



2024:KER:66720

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 3RD DAY OF SEPTEMBER 2024/12TH BHADRA, 1946

WP (CRL.) NO.917 OF 2024

AGAINST C.C NO.29 OF 2023 OF SPL.ADDL.CJM (FOR THE TRIAL OF
CRIMINAL CASES AGAINST SITTING AND FORMER MPS/MLAS OF THE
STATE) ERNAKULAM

PETITIONERS:

MANI C KAPPAN, AGED 65 YEARS, MLA,
S/O.CHERIAN J KAPPAN,
KAPPILL VEETIL, PALA, PIN - 686575.

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENTS:

- 1 STATE OF KERALA,
REP. BY HOME SECRETARY, GOVERNMENT OF KERALA,
OFFICE OF THE HOME SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 CHIEF JUDICIAL MAGISTRATE,
ERNAKULUM, PIN - 682011.



- 3 SPECIAL ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
(FOR THE TRIAL OF CRIMINAL CASES AGAINST SITTING
AND FORMER MPS/MLAS OF THE STATE),
ERNAKULUM, PIN - 682011.
- 4 REGISTRAR (DISTRICT JUDICIARY),
HIGH COURT OF KERALA, PIN - 682031.
- 5 DINESH MENON, S/O.LATE C.P.MENON,
R/AT 001A A14, ARADHANA GOKULDHAM GOREGAON EAST,
MUMBAI, PIN - 400063.

BY ADVS.
REKHA.S, SENIOR PUBLIC PROSECUTOR
RAJESH A., SPECIAL PUBLIC PROSECUTOR (VIGILANCE)
V.SETHUNATH
ANEESH JAMES

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 03.09.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



JUDGMENT

Dated, this the 3rd day of September, 2024

This W.P.(Crl) is preferred by the petitioner, who is the sole accused in C.C.No.29/2023, which is pending before the Special Additional Chief Judicial Magistrate Court, Ernakulam. The case stems from a private complaint preferred by the 5th respondent herein alleging offences under Sections 406, 417, 418, 420 and 423 of Indian Penal Code.

2. The instant Writ Petition is filed seeking a facility for the learned Senior Counsel, Sri.B.Raman Pillai - who is appearing on behalf of the petitioner/accused - to conduct sitting in a court room, which has a lift facility for the purpose of access. It is the specific contention that the Special Additional Chief Judicial Magistrate Court,



Ernakulam is in the 1st floor and one has to climb the stairs to reach the court. The learned Senior Counsel, because of his ailment, is not in a position to do that. It is in such circumstances that the present writ is filed, essentially for the following relief:

"i. Direct the respondents no 1 to 4 to make arrangement and shift the sitting of the Court of Special Chief Judicial Magistrate (for the trial of criminal cases against sitting and former MPs/MLAs of the State), Ernakulam to any other court rooms on the Court complex's ground floor so as to enable the senior counsel to cross examine PW1 in C.C.No.29/2023 on the file of Special Chief Judicial Magistrate (for the trial of criminal cases against sitting and former MPs/MLAs of the State), Ernakulam."

3. This application is seriously opposed by the 5th respondent by filing a counter affidavit, along with the exhibits.

4. Heard Sri.S.Rajeev, learned counsel for the



petitioner; Sri.V.Sethunath, learned counsel for the 5th respondent and Sri.Aneesh James, learned Standing Counsel for respondents 2, 3 and 4.

5. Learned counsel for the petitioner would submit that the petitioner would limit his prayer for the purpose of cross-examination of PW1. It is submitted that the J.F.C.M - III, Ernakulam, is not conducting sitting on Thursdays and Fridays, since the court is officiating as the Juvenile Justice Court on the said days, for which reason the said court hall, accessible by lift, will be free. Learned counsel would add that learned Senior is prepared to cross-examine PW1 on Friday, the 6th of September, 2024.

6. This Court will now address the objections raised by the learned counsel for the 5th respondent. Primarily, learned counsel would submit that the present attempt is nothing, but a delaying



tactics. The case was posted for trial on 16.08.2024 and the petitioner somehow wants to avoid the trial. In support of the above assertion, learned counsel would submit that this is a case, which commenced in the year 2019 and that the matter was taken to the Apex Court, twice. Besides, two Criminal Miscellaneous Cases and two Criminal Revision Petitions were also filed before this Court, all causing delay in disposing the above Calendar Case. Secondly, learned counsel would submit that the instant Writ Petition under Article 227 of the Constitution is not maintainable. None of the fundamental rights of the petitioner is violated. At best, a Writ Petition under Article 226 of the Constitution would lie. Thirdly, learned counsel would submit that Ext.P1 is not even a petition preferred by the petitioner/accused, but only a letter addressed to the learned Magistrate. No relief can be granted on the strength of Ext.P1, is



the submission. Fourthly, the refusal of the learned Senior Counsel to cross-examine the witness through Video Conferencing is violative of the enabling provision in Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Fifthly, it is the contention that a court premise cannot be shifted to suit the convenience of the counsel for the accused. It was also pointed out that the learned Senior Counsel had not even filed a memo to show his engagement on behalf of the accused. Lastly, learned counsel would submit that the learned Senior Counsel is appearing in as many as 19 cases in the C.B.I Court, which is housed in the 1st floor.

7. This Court ascertained from the Registry the correctness of the submission made by the learned counsel for the petitioner, as regards the



availability of J.F.C.M -III, Ernakulam on Thursdays and Fridays, and it was confirmed that the court hall is free on those days, which is in the 4th floor, but accessible by lift.

8. Having heard the learned counsel appearing for the respective parties, this Court is inclined to allow the limited prayer, as made before this Court by the learned counsel for the petitioner. This Court notice that the petitioner would limit his prayer only for the purpose of cross-examination of PW1 and that the learned Senior Counsel is prepared to cross-examine PW1 on the coming Friday, i.e., 06.09.2024. This would essentially take care of the main grievance of the 5th respondent that the attempt of the petitioner is to drag the proceedings, by one means or other. This Court will clarify that the facility being provided by this judgment by shifting the premises of the Court to



suit the convenience of the learned Senior Counsel is only for a day, i.e., the 6th day of September, 2024, inasmuch as, the arrangement now sought to be made is not something usual, and in deviation to the recognised practice and procedure.

9. Regarding other contentions of the 5th respondent, this Court finds little merit. Having regard to the contours of the jurisdiction under Article 227, it cannot be said that the instant Writ Petition is not maintainable. The contention that the petitioner has only preferred a letter and not a petition as such, also should not stand in the way of this Court exercising its powers under Article 227, once this Court is convinced of the genuineness of the request made. As regards the enabling provision under Section 530 of the BNSS, it is not the contention of the petitioner that the learned Senior is not prepared to cross-examine the witness



through video conferencing. Instead, the contention is that for effective cross-examination, it is always advisable and beneficial to do the same in the physical mode, than in the virtual mode. Therefore, the said contention also cannot stand in the way. Now, coming to the fourth contention regarding shifting the premises, it is not an absolute rule that the premises cannot be shifted for any reason, whatsoever. It is a matter within the administrative realm of the High Court and this Court in exercise of its powers under Article 227 can give appropriate directions and instructions to the administrative side of the High Court. The question as to whether the Senior counsel has filed a memo, expressing his willingness to appear for the accused, would pale into insignificance, inasmuch as this Court has ascertained through the learned counsel for the petitioner regarding the availability and willingness of the learned Senior



to cross-examine PW1 on the date afore-referred.

10. In the circumstances, there will be a direction to the 4th respondent to make suitable arrangements to conduct sitting of the Special Additional Chief Judicial Magistrate Court, Ernakulam in C.C.No.29/2023 in the premises of J.F.C.M-III, Ernakulam on 06.09.2024, solely for the purpose of cross-examination of PW1. The learned Special Additional Chief Judicial Magistrate can fix the time for cross-examination of the said witness and can shift to the J.F.C.M-III, Ernakulam for the said purpose. Every endeavor should be made to ensure that maximum time is allowed to the learned Senior to cross-examine PW1 by limiting the roll call, in view of the directions contained in this judgment. If for any reason, the cross-examination of PW1 could not be finished on 06.09.2024, the facility hereby afforded to the learned Senior by



shifting the premises cannot be extended; and further proceedings, including further cross-examination of PW1, will be conducted in the regular court hall of the Special Additional Chief Judicial Magistrate. Any instructions in furtherance of and supplementary to what has been given above and which is required in the facts and circumstances, will be given by the 4th respondent, so as to ensure the smooth conduct of the proceedings.

This Writ Petition is allowed as above.

Sd/-

C. JAYACHANDRAN, JUDGE



2024:KER:66720

APPENDIX OF WP(CRL.) 917/2024

PETITIONER'S EXHIBITS:

- EXHIBIT P1 A COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 13.08.2024 BEFORE THE CHIEF JUDICIAL MAGISTRATE, ERNAKULUM ON THE ADMINISTRATIVE SIDE.
- EXHIBIT P2 THE COPY OF THE COMPLAINT SUBMITTED BY THE 5TH RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-VIII.
- EXHIBIT P3 THE PROCEEDING SHEET OBTAINED FROM E-COURT WITH RESPECT TO THE CASE CC NO. 29/2023 ON THE FILE OF SPECIAL ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT DATED 16.08.2024.

RESPONDENTS' EXHIBITS:

- EXHIBIT.R5 (A) THE TRUE COPY OF THE CASE STATUS OF CASES APPEARED/APPEARING IN CBI-I COURT AND CBI-II COURT, WHERE SENIOR ADVOCATE SRI.B.RAMAN PILLAI IS APPEARING.
- EXHIBIT.R5 (B) THE TRUE COPY OF THE INTERIM ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 18-06-2021.
- EXHIBIT.R5 (C) TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 04-10-2021.
- EXHIBIT.R5 (D) THE TRUE COPY OF THE INTERIM ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 05-01-2022.
- EXHIBIT.R5 (E) THE TRUE COPY OF THE INTERIM ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 09-01-2023.



- EXHIBIT.R5 (F) THE TRUE COPY OF THE INTERIM ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 19-01-2023.
- EXHIBIT.R5 (G) THE TRUE COPY OF THE ORDER OF THE HON: SUPREME COURT IN S.L.P(CRL) NO.5592/2021.
- EXHIBIT.R5 (H) TRUE COPY OF THE INTERIM ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2021 IN CRL.MC NO.2755 OF 2021 DATED 16-02-2023.
- EXHIBIT.R5 (I) THE TRUE COPY OF THE JUDGMENT OF THIS COURT IN CRL.MC NO.2755 OF 2021 DATED 17-03-2023.
- EXHIBIT.R5 (J) THE TRUE COPY OF THE ORDER OF THE HON : SUPREME COURT IN SPECIAL LEAVE PETITION (CRIMINAL) DIARY NO(S).49775/2023 DATED 14-12-2023.
- EXHIBIT.R5 (K) THE TRUE COPY OF THE JUDGMENT OF THIS COURT IN O.P(CRL) NO.767 OF 2023 DATED 31-10-2023.
- EXHIBIT.R5 (L) THE TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2024 IN CRL.MC NO.4606 OF 2024 DATED 29-05-2024.
- EXHIBIT.R5 (M) TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2024 IN CRL.MC NO.4606 OF 2024 DATED 03-06-2024.
- EXHIBIT.R5 (N) TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2024 IN CRL.MC NO.4606 OF 2024 DATED 10-06-2024.
- EXHIBIT.R5 (O) TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2024 IN CRL.MC NO.4606 OF 2024 DATED 14-06-2024.



2024:KER:66720

- EXHIBIT.R5 (P) TRUE COPY OF THE ORDER OF THIS COURT IN CRL.M.APPL.NO.1/2024 IN CRL.MC NO.4606 OF 2024 DATED 18-06-2024.
- EXHIBIT.R5 (Q) THE TRUE COPY OF THE ORDER OF THIS COURT IN CRL.REV.PET NO.616 OF 2024 (FILING NO.) DATED 14-06-2024.
- EXHIBIT.R5 (R) TRUE COPY OF THE JUDGMENT IN CRL.MC NO. 4606 OF 2024 DATED 3-7-2024.
- EXHIBIT.R5 (S) THE TRUE COPY OF THE ORDER OF THIS COURT IN CRL.REV.PET NO.631 OF 2024 DATED 03-07-2024