. Mr. Nikhil Wagale has not filed any complaint in respect of any threat allegedly received from the Respondent No.1. Though, the applicants have alleged that they are under serious and continuous threat, yet none of the applicants have filed any report with the police at any point of time. Reliance on the orders passed by this Court and the observations of the Supreme Court is stated to be completely misplaced. In none of those matters, the involvement of Respondent No.1 in the alleged incidents has been adverted to.

6.7 In substance, Respondent No.1 contends that, none of the applicants have succeeded in making out a case for transfer of the suits. Vague allegations of threat, do not sustain the prayer for transfer of the suits from the Court of competent jurisdiction. In such circumstances, the Applications deserve to be rejected with exemplary costs.

Submissions :

7. In the backdrop of the aforesaid facts and pleadings, I have heard Mr. Amit Singh, learned Counsel for the Applicants in MCA Nos.52 of 2021, 89 of 2021, 90 of 2021 and 124 of 2021, Mr. Sandesh Shukla, learned Counsel for the Applicant in MCA No.106 of 2021, Mr. Rajendra Pai, the learned Senior Advocate for Respondent No.1 – Plaintiff, in all the applications, and Mr. Shetye, learned Counsel for Respondent Nos.3 and 4 in MCA Nos.52 of 2021 and for Respondent Nos.2 and 3 in rest of the applications. Learned Counsel took the Court through the documents and material on record.

In support.....

8. Mr. Amit Singh, learned Counsel for the Applicants, submitted that, the objections to the maintainability of the applicants on both the counts, namely, the proper remedy is to file an application under Section 25 of the Code and, at any rate, the applications for transfer ought to have been filed before the High Court of Bombay at Goa, are wholly untenable. Since the Bombay High Court is common High Court for the States of Maharashtra and Goa, the applications seeking transfer of the proceedings from the Court situated within the geographical limits of one State to the Court situated in another State is maintainable before the Bombay High Court, and, it is not necessary to move the Supreme Court invoking its powers under Section 25 of the Code. Mr. Singh would urge that the decision of the Supreme Court in the case of **Shah**

Newaz Khan and Ors. V/s. State of Nagaland and Ors.¹ sets the controversy at rest.

9. Mr. Singh further submitted that the proposition that an application for transfer of the proceedings from the Court situated at Goa to the Court situated within the State of Maharashtra is maintainable before the Bombay High Court at its principal seat and it is not necessary to file such application for transfer of the proceedings before the High Court of Bombay at Goa, is also settled by a line of decisions of this Court. Reliance was placed by Mr. Singh on the judgments in the cases of **Irene Blanch Khera and Anr. V/s. Glenn John Vijay**², **Sia Virendra Kamat V/s. Virendra Damodar Kamat**³ and **Sangamitra w/o Ramakant Royalwar V/s. Ramakant s/o Gangaram Royalwar**⁴.

10. On the merits of the matter, taking the Court through the averments in the applications, the copies of the chargesheets lodged in cases in connection with the murder of Dr. Dabholkar and Nalasopara Arms seizure case, Mr. Singh would urge that the applicants have made out a strong case of apprehension to their lives and well being as the aforesaid material establishes the nexus between the Respondent No.1 and the persons accused in the above referred prosecutions. Mr. Singh submitted that the fact

1 2023 SCC Online SC 203

2 2018(6) Mh.L.J. 199

3 2021 SCC Online Bom 5397

4 2009(1) Mh.L.J. 303

that four persons who were holding a contrarian opinion to that of the Respondent No.1 and were vocal against the activities of Respondent No.1 and the like minded organizations, were murdered and the chargesheet in the Nalasopara Arms seizure case, indicates that there was a commonality in all these four murders, in itself, constitutes a grave apprehension to the lives of the applicants, who have also been critical of the ideology and actions of the Respondent No.1.

11. Mr. Singh laid special emphasis on the observations of the learned Sessions Judge in the judgment in Sessions Case No.706 of 2016 dated 10 May 2024, thereby convicting two of the accused for the murder of Dr. Dabholkar. The thrust of the submission of Mr. Singh was that the observations of the learned Sessions Judge firmly establish the nexus between the Respondent No.1 and the persons involved in the murder of Dr. Dabholkar and fortify the apprehension of the applicants.

12. Mr. Singh further submitted that, at this stage, the applicants are only required to demonstrate reasonable apprehension and the likelihood of the applicants not getting a fair trial and justice. Since the headquarter of the Respondent No.1 is located barely few kilometers away from the Court at Ponda; where the suits are subjudice, the applicants genuinely apprehend risk to their lives and the trial being not held in a clam and serene atmosphere. Reliance was also placed by Mr. Singh on the observations

made by the Division Bench of this Court in PIL No.15 of 2015 and connected matters, wherein this Court was monitoring the investigation in the murder cases of Dr. Dabholkar and Comrade Pansare.

13. It was submitted that, on account of the overwhelming presence of the followers – sadhaks of Respondent No.1 at Ponda, Goa, there would be a hostile and bitter environment and the applicants would be under constant fear for their lives, and that would impede the fair trial. It was further submitted that Dr. Hamid Dabholkar (A1) and Nikhil Wagale (A2) have received threats. 'X' category security has been provided to Dr. Hamid (A1).

14. In the backdrop of the aforesaid material, according to Mr. Singh, it would be unrealistic to take a view that the apprehension of the applicants is not reasonable and genuine. Ultimately, the true test is whether the applicants would have a fair trial and justice. In the facts of the case, according to Mr. Singh, the cause of justice would be a casualty if the suits are tried at Ponda, Goa.

15. To lend support to these submissions, Mr. Singh placed reliance on the decisions of the Supreme Court in the cases of **Union of India and Anr. V/s. Shiromani Gurdwara Prabandhak Committee and Ors.**⁵ and **Dr. Subramaniam Swamy V/s. Ramakrishna Hegde**⁶. Reliance was also placed on a judgment of the Madhya Pradesh High Court in the case of

⁵ (1986) 3 SCC 600

⁶ (1990) 1 SCC 4

Jagatguru Shri Shankaracharya Jyotish Peethadhishwar Shri Swami Swaroopanand Saraswati V/s. Ramji Tripathi Lal Bihari Tripathi and Ors.⁷.

16. Mr. Singh further urged that the trial of the suits before any Court in the State of Maharashtra is not likely to cause any prejudice to the Respondent No.1. Alleged defamatory statements have been made and published in the State of Maharashtra. Respondent No.1 claims that it has its followers and sadhaks in the State of Maharashtra as well. The alleged defamatory articles must have been read by the persons who reside at the places where those statements were made and published. Respondent No.1 would, therefore, be in a position to examine those persons as witnesses. From this standpoint, according to Mr. Singh, the balance of convenience also tilts in favour of the applicants.

17. Mr. Sandesh Shukla, learned Counsel for the Applicant in MCA No.106 of 2021 supplemented the submissions of Mr. Singh. Mr. Shukla laid emphasis on the fact that the applicant in MCA No.106 of 2021 is a lady. Thus, the apprehension of her safety cannot be brushed aside lightly. Laying emphasis on the judgment of the Supreme Court in the case of **Kavitha Lankesh V/s. State of Karnataka and Ors.**⁸ wherein certain observations were made regarding the murder of Smt. Gauri Lankesh having been

7 1979 M.P.L.J. 305

8 2021 SCC Online SC 956

committed by an organized crime syndicate, Mr. Shukla would urge that, the enormity of the situation can be gauged from the fact that the investigating agency had found that the accused involved therein gave training of arms to various members of the syndicate since 2012 at various places in and around Karnataka and Maharashtra. Thus, the apprehension on the part of the Applicant cannot be said to be unreasonable. Mr. Shukla placed reliance on a decision of the Supreme Court in the case of **Kulwinder Kaur @ Kulwinder Gurcharan Singh V/s. Kandi Friends Education Trust and Ors.**⁹

18. Mr. Sachindra Shetye, learned Counsel appearing for other Respondents / co-defendants in the suits, supported the prayers in the applications.

In opposition....

19. Per contra, Mr. Rajendra Pai, the learned Senior Advocate for the Respondent No.1 stoutly countered the submissions on behalf of the applicants. Mr. Pai submitted that, though in view of the decision of the Supreme Court in the case of **Shah Newaz Khan and Ors. V/s. State of Nagaland and Ors. (supra)**, the Respondent No.1 may not pursue the objection regarding the maintainability of the applications under Section 24 of the Code, yet, objection to the tenability of the applications before the

⁹ (2008) 3 SCC 659

Bombay High Court at its principal seat is worthy of consideration. Mr. Pai laid emphasis on the provisions contained in Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, to buttress the submission that all the applications for transfer of the proceedings from the Court of Civil Judge, Senior Division, Ponda, must have been filed before the High Court of Bombay at Goa.

20. Mr. Pai made an endeavour to distinguish the decisions in the cases of **Irene Blanch Khera and Anr. (supra)**, **Sai Virendra Kamat (supra)** and **Sangamitra V/s. Ramakant (supra)**, asserting that those decisions were rendered in the peculiar fact-situation which obtained therein.

21. On the merits of the prayer for transfer, Mr. Pai urged, with a degree of vehemence, that the applications are devoid of reasonable apprehension of safety, or for that matter, the applicants not getting a fair trial. Mr. Pai would urge, there is no basis whatsoever for the self-perceived threat perception. None of the applicants have attributed any utterances or acts to anybody connected with Respondent No.1 to justify the apprehension of threat to safety. Nor, there is any public or private expression of threat in whatsoever manner, till date.

22. Mr. Pai made an endeavour to draw home the point that the averments in the applications do not travel beyond the realm of ideological differences between the applicants, on the one part, and the Respondent No.1, on the

other part. What the applicants term as 'Andhashraddha' (superstition), the Respondent No.1 perceives Dharmashraddha (religious beliefs). The suits, therefore, cannot be transferred on the basis of such ideological differences and the self-perceived apprehension sans any factual foundation. Transfer of the suits, on such grounds, would cause grave prejudice to the Plaintiff, who is a *dominus litis*.

23. Mr. Pai strongly urged that the Respondent No.1 was defamed at Goa by making wild, reckless and *per se* defamatory statements. Infamy was brought to the Respondent No.1 at Goa. Office bearers of the Respondent No.1 and the witnesses are based at Goa. The transfer of the suits, in such circumstances, would cause extreme inconvenience and hardship to the Respondent No.1.

24. Mr. Pai was extremely critical of the reliance by the Applicants on the opinions of the Investigating Officer in the charge sheet / supplementary chargesheet. Mr. Pai submitted that those opinions of the Investigating Officer cannot form the basis of the transfer of the proceedings until adjudication by the jurisdictional Court. Such allegations and inferences drawn by the Investigating Officer do not travel beyond the realm of opinion. To lend support to this submission, Mr. Pai placed reliance on the judgment of the Supreme Court in the case of **Rajesh Yadav and Anr. V/s. State of Uttar**

Pradesh¹⁰, wherein the Supreme Court enunciated that the final report filed by the Investigating Officer is nothing but a piece of evidence and forms a mere opinion of the investigating officer on the materials collected by him.

25. With regard to the observations of the learned Sessions Judge in Sessions Case No.706 of 2016, Mr. Pai submitted with tenacity that, the accused Virendrasinh Tawade, Sanjiv Punalekar and Vikram Bhave, who were stated to be connected with the Respondent No.1 have been duly acquitted. This factor singularly takes the wind out of sails of the submission on behalf of the Applicants, urged Mr. Pai.

26. It was further submitted that there is not a single proved case of violence involving the Respondent No.1. In the absence of extra-ordinary situation or compelling reasons, the suits cannot be transferred from the Court of competent jurisdiction, submitted Mr. Pai. A very strong reliance was placed by Mr. Pai on the judgment of the Supreme Court in the case of **Maneka Sanjay Gandhi and Anr. V/s. Rani Jethmalani**¹¹ to drag home the point that the facts of the case do not justify the transfer of the suits.

27. The aforesaid submissions now fall for consideration.

Consideration :

Maintainability

28. At the outset, it is necessary to note that in view of the judgment of the

¹⁰ (2022) 12 SCC 200

¹¹ (1979) 4 SCC 167

Supreme Court in the case of **Shah Newaz Khan and Ors. V/s. State of Nagaland and Ors. (supra)**, the challenge to the tenability of the applications under Section 24 of the Code, before the High Court need not detain the Court. In the said case, the Supreme Court considered the question, whether it is open for a High Court, if it is the common High Court for two or more States, to entertain an application for transfer under Section 24 of the Code and transfer the proceeding from a Civil Court to another Civil Court, both of which are subordinate to such High Court, but situate in different States in relation to which it exercises jurisdiction? After an elaborate analysis, the Supreme Court expounded that, the power under Section 24 of the Code can be exercised by the High Court even for inter-State transfer of a suit, appeal or proceedings, if it is common High Court for two or more States under Article 231 of the Constitution and both the civil courts (transferor and transferee) are subordinate to it.

29. Suffice to note, all the conditions, namely, the Bombay High Court is the common High Court for the State of Maharashtra and State of Goa; the proceedings sought to be transferred are civil proceedings, the transferor and transferee courts are subordinate to the Bombay High Court, are satisfied. Therefore, this Court would be justified in exercising the jurisdiction under Section 24 of the Code.

30. The challenge to the tenability of the applications before the principal

seat at Bombay was premised on the provisions contained in Rule 3 of Chapter XXXI of the Rules, 1960, which then read as under :

“3. All appeals, applications, references, petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution of India, arising in the State of Goa, which lie to the High Court at Bombay, shall be presented to the Special Officer at Panaji, Goa, and shall be disposed of by the Judges sitting at Panaji, Goa.

Provided that the Chief Justice may, in his discretion, order that any case arising in the State of Goa shall be heard at Bombay :

Provided further that the Chief Justice may, in his discretion, order that any case presented at Bombay be heard at Panaji, Goa.”

31. Mr. Pai would urge that the use of the word ‘shall’ in Rule 3 mandates that the applications must be presented before the Special Officer (now Registrar) at Panaji Goa, and shall be disposed of by the Judges sitting at the High Court of Bombay at Goa. Mr. Pai further submitted that the applicants have not resorted to the outlet provided by the proviso to Rule 3, and, therefore, the applications cannot be entertained by the High Court at its principal seat.

32. The issue sought to be raised by Mr. Pai is no longer *res integra*. In the case of **Irene Blanch Khera and Anr. (supra)**, an objection was raised to the tenability of the application filed under Section 24 of the Code, seeking

transfer of a matrimonial proceedings filed by the Respondent therein, in the Court of CJSD, Mapusa, North Goa, to the Family Court at Bandra, Mumbai, on an identical ground that the application ought to have been filed before the High Court of Bombay at Goa. The learned Single Judge of this Court, after adverting to the provisions of the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981, and The Goa, Daman and Diu Reorganization Act, 1987 and placing reliance on a Full Bench decision of this Court in the case of **Edward Evan Pereira and Anr. V/s. Goncalo Jose Agnelo and Anr.**¹², enunciated the legal position as under :

“17. This judgment, thus, makes it clear that the High Court of Bombay, being a common High Court for the State of Maharashtra and the State of Goa, the same jurisdiction including the jurisdiction under the Letters Patent is exercisable by the High Court of Bombay sitting at Panaji (Goa), which is exercisable by the High Court of Bombay at its Principal Seat at Bombay and its Benches at Nagpur and Aurangabad. Therefore, if the Principal Seat of the High Court at Bombay can transfer the proceedings pending in the judicial Districts in exclusive jurisdiction of its Benches at Aurangabad or Nagpur, then it follows that the Principal Seat of High Court at Bombay can also transfer the proceedings which are lying within the exclusive jurisdiction of its Seat at Goa, as both the Courts viz. the Court in which proceedings are pending and the Court to which the proceedings are to be transferred are subordinate to the common High Court. The provisions of Section 20 of the

12 2011(5) Mh.L.J. 550

Goa, Daman and Diu Reorganization Act, 1987 are clear to the effect that the High Court of Bombay is the common to both the State of Maharashtra and the State of Goa. Hence, there cannot be any distinction in exercise of jurisdiction in respect of the proceedings lying in the territories within the jurisdiction of the Principal Seat at Bombay and the proceedings lying in the exclusive jurisdiction of its Seat at Goa.”

33. The learned Single Judge adverted to the previous pronouncement of this Court in the case of **Sangamitra Ramakant Royalwar (supra)**, on which reliance was placed by Mr. Amit Singh, wherein also the similar issue as to whether Nagpur Bench of the Bombay High Court has jurisdiction to transfer the matrimonial petition filed by the Respondent against the wife to another Court, when such proceeding was pending in the judicial districts falling within the territorial limits of the jurisdiction of the Bench at Aurangabad and Principal Seat at Mumbai, arose for consideration. In the case of **Sangamitra Ramakant Royalwar (supra)**, answering the question in the affirmative and upholding the jurisdiction of the Nagpur Bench of the Bombay High Court, the learned Single Judge observed as under :

“17. In these cases wives are residing within territories of judicial districts assigned to this Bench and their proved situation in life constrains them to apply for transfer of matrimonial proceedings filed against them by their respective husbands. Their plight and sufferings are germane & hence, their ordinary residence with parents gives them a cause & reason to seek the order of transfers

from this Bench. It forms a part of cause of action to seek such relief. In the circumstances, I find that the present Misc. Civil Applications also arise in judicial districts specified in Rule 1 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 and hence this Bench has got jurisdiction and competence to take cognizance thereof. One more facet of the matter needs to be looked into. The same type of argument can be advanced by any side by pointing of that the High Court Bench relevant for judicial district in terms of chapter XXXI of Appellate Side Rules & in which the non-applicant husbands want proceedings to be continued, cannot direct the subordinate courts located in judicial districts outside their specified area to take cognizance of matrimonial proceeding transferred to them by it. Thus the objection of the non-applicants are therefore totally misconceived.”

34. An identical objection was repelled by this Court in the case of **Sia Virendra Kamat (supra)**, wherein the transfer of the matrimonial proceedings initiated by the husband at Margao, Goa, to the Family Court at Bandra, was sought.

35. This Court has, thus, consistently held that the principal seat at Bombay has jurisdiction to entertain an application for transfer of civil proceedings from the Court situated at Goa to the Court situated in the State of Maharashtra, as both the courts are subordinate to the High Court of Bombay, and Rule 3 of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, does not constitute an impediment in such a situation.

36. Moreover, it is imperative to note that in the case of **Shah Newaz Khan and Ors. (supra)**, the Supreme Court has given its imprimatur to the aforesaid view as the Supreme Court in paragraph No.32, referred to the decision of this Court in the case of **Irene Blanch Khera and Anr. (supra)**, observing, inter alia, that the learned Judge spurned the objection of the Respondent – husband that the transfer application ought to have been filed in the Bombay High Court at Goa and not at principal Seat in Mumbai. Thus, the challenge to the tenability of the applications on this ground, also falls through.

Contours of the power to transfer the proceedings :

37. Having dealt with the challenge to the tenability of the applications, I propose to delve into the merits of the prayer for transfer. To begin with, it is necessary to note that the provisions contained in Section 24 of the Code, do not spell out any ground or circumstances under which a proceeding can be transferred from one Court to another, unlike Section 25 of the Code, which provides that the Supreme Court may, if satisfied, that an order under the said Section is expedient for the ends of justice, direct the transfer of the proceeding. Nonetheless, the power to transfer the proceeding from one Court to another under Section 24 cannot be said to be completely unguided or uncanalized.

38. Undoubtedly, whether a proceeding ought to be transferred from one

Court to another would depend on the facts and circumstances which obtain in a given case. Yet, the cardinal consideration is securing the ends of justice. If the dictate of justice commands that the proceeding be transferred from one Court to another, the Court would be justified in exercising power under Section 24 of the Code. Whether the party who seeks transfer of the proceeding from one Court to another, would have an assurance of a fair trial is the primary consideration. The relative convenience and inconvenience of the parties and witnesses, and the balance of convenience are also the factors which weigh in. Where the proceedings are sought to be transferred at the instance of the Defendants, the principle that the Plaintiff is a *dominus litis*, and has a right to prosecute the suit in the jurisdictional Court of his choice, also deserves to be kept in view.

39. In the case of **Maneka Sanjay Gandhi (supra)**, on which reliance was placed by Mr. Pai, wherein a prosecution for an offence of defamation was sought to be transferred from the criminal Court at Bombay to the criminal Court at Delhi, by the accused therein, the Supreme Court enunciated the considerations which ought to weigh with the Court in the transfer of the proceeding from one Court to another. The observations in paragraph Nos.2, 3 and 5 are instructive, and, hence, extracted below :

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the

hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

3. One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complaint and will mitigate the serious difficulties of the accused. In the present case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi; but the meat of the matter, in a case of defamation, is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances flowing therefrom. They belong to Bombay in this case and the suggestion of the petitioner's counsel that Delhi readers may be substitute witness and the complainant may content herself with examining such persons is too presumptuous for serious consideration.

.....

5. A more serious ground which disturbs us in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial. '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 that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging 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. In

a decision cited by the counsel for the petitioner, Bose, J. Observed:

".... But we do feel that good grounds for transfer from Jashpurnagar are made out because of the bitterness of local communal feeling and the tenseness of the atmosphere there. 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."

(emphasis supplied)

40. In the case of **Union of India and Anr. V/s. Shiromani Gurdwara Prabandhak Committee and Ors. (supra)**, wherein the Union of India had sought transfer of a suit instituted by the Respondents therein from the State of Punjab to Delhi, the Supreme Court enunciated the law, as under :

"5. This Court had occasion to deal with this aspect of the matter in **G.X. Francis and Ors. V/s. Banke Bihari Singh and Anr.**¹³ where it was a case for transfer from Madhya Pradesh. Justice Vivian Bose observed that there was ground for transfer from the area because of the bitterness of the communal feeling and bitterness of the atmosphere. It was reiterated that the Public confidence in the fairness of a trial held in such an atmosphere would be

13 AIR 1958 SC 309

seriously undermined, particularly among the section of the community, and there was apprehension that administration of justice would not be possible in such atmosphere.

6. This was reiterated in **Hazara Singh Gill V/s. The State of Punjab**¹⁴, where Justice Hidayatullah as the learned Chief Justice then was, observed that the question was really whether the petitioner can be said to entertain reasonably an apprehension that he would not get justice. One of the highest principles in the administration of law is that justice should not only be done but should be seen to be done. In that case there was enough allegation to show that certain strong parties were opposed to the petitioner in various ways.

7. There is certainly in this case in view of the nature of allegations regarding some of the respondents who have been added, strong feelings are likely to be roused in some section of community. In such an atmosphere to meet the ends of justice it would be desirable to have the case transferred to a calmer and quieter atmosphere. Justice would be done in such a way. The power of this Court to transfer a suit or proceeding from one State to another State is a power which should be used with circumspection and caution but if the ends of justice so demand in an appropriate case, this Court should not hesitate to act. The fact that an extraordinary atmosphere exists in Punjab cannot be denied. To contend otherwise would be to contend for an unreality. The suit is unusual and sensitive, and the time is critical. This Court should act by transferring the case outside the State of Punjab to meet the ends of justice. That is an absolute imperative in this case.”

14 (1964) 4 SCR 1

41. The decision of the Supreme Court in the case of **Dr. Subramaniam Swamy V/s. Ramakrishna Hegde (supra)**, also illuminates the path :

“8. Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wide amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice.

Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude--for the ends of justice--have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touch-stone."

(emphasis supplied)

42. In the case of **Indian Overseas Bank, Madras V/s. Chemical Construction Company and Ors.**¹⁵, the Supreme Court postulated that the principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceeding in another Court, albeit a material consideration, may not always be a sure criterion justifying transfer.

¹⁵ 1979(4) SCC 358

Is the prayer for transfer justifiable :

43. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether a case for the transfer of the suits from the Civil Court at Ponda, Goa, is made out. It is pertinent to note, the applicants are not seeking the transfer of the proceedings on the ground of convenience. Nor any allegation of bias or other vitiating factors are made. The prime reason for seeking transfer is the perceived threat to life and well being of the applicants. Secondly, it is alleged, on account of the proximity of the court house from the headquarter of the Respondent No.1 and the overwhelming presence of the members of the Respondent No.1, environment would be hostile and bitter and the applicants would be under a constant fear for their safety and, thus, would not get a fair trial.

44. Whether the aforesaid apprehension is reasonable ? Is there any basis to entertain such apprehension ? Apprehensions are based on the murders of Dr. Dabholkar and Comrade Pansare, in the State of Maharashtra, and Prof. Kalburgi and Smt. Gauri Lankesh, in the State of Karnataka. It is alleged that, there is commonality in these four cases; similar sets of persons were involved in the killings and similar weapons were used. All the four persons were killed as they were highly critical and voiced their views against the ideology and activities of Respondent No.1 and similar organizations. The aforesaid contentions are premised on the chargesheet and the

supplementary chargesheet filed in the cases of Dr. Dabholkar by the CBI and the chargesheet filed in Nalasopara Arms seizure case.

45. From the perusal of the supplementary chargesheet in the Sessions Case No.706 of 2016, it becomes evident that the investigating agency has alleged that Sanjeev Punalekar and Vikram Bhave were the members of the Respondent No.1. Those accused had differences with Dr. Dabholkar. The accused were to follow and execute the teachings in 'Kshatradharma Sadhana' advocated by Sanatan Sanstha / Hindu Jan Jagruti Samiti and to eliminate those persons, who were considered / termed by the said organization / outfits as 'evil doers', 'anti-Hindu', 'Dharmadrohi', 'Durjan' etc., as they were opposed to their beliefs and customs.

46. In the chargesheet filed in the Nalasopara Arms Seizure case arising out of C.R.No.11 of 2018 by Anti-Terrorist Squad, the investigating agency has, inter alia, opined that the killings of Dr. Dabholkar, Comrade Pansare, Prof. Kalburgi and Smt. Gauri Lankesh, who were critical of the superstitious practices and rituals, had a thread of commonality. In the said chargesheet, there is a reference to the ideology propagated by the Respondent No.1 and its influence on the persons who were allegedly involved in the violent acts.

47. Mr. Pai, learned Senior Advocate for the Respondent No.1, would urge that the opinion formed by the investigating agency, as manifested in the chargesheets, is bereft of any value. It cannot be equated with the findings of

the Court. At best, they constitute the allegations which are not tried, tested and proved. Mr. Pai placed a very strong reliance on the observations in the case of **Rajesh Yadav and Anr. V/s. State of Uttar Pradesh (supra)**, to the effect that the final report is nothing but a piece of evidence and it forms a mere opinion of the investigating officer on the material collected by him.

48. The aforesaid observations were made by the Supreme Court in the context of the consequences that emanate non-examination of the investigating officer in a criminal trial. Undoubtedly, the conclusions drawn by the investigating officer are based on his assessment of the material collected by during the course of investigation and the inferences thereon. However, the matter cannot be considered only through the prism of admissibility of such opinion in a criminal trial, in the strict sense. The question to be posed is, whether upon a perusal of the said report and the opinion of the Investigating Officer, the person concerned would be justified in apprehending threat to his safety. Could that be a basis for reasonable apprehension ?

49. Moreover, as regards the murder of Dr. Dabholkar, *now* there is a judicial determination. Evidence and material was evaluated by the learned Sessions Judge and two of the accused were, inter alia, found guilty for the commission of the offence punishable under Section 302 of the Indian Penal Code.

50. Mr. Singh and Mr. Pai made an endeavour to lay emphasis on the

particular portions of the judgment in Sessions Case No.706 of 2016, to advance their respective submissions. It is necessary to clarify that, the consideration of the observations made and the findings recorded, by the learned Sessions Judge in Sessions Case No.706 of 2016, by this Court would be confined to appraise whether there is reasonable basis for the apprehension to the life and well being of the applicants, in the event the trial in the suits proceeds before the Court at Ponda, Goa and not beyond.

51. Learned Sessions Judge while determining the aspect of motive for the said offence, has noted that the Respondent No.1 and other organizations bitterly opposed the deceased (Dr. Dabholkar) and the activities of ANIS. It was established by the defence itself by putting suggestions to the prosecution witnesses that the accused in the case were connected with the Respondent No.1. On the aspect of motive, it was concluded that the connection of accused No.1 with the Respondent No.1, and his activities against the ideology of ANIS and enmity with Dr. Dabholkar were duly proved. In paragraph 75 of the said judgment, learned Sessions Judge concluded that there was reliable evidence that the Respondent No.1 was bitterly opposing the deceased (Dr. Dabholkar), and the accused were connected with the Respondent No.1 and its sister organizations, and, therefore, motive was held to be proved against the accused. Eventually, as noted above, the learned Sessions Judge convicted accused Nos.2 and 3 therein, and acquitted

accused Nos.1, 4 and 5.

52. Mr. Pai made an endeavour to read the judgment rendered by the learned Sessions Judge to the advantage of Respondent No.1 by forcefully canvassing a submission that accused Nos.1, 4 and 5 who were the members of the Respondent No.1, were duly acquitted. Therefore, the nexus between the Respondent No.1 with the said incident cannot be said to have been established.

53. In my view, acquittal of accused Nos.1, 4 and 5 in the said Sessions Case, cannot be considered in the abstract. The observations of the learned Sessions Judge in paragraph Nos.104 and 108 of the judgment throw light on the circumstances and the impressions gathered by the learned Sessions Judge after a full fledged trial. They read as under :

“104. As already observed, there is evidence of motive for murder of Dr. Narendra Dabholkar against accused No.1 Dr Virndrasinh Tawde. There is reasonable suspicion against accused No. 4. Sanjiv Punalekar and accused No.5. Vikram Bhave, showing their involvement in the present crime. However, the prosecution has failed to establish the involvement of accused Nos. 1, 4 and 5 by leading reliable evidence to convert motive and suspicion into the form of evidence showing their involvement in the crime. However, from the entire evidence on record, it is proved beyond reasonable doubt that, the accused No.2. Sachin Andure and accused No.3. Sharad Kalaskar committed murder of Dr. Narendra Dabholkar by firing bullets from firearms. The

accused Nos. 2 and 3 have simultaneously and together have fired bullets with common intention to commit murder of Dr. Narendra Dabholkar. Therefore, the offence under section 302 read with section 34 of the Indian Penal Code, 1860 is proved beyond reasonable doubt against accused Nos. 2 and 3.

.....

108. Admittedly, except ideological differences with deceased Dr. Narendra Dabholkar, the accused Nos. 2 and 3 were not having any personal enmity or rivalry against Dr. Narendra Dabholkar. The murder is committed with very well prepared plan, which is executed by accused Nos. 2 and 3. Considering the economical and social status of the accused Nos. 2 and 3, they are not the master minds of the crime. The main master mind behind the crime is someone else. Pune police as well as CBI has failed to unearth those master minds. They have to introspect whether it is their failure or deliberate inaction on their part due to influence by any person in powers. It is interesting to note here that in the present case, charge-sheeted accused and defence counsels have not merely attempted to raise the defence. From unnecessary and irrelevant lengthy cross-examination of the prosecution witnesses and even in final argument, an attempt is made to tarnish image of the deceased. At the same time, the approach of the defence was to justify the killing of the deceased Dr. Narendra Dabholkar, by labelling him as anti Hindu. In said attempt, advocate Shri. Salshingikar referred the yearly magazine Exh. 376, which is published after more than five years, after the death of Dr. Narendra Dabholkar. The said approach is very strange and

is condemnable. As already observed, it is not an exclusive act of accused Nos. 2 and 3, but definitely, there is preplan by master minds. Unfortunately, the prosecution has failed to unmask those master minds."

54. Learned Sessions Judge has, in terms, recorded that accused Nos.2 and 3 therein, who committed murder of Dr. Dabholkar by firearms, were the persons who executed the plan. The main mastermind behind the crime was someone else. The premier investigating agency like CBI failed to unearth the identity of the mastermind. Murder of Dr. Dabholkar is not the exclusive act of accused Nos.2 and 3 therein. That was a well-planned act. Unfortunately, the prosecution had failed to unmask the identity of the mastermind. These findings of the learned Sessions Judge appear sufficient to instill a sense of fear in the minds of the applicants.

55. I am conscious of the fact that the aforesaid observations of the learned Sessions Judge, or, for that matter, the legality and correctness of the findings of guilt itself, is subject to further appeals. The aforesaid observations are extracted to ascertain whether those observations would instill a sense of fear in the applicants who claim to be pursuing the path traded by Dr. Dabholkar.

56. It is a matter of record that Hamid (A1) was examined as a prosecution witness in the Sessions Case No.706 of 2016 to prove motive for the offences and the threats received by Dr. Dabholkar. The Applicant No.1 claims that he

continues to work for ANIS to eradicate superstitions. He claims to be critical of the ideologies and activities of the Respondent No.2. Mr. Nikhil Wagale (A2), Applicant in MCA Nos.89 of 2021, 90 of 2021 and 124 of 2021 and Mrs. Alka Dhupkar, Applicant in MCA No.106 of 2021, have allegedly made statements which criticized the ideologies and activities of the Respondent No.1, and taking umbrage at which Respondent No.1 has instituted suits for damages for tarnishing its image and reputation.

57. If the matter was to be looked at from the solitary cause of the killing of Dr. Dabholkar, probably different considerations might have come into play. What lends gravity to the situation is the concrete allegations that Comrade Pansare, Prof. Kalburgi and Smt. Lankesh, who were also critical of the thoughts propagated, and the activities undertaken to accomplish those ideas, by the Respondent No.1, also paid the ultimate price. Allegedly, there was a pattern in the murders of abovenamed persons. It would be contextually relevant to note that, the Division Bench of this Court in its order dated 7 December 2017 in PIL No.15 of 2015 has observed that it was the concern of the society at large when attempts were made by some groups or persons holding extreme views and opinions to eliminate the free thinkers, writers, social workers, etc. In the order dated 21 April 2017, the Division Bench observed that such incidents and killings are viewed as but a reminder to all those right-minded liberal persons that in the event they are expressing their

views and opinions fearlessly and openly they would meet the same fate as the deceased.

58. It is in the context of the aforesaid material and observations in judicial proceedings, the reasonability of the apprehension is required to be judged. The apprehension of the applicants stems from the course of action they chose to pursue. The Applicants claimed to be highly critical of Respondent No.1 and its ideologies and activities. Dr. Hamid Dabholkar (A1) has been provided with 'X' category. Mr. Nikhil Wagale (A2) claimed to have received threats and was also offered security, but declined to avail the same.

59. Mr. Pai would urge that if the security was declined, it implies that there is no threat perception. I am afraid to accede to this submission. The fact that a person declines to avail the security does not necessarily mean that there was no threat perception. A journalist may find it difficult to do justice to the profession if he moves around with a posse of policemen. Moreover, the apprehension of threat to life is also to be judged from the perspective of the applicants. The state of mind of the person who entertain apprehension is relevant, though not decisive.

60. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Gurucharan Das Chadha V/s. State of Rajasthan**¹⁶, wherein the Supreme Court observed as under :

16 AIR 1966 SC 1418

“13.....The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

(emphasis supplied)

61. The Applicants who claimed to be pursuing the course which was followed by Dr. Dabholkar and others, apprehend that they might meet the same fate if they participate in the trial in the suits at Ponda. In the totality of the circumstances, the apprehension cannot be said to be unreasonable. The applicants consider themselves to be more vulnerable if the trials are held in a Court which is at a close distance from the headquarter of the Respondent No.1. The real question is not whether Respondent No.1 is actually involved

in the activities, but whether there are circumstances which give rise to the apprehension in the mind of the applicants about their safety.

62. If considered in the light of the animosity bordering on enmity, albeit on ideological plane, between the Respondent No.1 and the cause espoused by the applicants, the alleged killings of four persons who opposed the ideas which Respondent No.1 and other like minded organizations propagate, the alleged involvement of the members of the Respondent No.1 in the activities which led to their prosecution in Maharashtra and Karnataka, cumulatively render such apprehension reasonable and genuine.

63. This Court must and does clarify that the aforesaid inference does not reflect upon either the ability of the Presiding Officer, Civil Court at Goa to render fair and impartial justice, or the general state of law and order in the State of Goa. The aforesaid inference is confined to the exercise of ascertainment as to whether the trial of the suits before the Court at Goa, in the peculiar facts of the case, would advance the cause of justice. The Court finds that the command of dictate of justice would be better served if the suits are transferred from the Court at Goa to a Court in the State of Maharashtra.

64. In MCA No.52 of 2021, the defamatory statements were made and published at Kolhapur. In other cases also, articles were published in the newspapers and portals in the State of Maharashtra. Respondent No.1 claims that it has thousands of Satsangs through out India, including State of

Maharashtra. Alleged defamatory articles might have been read by its members/followers in the State of Maharashtra as well. Thus, in the context of the facts in issue, transfer of the suits to the Court in the State of Maharashtra may not operate as an impediment for the Respondent No.1 to adduce evidence and prove its case.

65. This Court is, therefore, of the view that, it would be expedient in the interest of justice to transfer the suits to the Court of Civil Judge, Sr. Division at Kolhapur, as the parties, including Respondent No.1, can avail the assistance of the legal professionals thereat with ease.

66. For the foregoing reasons, the Applications deserve to be allowed.

67. Hence, the following order :

ORDER

(i) Misc. Civil Applications stand allowed.

(ii) Special Civil Suit Nos.14 of 2017, 15 of 2017, 35 of 2018, 26 of 2018 and 25 of 2018 pending on the file of Civil Judge, Sr. Division, Ponda, Goa, stand transferred to the Court of Civil Judge, Sr. Division, Kolhapur, for hearing and final disposal in accordance with law.

(iii) The learned Civil Judge, Senior Division, Ponda, Goa, shall transfer the record and proceedings in the abovenumbered Special Civil Suits with such dispatch that it reaches the Civil Judge, Sr. Division at Kolhapur, within a period of six weeks from the date of communication of this order.

(iv) Upon transfer, the learned Civil Judge, Sr. Division, Kolhapur, shall proceed to hear and decide the respective suits in accordance with law, from the stage the suits have reached before the Civil Judge, Sr. Division, Ponda, Goa.

(v) By way of abundant caution, it is again clarified that the observations in this judgment are confined to decide the issue of justifiability of the transfer of the suits from the Court of Civil Judge, Sr. Division, Ponda, Goa, and the observations made hereinabove may not be construed as expression of opinion on the merits of, and the role and involvement of the parties in, the proceedings which are subjudice.

(vi) No costs.

(N.J.JAMADAR, J.)

At this stage, Mr. Akshay Pai, learned Counsel for the Respondent No.1 seeks stay to the execution and operation of this order.

Since the trial in the suits has been stayed, there shall be stay to the execution and operation of this order for a period of six weeks. However, the stay to the trial of the suits before the Court at Ponda, Goa, shall continue to operate for the said period.

(N.J.JAMADAR, J.)