

ANNEXURE 'E'

COURT OF THE CHIEF JUDICIAL MAGISTRATE  
BHOPAL (M.P.)

Before Shri Gulab Sharma

State \_\_\_\_\_ Plaintiff

Vs.

Warren Anderson

and others \_\_\_\_\_ Accused

*Exhibits attached  
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Anderson*

ORDER

(Passed on 30.4.1992)

1. Through this order, the applications, regarding attachment of the properties of UCC (USA), submitted by the State on 23.4.92 and 27.3.92 are being resolved.

2. In the application by the State it has been submitted that Union Carbide (USA) is an accused in this case and summons have been dispatched by this Court earlier but no one was present in the Court despite the serving of summons. Later Bailable warrant was issued but this could not be executed upon which on 1.2.92 as per section 82 of CrPC this court issued a proclamation and directed the accused to be present in this court on 27.3.92. The order of 1.2.1992 specifically said that if no one is present on behalf of the accused then their property will be attached. Despite this no one was present on 27.3.92 and the State applied for attachment of the properties of the accused. But on the application of Shri Rajendra Singh, advocate for the co-accused, the Court allowed time for submission of rely on the matter of attachment of property. Union Carbide Corporation, USA, holds 50.9% of shares of Union Carbide India Ltd. and this property lies in Bhopal and other

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places in India. It has come to our notice that Union Carbide Corporation, USA, wants to transfer its properties in India. Reports regarding this matter were published in the Times of India, Hindustan Times and other newspapers on 16.4.92 and these were attached with the application. Because the date of hearing in the case was scheduled for 22.5.92 and it is clear from the news reports published on 16.4.92 that Union Carbide Corporation, USA, wants to transfer its properties in India so that it cannot be made to present itself in Court, it was submitted that the properties of Union Carbide Corporation, USA, which are with Union Carbide India Ltd. be immediately attached and Union Carbide Corporation, USA, be not allowed to sell these properties without the permission of this Court and a three page note was attached with it.

3. In the course of the hearing an application for attachment of the properties of Union Carbide Corporation, USA, on the same basis was submitted by Bhopal Gas Peedith Mahila Udyog Sangathan (Bhopal), Bhopal Gas Peedith Sangarsh Sahayog Samiti (New Delhi), and Bhopal Group for Information and Action.

4. A reply to this application was submitted on behalf of the co-accused on 24.4.92 in which it has been stated that according to Section 82 and 83 of CrPC only properties situated in India can be attached and UCC and UCIL have transferred the shares, according to rules, from India to USA and a copy of the relevant license has been attached as Annexures A. It has also been stated that the shares have been sent outside India according

to Indian laws and after securing special permission for the same and hence these properties cannot be attached and further Union Carbide Corporation has pledged its shares to the Bhopal Hospital Trust which was formed on 20.3.92 and whose sole trustee is Ian Percival, former Solicitor General, who has informed that all interests of UCC have been pledged to this Trust and he has issued a declaration in this regard. The Reserve Bank of India has on 20.3.92 given permission for these shares to be pledged and if the Trust wants to sell these shares the required permission has to be taken. Along with this reply another reply has been presented in which it has been stated that in accordance with the directions issued by the Supreme Court regarding setting up of a hospital the shares of UCC (USA) have been pledged and these shares are outside India and properties outside India cannot be attached and the shares of a company based in India which have been kept outside India cannot be transferred without the permission of the Reserve Bank of India and given the above circumstances the application by the State is not fit to be accepted and should be dismissed.

5. Primary objection of the State in its application has been that since rest of the accused are not representing Union Carbide Corporation, USA, they have no right to object to matters relating to properties of Union Carbide Corporation, USA, hence they should not be heard on this matter. So far as this objection is concerned, because the properties or shares of Union Carbide Corporation, USA, are with Union Carbide India Limited

and the issue concerns the attachment of these properties then definitely the rest of the accused who represent Union Carbide Corporation India Limited have their interest in this matter and they cannot be prevented from presenting their view. It is true that the co-accused cannot put up objections with regard to matters relating to the properties of Union Carbide Corporation, USA, but they cannot be stopped from presenting their opinion and hence the matter is resolved accordingly.

6. So far as the matter of attachment of property is concerned the basic argument of the advocate of the accused is that among the direction given in the order of the Hon'ble Supreme Court one of the direction is that UCC (USA) and UCIL will construct a hospital for the Bhopal gas victims and run it at least eight years and it is for this hospital that UCC (USA) wants to utilise its properties and for this reason it has formed a Trust on 20.3.92 and this property has been pledged to this Trust for which permission has been taken from the Reserve Bank through its letter dated 9.4.92 . In this letter it is mentioned that if the Trust wants to transfer the shares, then they have to seek permission under section 19 (5) of the Foreign Exchange Regulation Act before transferring them for sale. Also they have presented copies of license for export of securities and under such circumstances in which UCC wants to use its properties in India in the interest of the Bhopal gas victims it will not be just to attach its property. Advocate on behalf of the State Shri U.S. Prasad has

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stated in his arguments that as has happened earlier with regard to accused Warren Anderson who does not have any property in India and his property abroad cannot be attached and there is no way left but to seek his extradition and hence this Court has issued an arrest warrant against accused Warren Anderson. Similarly if accused UCC is allowed to sell, pledge or transfer its properties situated in India, it will not be possible to compel UCC (USA) to present itself in this Court. Further the primary objective of UCC (USA), in selling its properties is not for the setting up of a hospital in Bhopal but actually they want to transfer their properties situated in India so that prosecution against them, as directed by the Hon'ble Supreme Court, cannot be carried out and criminal prosecution against them cannot proceed in this Court.

7. After listening to the arguments of both sides and on the basis of documents presented, there is no doubt that accused UCC (USA) wants to transfer its properties situated in India. In this regard it is worth mentioning that on 1.2.92 it was ordered that a proclamation be made against the accused and thereafter, to ensure presence a proclamation was issued under Section 82 of the CrPC but even after this no one was present on behalf of the accused on 27.3.92 in this Court. In the order of 1.2.92, by which it was directed that proclamation be issued, it was also ordered that if no one is present on behalf of UCC (USA) subsequent to the proclamation then in those circumstance action will be taken towards attachment of its properties situated in

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India. From this it is clear that it was mentioned in the order of 1.2.92 that in the event of their absence their property situated in India will be attached and surely it cannot be considered that they did not know about this and subsequently it has taken actions between 1.2.92 and 27.3.92 to pledge its properties to the Trust and sought permission from the Reserve Bank of India to pledge its shares. It is clear from this that when the accused came to know that in the event of its absence from the Court its properties situated in India which is 50.9% will be attached then this action was taken to evade this. The Honorable Supreme Court has announced its decisions on October 3, 1991 and if the accused really wanted to sell its properties to set up the hospitals the they could have made it known at that time. But this action was carried out when an order was passed that its properties situated in India will be attached to ensure the presence of the accused in the Court. The inference that can be drawn from this action is that accused Union Carbide Corporation, USA, wants to evade the prosecution going on in this Court by transferring its properties situated in India by any means. As is clear from the permission given by the Reserve Bank of India through letter dated 9.4.92 that if the Bhopal Hospital Trust wants to sell properties of Union Carbide, USA, that are situated in India, it can do so after obtaining permission under section 19(5) of the Foreign Exchange Regulation Act. It is clear from this that it has authorized Bhopal Hospital Trust to sell its properties situated in India that is 50.9%

shares of Union Carbide India Limited. (31)

8. Apart from this it is also worth mentioning that Union Carbide Corporation, USA, as has been expressed by advocate Rajendra Singh, wants to spend Rs. 50 crores for the hospital in Bhopal and they have pledged their properties situated in India to the Trust to raise this amount of money. Shri Singh's argument is in no way fit to be accepted. It is beyond comprehension why a company such as Union Carbide Corporation which has given 470 million dollars as compensation to the Bhopal gas victims cannot give Rs. 50 crores for building a hospital from its own coffers. It is not as if Union Carbide Corporation does not have any other property but this which they can use for construction of the hospital. Hence it is clear that accused Union Carbide Corporation, USA, wants to sell its 50.9% shares in Union Carbide India Limited to evade the criminal case so that it cannot be forced to be present in this Court.

9. So far as the objection regarding 50.9% shares of Union Carbide being outside India and hence not liable to be attached is concerned - the objection is baseless. Because the properties relating to 50.9% shares of Union Carbide India Limited that belong to UCC (USA) are situated in India and the profit generated on the properties situated in India are sent abroad according to their 50.9% share. From this it is clear that the properties related to 50.9% shares are situated in India. It is also worth mentioning that the shares held abroad cannot be transferred or sold without the permission of the Reserve Bank of India under section

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19(5) of the Foreign Exchange Regulation Act. In these circumstances it is clear that these properties are situated in India and only certificates of ownership of this property are with concerned individuals abroad. While its properties are situated in India, objection to attachment of its properties relating to 50.9% shares in Union Carbide India Limited and any other properties of UCC (USA) that are situated in Bhopal and India cannot be acceptable.

10. Shri Rajendra Singh, advocate, has also submitted that objections relating to attachment of property which will be attached under Section 83 CrPC would be resolved under section 84 CrPC and thereafter the matter would be resolved under section 85 of CrPC. Under section 85 of CrPC, for two years no use can be made of the property hence there is no justification for attachment of this property because Union Carbide Corporation wants to build the hospital with this property and it is up to the conscience of the Court whether it attaches this property or not. In response to this Sri U.S. Prasad raised objections that if UCC really wants to build the hospital it is capable of providing the required funds hence it is necessary to attach its properties situated in India or else it cannot be compelled to be present in this Court. So as far as these arguments are concerned, as has been concluded earlier, accused UCC (USA) wants to transfer its properties situated in India so that it cannot be compelled to be present in Court. This shows its intentions are clear: it wants to evade prosecution that is going on in India. The sole objective of



attaching the properties of a proclaimed offender is to ensure that the accused will appear in Court and face prosecution when it becomes clearly evident that the accused wants to evade prosecution by any means. Thus, there is no other option but to attach its properties situated in India. So far as the attached property is concerned the matter can be resolved according to the procedure laid down in this regard and subsequent to attachment the property will belong to the State and even after this if the accused intends to be present for the prosecution then the accused can be present in the Court and if such presence is within the time limit then the property can be freed from attachment.

11. In the application submitted by Shri U.S. Prasad it has been stated that accused UCC (USA) has knowingly and with dishonest intentions sought to transfer its properties and this action is punishable under section 424 of the IPC hence the Bhopal police should be directed to take action against this crime. Regarding this advocate Shri Rajendra Singh has stated that this action is being carried out in accordance with the direction of the Hon'ble Supreme Court hence it cannot be called a dishonest action and if the State Government wants it itself is capable of taking action in this regard. I am in agreement with Shri Rajendra Singh's argument that if the state government thinks that accused Union Carbide Corporation has committed some other offense under IPC then the government is certainly capable of taking action on its own and it will not be

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proper to issue directions by the Court in this regard. Hence this application is not fit to be accepted.

12. After full consideration of the above the conclusion that emerges is that accused No.10 - Union Carbide Corporation, USA, wants to transfer its 50.9% percent properties by any means to evade criminal action against it in this case so that it can evade prosecution against it in India and in these circumstances there is no other option but to attach its properties situated in India so that it can be compelled to be present in court. In such a situation application of the State regarding attachment of properties situated in India of accused No.10 Union Carbide Corporation, USA, is accepted. Shri Prasad has also stated that shares in UCIL have been pledged to the Hospital Trust but no actual transfer has taken place hence properties should immediately be attached and Union Carbide India Limited be directed not to register any charges regarding pledged shares. Accordingly movable and immovable properties of accused No.10 - UCC (USA) - situated in India being attached under section 83 of CrPC.

13. The application by the State is thus accepted and it is ordered that:

i) Movable and immovable properties of accused No.10 UCC (USA) in India be attached and 50.9 percent shares in Union Carbide India Limited situated in India be attached.

ii) Apart from this any other movable and immovable properties of Union Carbide Corporation situated in

pal or any other etc,  
attached

iii) The state should present a clear description of movable and immovable properties in India that can be attached in addition to 50.9% shares in Union Carbide India Ltd.

iv) Information regarding this order be immediately sent to the head office of Union Carbide India Limited that they should not transfer shares or any other property of Union Carbide Corporation (USA), lying with UCIL anywhere and this information be also sent to the Reserve Bank of India so that permission for sale and transfer under section 19 (5) of the Foreign Exchange Regulation Act is not given without the permission of this Court. Accordingly the application is being resolved. State government should take necessary action in this regard.

Sd/-

(Gulab Sharma)

Chief Judicial Magistrate

Bhopal

30.4.92