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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 22<sup>ND</sup> DAY OF SEPTEMBER 2022 / 31ST BHADRA, 1944

TR.P(CRL.) NO. 52 OF 2022

[TO TRANSFER S.C.NO.118/2018 ON THE FILE OF THE PRINCIPAL DISTRICT  
AND SESSIONS COURT, ERNAKULAM]

PETITIONER/DEFACTO COMPLAINANT:

XXXXX

MRS."X" THE VICTIM IN CR.297/17 OF NEDUMBASSERY POLICE  
STATION ON THE FILES OF ADDITIONAL SPECIAL SESSIONS  
JUDGE (SPE/CBI)-III ERNAKULAM AS SC 118/18 (NAME AND  
DETAILS WITHHELD SINCE THE OFENCES INCOLVED INCLUDE ONE  
UNDER S.376(D) OF THE IPC.)

BY ADVS.

P.SANJAY

A.PARVATHI MENON

BIJU MEENATTOOR

PAUL VARGHESE (PALLATH)

P.A.MOHAMMED ASLAM

KIRAN NARAYANAN

PRASOON SUNNY

RAHUL RAJ P.

AMRUTHA M. NAIR

R.K.ASHA

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.-682031
- 2 SUNIL N.S. @ PULSAR SUNI, AGED 29/2017  
S/O.SURENDRAN, NEDUVELIKKUDY HOUSE,ELAMBAKKAPPILLY  
KARA,NETTANCITY BHAGAOM, VENGOOR WEST, ERNAKULAM-683  
546.
- 3 MARTIN ANTONY, AGED 25/2017  
S/O.ANTONY, PUTHUSSERY HOUSE, THIRUMUDIKKUNNU KARA,  
KORATTY EAST P.O., KORATTY, THRISSUR,PIN-680308.
- 4 MANIKANDAN B., AGED 29/2017  
S/O. BABU, MANAPPATTIPARAMBIL HOUSE, H.NO. 95,AKG  
NAGAR, MASJID ROAD, THAMMANAM, POONITHURA, VILLAGE,  
ERNAKULAM, PIN-682038

- 5 VIJEESH V.P., AGED 30/2017  
S/O. RAMAKRISHNAN, MANGALASSERY HOUSE,  
CHUNDAGAPOYYIL, PONNAYAM P.O, KATHIROOR, THALASSERY,  
KANNUR, PIN- 670 642
- 6 SALIM H @ VADIVAL SALI, AGED 22/2017  
S/O. HASSAN, PALIKKAPARAMBIL HOUSE, KUNNUMPURAM,  
AIMS PONEKKARA, EDAPPALLY NORTH, ERNAKULAM,  
PIN- 682 041
- 7 PRADEEP, AGED 23/2017  
S/O.USHA SREEHARAN, PAZHAYANILATHIL HOUSE,  
CHATHANKIRI, PERINGARA VILLAGE,  
THIRUVALLA, PATHANAMTHITTA-689 101.
- 8 CHARLY THOMAS, AGED 43/2017  
S/O.THOMAS, POOPPALI HOUSE, KILIYANTHARA, 32 MILE,  
VELLAMANA VILLAGE,  
IRITTI TALUK, KANNUR, PIN-670 703.
- 9 P.GOPALAKRISHNAN @ DILEEP  
AGED 49/2017  
S/O.PADMANABHA PILLAI, PADMASAROVARAM HOUSE,  
KOTTARAKADAVU ROAD, ALUVA, ERNAKULAM-683 101.
- 10 SUNILKUMAR @ MESTHIRISANIL, AGED 41/2017  
S/O.K.N.PILLAI, SNEHABHAVAN HOUSE, VETTIPURAM,  
MILAPPARA VILLAGE, KOZHENCHERRY TALUK,  
PATHANAMTHITTA , PIN-689 641.
- 11 VISHNU, AGED 39/2017  
S/O.ARAVINDAN, KUNNATH HOUSE, CHEMBUMUKKU, KAKKANAD,  
THIRKKAKARA NORTH VILLAGE, ERNAKULAM,  
PIN-682 021.

FOR R1 BY SRI.T.A.SHAJI, SENIOR ADOVCATE AND  
DIRECTOR GENERAL OF PROSECUTION,  
SRI.P.NARAYANAN, SENIOR G.P. AND ADDL.PP  
SRI.SAJJU S, SENIOR G.P.

FOR R2 BY ADVS. PRATHEEKSH KURUP V.V., N.S.SANDHYA

FOR R3 BY ADVS. ALEX JOSEPH, ASWATHI SURESH  
NISHA K.PETER

FOR R4 BY ADVS. KRISHNADAS P. NAIR, K.L.SREEKALA,  
HARIDAS P. NAIR, M.A.VINOD,BIJU VISWANATH, SHINTO  
THOMAS, ANU PRABHAKAR, ASWATHY ARJUNAN.

FOR R5 BY ADVS.A.MOHAMMED, T.R.S.KUMAR, DEEPA R.  
MENON.

FOR R8 BY ADV.PHIJO PRADEESH PHILIP, P.V. ANOOP

FOR R9 BY SENIOR ADVOCATE B.RAMAN PILLAI,  
ADVS.PHILIP T. VARGHESE, SUJESH MENON V.B.,  
THOMAS T. VARGHESE, ACHU SUBHA ABRAHAM, V.T.LITHA,  
K.R.MONISHA, NITYA R.

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY  
HEARD ON 19.09.2022, THE COURT ON 22.09.2022 PASSED THE  
FOLLOWING:

O R D E R

The petitioner is the victim of Crime No. 297/2017 of Nedumbasserry Police Station, which is now pending before the Principal Session Court, Ernakulam, as S.C.No.118 of 2018, after having been transferred to the said court from the Court of Additional Special Session Judge (SPE/CBI)-III, Ernakulam. This transfer petition is filed by the petitioner, praying for an order to transfer the said case from the said court to any other Sessions Court having jurisdiction to try the same. The ground on which such transfer is sought is the personal bias of the learned judge presiding over the said court. The facts which led to the filing of the transfer petitioner are as follows;

The petitioner is a film actor with a good reputation. On 17.12.2017, the petitioner was

subjected to sexual assaults in a moving vehicle and such sexual assaults were recorded by the culprits. Based on this incident, Crime 297/2017 was registered by the Nedumbasserry Police. After completing the investigation, a final report was submitted by the Police on 18.05.2017 against seven accused persons. The aforesaid final report was submitted based on an investigation conducted by a Special Team constituted for the said purpose. Subsequently, the Special Investigation Team, submitted a supplementary final report 22.11.2017, by implicating another film actor as the 8<sup>th</sup> accused, who is the 9<sup>th</sup> respondent in this petition. The allegation is that the said assaults were committed by the other accused, as instructed by the 8<sup>th</sup> accused.

2. Earlier, the petitioner moved this court by filing OP(CrI).No.344/2018, for an order to conduct the trial of the said case, by a court

presided by a woman judge and to transfer the said case to such court from the Principal Sessions Court, Ernakulam, where it was pending at the relevant time. As per judgment dated 25.02.2019, this court allowed the said prayer and accordingly the case was transferred to Additional Special Session Judge (SPE/CBI)-III. At the relevant time that was the only competent court in Ernakulam presided by a woman judge.

3. The trial of the said case commenced before the Additional Session Court on 30.01.2020 and as on 14.10.2020, eighty witnesses were examined by the prosecution, including the petitioner as PW1, 49 Exhibits and 87 Material Objects were marked. At that time, the State and the petitioner, submitted Tr.P.C.No.49/2020 and Tr.P.C.No.50/2020 before this Court, respectively, seeking transfer of the said case from the said Additional Sessions

Court, to any other court. The main ground raised in both the said petitions was the personal bias of the learned Sessions Judge. In support of the averments in the petition submitted by the Prosecution, the then Special Public Prosecutor submitted an affidavit, which contained certain aspects claimed to be transpired in the court during the trial, which according to them, were indicative of the hostility of the learned Sessions Judge against the prosecution. The petitioner herein also raised allegations against the learned Sessions Judge to the effect that, during her cross examination as PW1, she was subjected to certain objectionable questions by the counsels for the accused, challenging her dignity, which was not prevented by the learned Session Judge. However, as per Annexure-A1 order, this court rejected both the said transfer petitions by a

common order, holding that the petitioner and the prosecution could not produce any materials to substantiate the personal bias of the learned judge, so as to warrant a transfer. Even though the said order was challenged by the State, before the Honourable Court Supreme Court, the SLP filed by them was dismissed, and thus Annexure-A1 order has become final.

4. Immediately after the dismissal of the transfer petitions as per Annexure-A1, the Special Public Prosecutor resigned and in his place another Special Public Prosecutor named Sri V.N .Anil Kumar was appointed. Thereafter the trial continued and as on 29.12.2021, a total of 207 witnesses were examined (including the eighty witnesses examined by the 1<sup>st</sup> Special Public Prosecutor) and the only remaining witness to be examined was the Investigation Officer. At that point of time, a



report was filed by the Investigation Officer to the effect that one Balachandra Kumar, a Film Director, made certain revelations against the 8<sup>th</sup> accused and also furnished certain additional evidence, including certain audio clips, which contain additional materials showing the complicity of the 8<sup>th</sup> accused and involvement of some other persons. It was also alleged that the 8<sup>th</sup> accused got in his possession, the video clips of sexual assaults of the petitioner and also entered into a conspiracy to do away with some of the members of the special investigation team. Based on the same, it was reported to the court that they had started a further investigation in the matter, and accordingly, the trial of the said case came to a standstill.

5. During the course of further investigation, it came to the notice of the

investigation team that the FSL experts earlier submitted a report before the learned Session Judge on 29.10.2020 to the effect that there was a change in the hash value of the memory card containing the video clips of the sexual assault on the petitioner and was seized by the police, while it was in the custody of the court. According to them, the aforesaid change in hash value indicates unauthorized access to the memory card while it was in the custody of the court. It is alleged that, even though the said report was received in the Additional Sessions Court on 29.01.2020, the same was not brought to the notice of the prosecution at no point of time and according to the prosecution, they came to know about the same only during the month of February, 2022. In such circumstances, the investigation officer submitted a forwarding note to forward

it for Forensic Laboratory for subjecting the said memory card for scientific examination to find out the reasons for the change of hash value, but the learned Sessions Judge rejected the same. The said order was challenged by the State before this court, and as per judgment passed in O.P (CrI).NO.257 of 2022 (Annexure A5), it was set aside, directing the trial court to forward the memory card to the State Forensic Science Laboratory. In the report of FSL, it was revealed that the memory card was accessed while in the custody of the court on three occasions, i.e., on 9/01/2018, 13/12/2018 and 19/07/2021.

6. In the meantime, as part of the further investigation conducted by the police consequent to the revelation made by the said Balachandra Kumar, another crime was registered against the 8<sup>th</sup> accused for committing the

offence of criminal conspiracy to cause harm to the police officers. In the said crime, an application for anticipatory bail was submitted by the 8<sup>th</sup> accused before this court. During the course of consideration of the same, the mobile phones used by the petitioner therein (9<sup>th</sup> respondent herein) were directed to be surrendered. It is alleged that, though the 8<sup>th</sup> accused surrendered the said phones before this Court, he deleted the data in the said phones including the WhatsApp chats with some of the persons in a clandestine manner. The investigation team could recover some of the said chats from the mobile phone of the 8<sup>th</sup> accused, with the assistance of experts. Among the data recovered, there was a voice clip alleged to have been received by the 8<sup>th</sup> accused. Somehow, the same is now available in the public domain, as it was aired by one

Malayalam TV News channel. The aforesaid voice clip contains a conversation between on lawyer named Ullas, and some reference about a link he(maker of the voice message) claimed to have established with the learned Sessions Judge, following the involvement of the husband of the learned Judge, a Circle Inspector of Excise Department, in a case relating custodial torture of a person. The pen drive containing the said voice clip and the abstract of the contents thereof are produced along with this transfer petition.

7. While so, the learned Judge of Additional Sessions court was transferred and posted as Principal Sessions Judge, Ernakulam. According to the petitioner, as she got reliable information from the media that, consequent to the transfer of the learned judge, the case of the petitioner will be

transferred to the Principal Sessions Court Ernakulam, she submitted a request before the Registrar of this Court, (Annexure A6) not to transfer the said case to the court presided over by the said learned Judge. However, the petitioner received Annexure-A7 notice from the Additional Sessions Court, intimating that the case has been transferred to the Principal Sessions Court, Ernakulam. From Annexure-A7, she could learn that the said transfer was as ordered by this court through an administrative order numbered as O.M.No.D7 A(1)-26856/2018/D11-1 dated 02.08.2022. Thereupon, the petitioner submitted Annexure-A8 petition before the Principal Sessions Court for transfer of the case to any other court. In the meantime, Adv. V.N. Anil Kumar, the 2<sup>nd</sup> Special Public Prosecutor appointed, also resigned and in his place, Adv.V. Ajakumar, was

appointed as the new Special Public Prosecutor. The prosecution submitted an application seeking similar relief as per Annexure A9. The petitioner submits this application for transfer in the above circumstances.

8. The prosecution submitted a statement of facts, supporting the prayer sought by the petitioner. In the said statement, the details of the investigation conducted by the police in respect of the voice clip referred to by the petitioner are provided. Since it contained the investigation details, the same was submitted before this court in a sealed cover, as ordered in this regard by this court.

9. The respondent Nos.3, 5 and 9, who are some of the accused, submitted separate written objections, controverting the averments made in the transfer petition and the prayer sought therein. The details of their objections, shall

be dealt with at appropriate stages, when the discussions on the issues involved in this case are made.

10. Heard Sri.P.Sanjay, learned Counsel for the petitioner, learned Senior Counsel and Director General of Prosecution Sri. T.A.Shaji, assisted by Sri.P.Narayanan, Additional Public Prosecutor for the State, Senior Counsel Sri.B.Raman Pillai, assisted by Sri.Philip T.Varghese, learned counsels appearing for respondent No.9, Sri.A.Mohammed, learned Counsel for the 5<sup>th</sup> respondent, Sri.Alex Joseph, learned Counsel for the 3<sup>rd</sup> respondent and Sri.Phijo Pradeesh Philip, the learned Counsel for the 8<sup>th</sup> respondent.

11. The prayer for transfer is sought by highlighting the personal bias of the learned judge against the prosecution and the petitioner. The reasons on which the petitioner



seeks the said relief are summarized by her in paragraph 17 of the transfer petition, and it is extracted hereunder, for convenience.

*"From the voice clip recovered by the police it is clear that the accused have established contacts with the learned judge.*

*In the voice clip it is clearly stated that the judge's husband Jijo is a CI in the Excise department and he is under investigation in a lock up assault and death case.*

*It is a fact that the judge's husband Jijo is a CI in the Excise department and he is under investigation.*

*The voice clip was played in court while hearing the bail cancellation application. The judge has carefully stated in Annexure-A3 order that there is no evidence that the person referred in the voice clip is she and her husband.*

*The person whose voice in the clip has been identified and so also Adv.Santhosh Kumar mentioned therein. Adv.Santhosh Kumar is understood to be close to the judge.*

*The learned judge's hostility to the prosecution and resignation of two prosecutors and conduct throughout the trial in the backdrop of the present revelations causes grave apprehension to petitioner.*

*The memory card was unauthorisedly accessed while in her custody despite a Supreme Court direction asking it keep it safe.*

*The learned judge has withdrawn the case and is herself hearing the objections to the transfer."*

12. Among the reasons highlighted above, some pertain to the resignation of public prosecutors, the conduct of the learned judge during the trial at the initial stage, and the difficulties claimed to have faced by the petitioner during her cross examination as PW1. The grounds relating to the conduct of the learned Sessions Judge up to the stage of examination of 80 prosecution witnesses including the petitioner, and the resignation of the first Special Public Prosecutor were subject matters of the transfer petitions earlier submitted by the petitioner and the State. After considering the said contentions, this court vide Annexure-A1 order dismissed the said prayer. The contention of the petitioner regarding the alleged failure on the part of

the learned judge in preventing the counsels for the accused from raising unwanted questions during her cross examination was categorically rejected by this court in Annexure A1 order after holding that there are no materials to substantiate the same. Similarly, the affidavit filed by the Special Public Prosecutor, alleging hostility to the prosecution was also rejected by observing as follows;

*" 33. It has time and again been stated that the duty of the Prosecutor is not to seek conviction at all costs or be an avenging angel for the victim but to ensure that justice is delivered. The Special Public Prosecutor, in this case is understood to be a seasoned Prosecutor, not easily flummoxed by the number of defence lawyers or the charged atmosphere in the court hall.*

*34. As far as a defence lawyer is concerned, he is in theory an officer of the court and irrespective of his engagement, has a higher duty to the court, in assisting the court in finding out the truth and placing before the court the point of view of his client honestly and fairly. The advocate's duty to the court transcends the limited and narrow loyalty to the client who has engaged him. I have no doubt*

*that the defence lawyers in this case are well aware of their role.*

*35. It goes without saying that unless the court and the prosecutor work in sync, it will result in either the guilty escaping from the clutches of law or the innocent being punished.*

*36. I am confident that in the endeavour to reach the truth and render justice, the court, the Special Public Prosecutor and the defence lawyers will work in tandem, as is expected of them."*

13. It is understood that the Annexure-A1 order was challenged by the State before the Honourable Supreme Court, but the SLP was dismissed; thereby the said order has become final. In the light of the observations and findings in the said order, which has become final, the contentions covered by the said order, which include the hostility allegedly shown by the learned judge towards the witness, including the petitioner and also against the Special Public Prosecutor initially appointed, are no longer available for the petitioner.

Since those aspects were already decided by this Court in Annexure-A1 order, the petitioner cannot re-agitate the same in this case.

14. Therefore, the grounds available for the petitioner are confined to the matters relating to, (1) the voice clip referred to by the petitioner, (2) alleged inaction of the learned judge in informing the report of FSL regarding the change in hash value of the memory card to the prosecution, (3) the circumstances that led to the resignation of the second public prosecutor and, (4) contentions regarding the legal sustainability of the order of transfer of the case, from Additional Sessions Court to the Principal Sessions Court, consequent to transfer of the learned judge.

15. At first, I would consider the contentions regarding the sustainability of the

order of transfer of the case from the Special Court to the Principal Sessions Court. Apart from the petitioner, the learned DGP is also strongly urging the said contention to support the prayer sought in this petition. According to them, the aforesaid transfer was affected based on an administrative order passed by this court, which is not sustainable. The reason cited is that such an administrative order is against the judgment passed by this court in OP(Crl.) No.344 of 2018, by which the case was transferred from the Principal Sessions Court, Ernakulam, to the Court of Additional Special Sessions Judge(SPE/CBI)-III, Ernakulam. The said judgment is produced in this Transfer Petition as Annexure R3(a), along with the counter affidavit of the 3<sup>rd</sup> respondent. It was contended on behalf of the petitioner and the prosecution that, by virtue of the direction

issued by this court in the said judgment, the matter was transferred to the Special Court, as per a judicial order, and the present Office Memorandum issued by this court for transfer of the case back to the Principal Sessions Court, being an administrative order, is against the said judicial order, and hence not a legally sustainable one. A judicial order cannot be modified or varied through an administrative order, and it can only be done through another judicial order by a superior court, it was contended.

16. The aforesaid contention appears to be sound at first blush. But a careful scrutiny of the circumstances under which Annexure-R3(a) order was passed, and the purport behind the same would indicate that it is not so. OP(Crl.)No.344/2018, which culminated in the said judgment, was filed by the petitioner,

with a specific prayer that the case is to be tried by a court presided by a woman judge. After being convinced of the genuineness of the said prayer, while considering the said original petition, reports were called for by this court, from the courts concerned with a view to find out the courts having the competence to try the offence and presided by woman judges. After conducting an inquiry in this regard, it was found that the Additional Special Sessions Court (SPE/CBI)-III, Ernakulam was the only competent court in Ernakulam, presided by a woman judge. The transfer of the case to the Additional Sessions Court was ordered in that circumstances. Therefore, it is evident that the order of transfer was not because of the status of the Additional Special Sessions Court, but the relevant consideration was the sole fact that the said court, at the relevant time,



was presided by a woman judge. Though, technically the transfer was ordered to the Additional Special Sessions Court (SPE/CBI)-III, Ernakulam, the spirit of the said order was to ensure that the case is tried by a woman judge. Therefore, if the case is later transferred to the Principal Session Court, consequent to the transfer of the said woman judge to that court, under no circumstances, such transfer can be treated as an order passed against the judicial order as per Annexure-R3(a) judgment. On the other hand, it is an order to implement the direction issued by this court as per Annexure-R3(a) judgment, in letter and spirit.

17. The learned Director General of Prosecution contends that the judicial order of transfer could be given effect only by appointing another woman judge in the said court when the present woman judge is

transferred to the Principal Sessions Court. In my view, even though that was also an option available, taking the decision to transfer the case to the court to which the present judge is transferred, cannot be treated as an unsustainable one, for that reason. This is particularly so when the overall viability and practicality are considered. The most crucial aspect to be noticed in this regard is that, as of now, 207 witnesses have been examined, hundreds of exhibits and Material Objects were already marked. When the trial was stopped on commencement of the further investigation, only one witness, the investigating officer of the case alone, remained to be examined. It is also reported that the examination of the witnesses lasted for several days individually and collectively it took several months. It is reported that the cross examination of the

petitioner alone took nine days. The depositions of the witnesses run into thousands of pages. Additional Supplementary Final report submitted consequent to the further investigation contains a list of witnesses of more than a hundred.

18. More importantly, there is already a time limit fixed by the Honorable Supreme Court to complete the trial of the case. The period initially fixed is being extended from time to time, and the last of such orders was passed on 05.09.2022 in Miscellaneous Application No.1433/2022 in Crl.A. No.1794/2019 extending the said period up to 31.01.2023. Since the substantial part of the trial of the case is already over in the presence of the present judge, entrusting the same to another judge, at this juncture would cause serious practical difficulties, particularly when there is a time

limit fixed by the Honourable Supreme Court to comply. Thus, when considering the viability and practicality of the matter, the only conclusion possible is that the decision taken by this court on its administrative side is perfectly in tune with the spirit of not only the Annexure-R3(a) judicial order passed by this court, but also the direction issued by the Honourable Supreme Court as to the time limit for completing the proceedings.

19. The learned counsel for the petitioner, as well as the learned DGP, challenged the transfer of the case based on an administrative order on another ground as well. According to them, it is not in tune with the statutory stipulation in Section 407 of Cr.P.C. In response to the said contentions, Sri.A.Mohammed, learned Counsel for the 5<sup>th</sup> respondent, brought to my attention the

observations made by the Honourable Supreme Court in **Ranbir Yadav v. State of Bihar (1995) 4 SCC 392**. In paras 12 and 13 of the said judgment, it was observed as follows;

*"12. Before considering the above contentions of Mr. Jethmalani we may mention that in spite of sufficient opportunities given, the order of transfer passed by the High Court was not produced before us. Needless to say, had it been produced we would have exactly known the facts and circumstances which prompted the High Court to pass that order and clearly apprehended the source of power. However, from the materials on record which we have already detailed, it appears that the order was passed by the High Court in its administrative jurisdiction. Under Article 227 of the Constitution of India every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and its trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency.*

*In the instant case it appears that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the Court room as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the Court was so*

*crowded that even clerks of the lawyers were not being allowed to enter the Court room to carry the briefs. Such a, situation was obviously created by the trial of a large number of persons. If in the context of the above facts the High Court had exercised its plenary administrative power to transfer the case to the 5th Court which, we resume had a bigger and better arrangement to accommodate the accused, lawyers and other connected with the trial no exception can be taken to the same, particularly by them at whose instance and for whose benefit the power was exercised. Mr.Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. According to Mr.Jethmalani, if the former was not contained the latter would be nugatory.*

*13. We are unable to share the above view of Mr.Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with*

*all the procedural formalities thereof besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch."*

20. From the above, it is evident that, this court derives its powers to transfer one case from one court to another, both under Article 227 of the Constitution of India and section 407 of Cr.P.C. The said powers can be exercised by issuing judicial orders and administrative orders. Even though the learned counsel for the petitioner attempted to distinguish **Ranbir Yadav's** case on facts, I am of the view that it is not possible to draw such distinction, as the principles set out by the Honourable Supreme Court is very clear. Undoubtedly, it is in favour of the exercise of

the powers of the High Court through administrative orders as well. In this case, said powers were invoked by this court by issuing an administrative order, for implementing a judicial order passed by this court, and therefore, under no circumstances, can such an order be held to be faulty. The contention of the petitioner in this regard is therefore rejected.

21. Now we are coming to the most crucial contention of the petitioner, i.e. the personal bias of the learned judge. This court already decided the contention of personal bias of the very same learned Sessions Judge once, in respect of the very same proceedings, as per Annexure-A1, and the contentions raised by the petitioner were rejected, which findings were confirmed by the Honourable Supreme Court as well. The contentions now raised by the



petitioner, are to be considered in that factual background, which makes the situation less favourable to the petitioner.

22. The considerations which are relevant while considering a prayer for transfer of a case on the ground of personal bias of the judge was the subject matter in a large number of cases and the principles to be followed are well settled. Sri. P.Sanjay, the learned Counsel for the petitioner, brought to my notice the observations in **The King v. Sussex Justices (1924 (1) KB 256)**, where it is observed as follows:

*".....But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but manifestly and undoubtedly be seen to be done. The question therefore, is not whether in this case the deputy clerk made any observations or offered by criticism which he might properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be*

*unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not what actually was done but what might appear to be done. Nothing is to be done, which creates even a suspicion that there has been improper interference with the course of justice....."*

23. The aforesaid principles were taken note of by the Honourable Supreme Court, in **P.K Ghosh I.A.S and another v. J.G. Rajput [(1995) 6 SCC 744]**. In para 10 of the said judgment, it was observed as follows:

*"A basic postulate of the rule of law is that "justice should not only be done, but it must also be seen to be done." If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned judge should recuse himself from the Bench hearing that matter. This step is required to be taken by the learned judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned judge, may*

*be subconsciously, has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party. Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."*

24. In response to the same, Sri.Raman Pillai the Learned Senior Counsel appearing for the 9<sup>th</sup> respondent, relies on the decisions rendered by the Honourable Supreme Court in *Usmangani Adambhai Vahora v. State of Gujarat* and another [(2016) 3 SCC 370], *Haritha Sunil Parab v. State (NCT of Delhi) & others, Captain Amarinder Singh v. Prakash Singh Badal and others* [(2009) 6 SCC 260], *Supreme Court Advocates-On-Record Association and another v. Union of India (Recusal matter)* [(2016) 5 SCC 808] and the decision of Delhi High Court in

Ankur Mutreja v Aviation Employees Cooperative House Building Society Ltd [2022 SCC Online Del 770]

25. In **Captain Amarinder Singh's case (supra)**, a three judges Bench of the Honourable Supreme Court observed that,

*" 18. For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleges is reasonable or not. The apprehension must not only be entertained but must appear to the court to be reasonable apprehension."*

26. In para 20 of the said judgment, it was further observed as follows:

*"However, the apprehension of not getting a fair trial and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free*

*and fair and if it is biased, judicial fairness and criminal justice system would be at stake., shaking the confidence of the public in the system. The apprehension must appear to the court to be reasonable one."*

27. In **Gurcharan Das Chadha v. State of Rajasthan ( AIR 1966 SC 1418)** it was observed as follows:

*"13..... The law with regard to transfer of cases is well settled. A case is transferred if there is reasonable apprehension on the part of the 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 entertain an apprehension and that is reasonable in the circumstances alleged. It is one of the principles of 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 to further see whether the the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of mind of the person who entertains 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 reasonable apprehension."

28. In **Usmangani Adambhai Vahora's case (supra)**, after referring to the decision of the Honourable Supreme Court in **Lalu Prasad v. State of Jharkhand [(2013) 8 SCC 593]** and **Nahar Singh Yadav v. Union of India [(2011) 1 SCC 307]**, it was observed in para 10 as follows:

*"10. In Lalul Prasad alias Lalul Prasad Yadav v. State of Jharkhand, the Court, repelling the submission that because some of the distantly related members were in the midst of the Chief Minister, opined that from the said fact it cannot be presumed that the Presiding Judge would conclude against the appellant. From the said decision, we think it appropriate to reproduce the following passage:-*

*"20 Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not*

*lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent."*

*The aforesaid passage, as we perceive, clearly lays emphasis on sustenance of majesty of law by all concerned. Seeking transfer at the drop of a hat is inconceivable. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice. [See:Nahar Singh Yadav and another v. Union of India and others]."*

**29. Supreme Court Advocates-on Record Association's case (supra)** was a case decided by Five judges bench of the Honourable Supreme

Court. In paras 74, 75 and 76, after referring to certain foreign judgments, it was observed as follows;

*74. There may be situations where mischievous litigants wanting to avoid a Judge may be because he is known to them to be very strong and thus making an attempt for forum shopping by raising baseless submissions on conflict of interest. The Constitutional Court of South Africa in President of the Republic of South Africa v. South African Rugby Football Union in President of the Republic of South Africa v. South African Rugby Football Union (1999) 4 SA 147 : 1999 ZACC 9], has made two very relevant observations in this regard: (ZACC para 46)*

*"46. ... 'Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a Judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.' ...*

*'It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice,*



*rather than that he will decide the case adversely to one party.'*

75. *Ultimately, the question is whether a fair-minded and reasonably informed person, on correct facts, would reasonably entertain a doubt on the impartiality of the Judge. The reasonableness of the apprehension must be assessed in the light of the oath of office he has taken as a Judge to administer justice without fear or favour, affection or ill will and his ability to carry out the oath by reason of his training and experience whereby he is in a position to disabuse his mind of any irrelevant personal belief or predisposition or unwarranted apprehensions of his image in public or difficulty in deciding a controversial issue particularly when the same is highly sensitive.*

76. *These issues have been succinctly discussed by the Constitutional Court in President of the Republic of South Africa [President of the Republic of South Africa v. South African Rugby Football Union, (1999) 4 SA 147 : 1999 ZACC 9], on an application for recusal of four of the Judges in the Constitutional Court. After elaborately considering the factual matrix as well as the legal position, the Court held as follows: (ZACC para 104)*

*"104. ... While litigants have the right to apply for the recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officers simply because they believe*

*that such persons will be less likely to decide the case in their favour, than would other judicial officers drawn from a different segment of society. The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to 'administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law'. To this end they must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself."*

30. The principles laid down by the Honourable Supreme Court as above, establish that, even though the basic principle is that justice not only be done, it is shown to be done, the request for transfer cannot be made as a routine affair. It can be done only in exceptional circumstances and as observed in **Usmangini's** case (supra), the transfer shall

not be ordered merely because an interested party has expressed some apprehension about the proper conduct of the trial. The court should be satisfied that the apprehension raised by the party is reasonable. The allegations of apprehensions of personal bias of the learned Sessions Judge are to be considered by keeping the aforesaid principles in mind.

31. The crucial contention in this regard is a voice clip produced by the petitioner. The abstract of the contents of the voice clip is produced as Annexure-A2. According to the petitioner and the prosecution, the said voice clip was recovered from one of the mobile phones surrendered by the 9<sup>th</sup> respondent/8<sup>th</sup> accused, and when the police received the mobile phone, some of the WhatsApp chats contained therein were already deleted. Later, some of the said chats were recovered by the

police with the help of experts in the I.T. field. The aforesaid voice clip is a voice message of a lawyer named Ullas, who claimed to have addressed the 8<sup>th</sup> accused. The said voice message contains a reference to a case of custodial torture, in which certain proceedings were initiated against the husband of the learned Sessions Judge. In the said message, the person who sent the message informs the person to whom it is addressed that, they ('avaru') contacted Santhosh Vakil, in connection with the said incident. The said incident is positive for them. It is also claimed that they are able to keep a soulful connection again. The voice message was played in open court in the presence of all the lawyers of the parties. I have carefully examined the same. I have also perused the report of the investigation officer as to the

outcome of the investigation conducted in respect of the origin of the voice clip, and also the call data details of the parties referred to therein.

32. Even though the learned counsel for the petitioner strenuously contended that the said voice message clearly indicates that the 8<sup>th</sup> accused established a connection with the learned Sessions Judge, I am unable to accept the same for several reasons. The learned Director General of Prosecution indeed confirmed that the husband of the learned Sessions Judge is a Circle Inspector of the Excise Department, and some departmental proceedings were initiated against him in connection with a custodial torture case in which his subordinate officers were directly involved. However, in the voice message, there is nothing to indicate that the 8<sup>th</sup> accused was

able to establish a direct or indirect connection with the learned Sessions Judge. Even going by the same, one person, who is reported to be one Adv. Ullas is claiming that the learned Session Judge contacted one lawyer named Santhosh. The investigation conducted by the police revealed that the said Adv. Santhosh was the counsel for Sri. Anoop Kumar, the Preventive officer, Excise Department, who is the 1<sup>st</sup> accused in the custodial murder case, in connection with which, disciplinary proceedings were initiated against Sri. Jijo Jose, the husband of the learned Sessions Judge. The Call Data Records of the parties referred to in the voice message are also made available before me, and I have perused the same. It indeed shows that some telephonic conversations have occurred between the learned Sessions Judge and the said Adv. Santhosh, who

is appearing for the accused in the custody murder case(not the counsel of any of the accused in this case), in respect of which disciplinary proceedings were initiated against her husband. The police report also states that, the Adv. Santhosh contacted Adv.Ullas, several times and they were in regular contact. Out of the calls made by the said Santhosh to the learned Sessions Judge, one call was made after he received a call from Adv.Ullas. These are the materials produced before me in connection with the said allegation.

33. From the analysis of the said materials, it is evident that there is nothing to suggest that a direct or indirect link was ever established between the 8<sup>th</sup> accused and the learned Sessions Judge. There is no material that the learned Sessions Judge contacted the said Adv. Ullas, the maker of the

voice message directly, or the 8<sup>th</sup> accused. The only allegation is that the learned Judge was in contact with the Adv. Santhosh. It is evident that the said Adv. Santhosh was appearing for the accused in the case in respect of which disciplinary proceedings are initiated against her husband. Therefore, it could probably be a situation of having an interaction in relation to defending the case of her husband and nothing more. As regards the telephonic conversation between the said Santhosh and Ullas, it is reported that both of them are lawyers from Thrissur, and in the absence of any specific materials, a connection between the learned judge and the 8<sup>th</sup> respondent cannot be inferred merely because of the same. Thus, nothing unusual could be assumed or found, touching upon the credibility of the learned Sessions judge. Similarly, the



voice message sent by the said Ullas to the 8<sup>th</sup> accused cannot lead to the conclusion of having a link established between the learned Sessions Judge and the 8<sup>th</sup> accused. It is also to be noted that there are no materials to show that there was some response from the 8<sup>th</sup> accused consequent to the said message. Apart from the said message, there is nothing on record showing any further steps in connection with the same by any of the parties. The reference to the learned Session judge in the voice message, at the most, could be a desire, or an intention on their part, to create an opportunity. Under no circumstances can that lead to an inference that it is an instance where a connection is established with the learned Sessions, Judge. I am of the firm view that the said reference of the learned Sessions Judge in the voice message is too remote to

conclude as to a possible link with the learned Sessions Judge.

34. In my view, the contents of the said message are not sufficient to draw an inference against the learned Sessions Judge so as to justify the apprehensions voiced by the petitioner. It is to be noted that the apprehension is in respect of a judicial officer who is under an obligation to dispense justice without fear or favour. Unless the allegations or apprehensions are so strong and create an impression in the judicial mind of this court that such allegations or apprehensions are reasonable and probable, the same cannot be relied upon. Even after anxiously and meticulously examining the same, I am unable to find it that way.

35. The learned Counsel for the petitioner relied upon the manner in which the learned

Sessions Judge dealt with the said voice clip when the same was played in the said court, while the application submitted by the prosecution for cancelling the bail of the 9<sup>th</sup> respondent/8<sup>th</sup> accused was being considered. It is contended that the learned Sessions Judge dismissed the said application, and the said order is produced as Annexure-A3. According to the learned Counsel for the petitioner, despite understanding that the reference in the message was about her husband, she pretended ignorance of the same. I have carefully examined the relevant observations made by the learned Sessions Judge at para 24 of the said order. (*In the said order, there are two paragraphs with the number 24, and I am referring to the 1<sup>st</sup> paragraph with the number 24*). In the said paragraph, two voice messages allegedly recovered from the 8<sup>th</sup> accused were referred

to. The first has no connection with the issue involved in this petition. The second one is the voice message referred to in this transfer petition. The prosecution produced the said message to establish that an attempt was made by the 8<sup>th</sup> accused to interfere with the judicial process, and therefore his bail is to be cancelled. The crucial aspect to be noticed is that, at the time of considering the said application, the details as to the person who sent the said message and the name of the Advocate mentioned therein were not traced out and that submission was made by the learned Public prosecutor appeared in that case himself. Thus at that time, apart from the said message, no further details about the maker of the same, name of the Advocate referred to therein, were available. Therefore, I am unable to find any impropriety on the part of the

learned Sessions Judge in making the said observations.

36. The learned Director General of Prosecution contended that the said WhatsApp chat was among the various chats clandestinely deleted by the 8<sup>th</sup> accused, after he was directed to surrender the mobile phones as per an order passed in his application for anticipatory bail. It is pointed out that the scientific examination of the mobile phones of the 8<sup>th</sup> accused revealed that the 8<sup>th</sup> accused removed the entire chat history he had with about 12 persons, and one among them was Adv.Ullas, the maker of the voice message mentioned above. According to them, this creates a shadow of a doubt. However, I am not inclined to accept the said contention for the purpose of the adjudication of the issues involved in this case. If the 8<sup>th</sup> accused

deleted the entire chat history with the lawyer, that cannot lead to any aspersions on the learned Sessions Judge. I have already found that the said voice message does not even remotely suggest any connection with the learned judge. Therefore, the said contention is also liable to be rejected, and I do so.

37. Another instance of personal bias highlighted by the petitioner is the inaction on the part of the learned Sessions Judge in taking action upon the FSL report showing the change in the hash value of the memory card in the custody of the court and containing the video clips of the sexual assault of the petitioner. It is pointed out that the said report was submitted before the trial court on 29.01.2020, but the court did not inform the prosecution until February 2022. Even though an application was submitted for referring the

same for scientific examination, it was rejected by the trial court. Later, this court allowed the examination of the same, and in such examination, it was revealed that the memory card was accessed on three occasions, and the change in the hash value was due to the same.

38. However, it is to be noted in this regard that the change in hash value reported is in respect of the memory card and not with respect to the respective files containing the video footage. This would indicate that the subject video clips were not tampered with, but the memory card was accessed. It is to be noted that the report of change in hash value was submitted before the court on 29.01.2020, and the trial of the case started from 30.01.2020 onwards, i.e. the next day. The aforesaid video footage was played during the

trial in the presence of the petitioner. There is no allegation that there was any tampering in the said video. Even in the FSL report subsequently obtained, there is no finding of any tampering with video files. The only allegation is unauthorised access to the memory card. The objectionable access, according to the prosecution, is the one that occurred on 19.07.2021. It is to be noted that the allegation of inaction on the part of the learned Sessions Judge is in respect of the FSL report of change in the hash value, submitted in the year 2020, whereas the objectionable access to the memory card took place on 19.07.2021, which is much after that. Therefore, the failure to inform the receipt of the report did not affect the trial and the evidence adduced by the prosecution.

39. It is also to be noted that there is



an explanation as per the records for accessing the memory card on 19.07.2021. As per the records, the memory card was kept in the Government treasury as directed by the trial judge. The memory card was brought to the court on 19.07.2021 as the new counsel engaged by the 1<sup>st</sup> accused requested for an opportunity to see the same. It is pertinent to note that all the other accused and their respective counsels were permitted to watch the same as per the order passed by the Honourable Supreme Court. The trial court granted permission for the same to the newly appointed counsel of the 1<sup>st</sup> accused, and the said order is recorded in the case proceedings of 16.07.2021, as per which the counsel for the 1<sup>st</sup> accused was permitted to inspect the video footage on 19.07.2021. However, the FSL report indeed indicates that, on 19.07,2021, the memory card was accessed

through a Vivo Phone with an Android operating system installed with WhatsApp, Instagram etc. Although this may be a debatable case for violation of the order passed by the Honourable Supreme Court, I do not think that this could be treated as a reason to establish the personal bias of the learned Judge against the prosecution or the petitioner.

40. Thus though it may be a matter which could be a subject matter of inquiry, as mentioned above, that cannot be a reason to cast any aspersions on the learned Sessions Judge alleging bias. This is particularly because the prosecution has no case that the video footage was ever tampered with. Nothing which could interfere with the fair trial of the case is seen to have occurred. Hence, the prayer to transfer the case cannot be allowed on that ground.

41. During the course of arguments, it was also contended by the petitioner that, this was a case in which the learned judge ought to have recused from hearing. In this regard, some observations made by this Court in Annexure A1 order is relevant. In para 32 of the said order, it was observed as follows;

*" 32. I find no merit in the contention that it would be appropriate for the Special Judge to recuse from the case. Being a case transferred by the High Court and the Honorable Supreme Court having prescribed a time limit for completing the process, the judge cannot be expected recuse, as long as her conscience is clear. The endeavour of every Judge should be to get rid of his personal predictions and prejudices and to decide the cases dispassionately, and not to recuse whenever his or her actions are questioned."*

42. Next contention is with regard to the resignation of Special Public Prosecutors. It is contended that such resignations were due to the hostility shown by the learned Sessions Judge. The alleged bias and the resignation of

the Special Public prosecutor initially appointed were the subject matter of the earlier transfer petitions, which culminated in the Annexure A1 order. The allegations raised by the said Special Public Prosecutor was found to be not acceptable, and the prayer for transfer was rejected. Therefore that contention cannot be re-agitated. Now when coming to the resignation of the second Special Public Prosecutor, apart from the mere allegations, there are no materials to substantiate any such hostility towards the said Special Public Prosecutor. At no point of time the said Special Public Prosecutor made any complaints. In such circumstances, the contentions of the petitioner in this regard are also to be rejected.

43. Thus, after having examined all the relevant aspects, I am of the firm view that

the petitioner's apprehensions regarding possible interference in the fair trial are not reasonable. As observed by the Honourable Supreme Court, to judge the reasonableness of the apprehension, the state of mind of the person who entertains 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.

44. Possibly, the frequent discussions and debates conducted and being conducted by various News Channels in connection with this case for several days and months created some wrong perceptions about the trial of the case, and it apparently influenced the general public at large, including the petitioner. Though I do find that this petition is submitted by the petitioner with all bonafides, I have all the reasons to assume that she is a victim of such

wrong perceptions and aspersions created by the media.

45. It is evident that the petitioner was skeptical about the whole proceedings right from the inception. Instances for the same are plenty. Initially, she wanted the trial to be conducted before the Sessions Court presided by a woman judge instead of the Principal Sessions Court, which was permitted. Later, she filed a transfer petition against the woman judge, alleging personal bias, which was found to be without any valid grounds, as per Annexure-A1. She approached this court very recently by filing a writ petition, raising allegations against the investigation team and seeking a prayer that a further investigation be conducted under the supervision of this court. The said writ petition earlier came up before another learned Judge of this court and at that

point, she placed a request that the said judge shall not hear the said writ petition and sought his recusal. Accordingly, the said learned judge recused from hearing the said case. She again submitted this transfer petition raising apprehensions about the learned Sessions Judge for the second time. Thus, apparently, there is an atmosphere of distrust from the point of view of the petitioner; a distrust on the present Sessions Judge, distrust on the judge of this court, and distrust on the investigation team, which are obviously influenced by the impressions created by the media through the 'trials' conducted in their studios. It is unfortunate that, in the debates in media ('trials'), causes and issues are prejudged, and the verdicts are passed, expecting the courts to pass orders, sentencing the accused to the maximum, by following their

declarations. These so called debates, claimed to be carried out to enlighten the public at large, convey their views (instead of news), without even fully knowing the nature of materials placed before the court, without properly understanding the circumstances under which the courts take decisions and unaware of the legal provisions and principles relied on/applied by the courts. This is not the first time this court was forced to make observations regarding the media trial concerning the case at hand. This was the subject matter of the decision in **P.Gopalakrishnan @ Dileep and others v. State of Kerala [2022 (1) KLT 774]**, which arose from the connected case of this case wherein the following observations were made by this court;

*"20. 'Supreme but not Infallible' is the name of the book published on the occasion of 50th anniversary of the establishment of the Supreme Court [Essays in honour of the Supreme Court of India]. Justice B.N. Kirpal penning the preface of*



*that book said:*

*"The title of the volume 'Supreme but not Infallible' - is taken from an oft quoted self -reflection of an American judge: "We are not final because we are infallible, we are infallible only because we are final." We would like to believe that the Supreme Court has gone about its task less conscious of its supremacy and more warily with the intuition that the Court, though final, is fallible. These essays are a reminder of what the Court is and does.*

*These words intend to convey the message that even the highest court in the country has no claim that it is infallible. This case has generated a lot of media attention. Mainstream television media and social media have commented upon the way this court went upon its business in handling this case. Observations made in Court during the course of hearing have been dissected and made subject matter of intense discussion. The existence of a vibrant, independent and free press is no doubt essential to democracy. The constitutional Courts in this country have been zealous to protect the freedom of speech and expression but this cannot be a license for persons armed with half baked facts with little or no knowledge of how the judiciary functions and little or no knowledge of the fundamental legal principles that govern it, abuse the justice delivery system. Lord Mansfield said at the trial of the radical John Wilkes (in 1770): -*

*"I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right; though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow."*

*Centuries later, in 1998 Judge Hiller B. Zobel at the trial of the Nanny Louise Woodward said:-*

*"Elected officials may consider popular urging and sway to public opinion polls, Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panellists and talk shows. In this country, we do not administer justice by plebiscite."*

*Both the above quotations extracted from the book 'Literature of the Law' echo, in no uncertain terms, the sentiments of this Court. I leave it at that."*

I endorse the said observations wholeheartedly. Now, it's time for introspection, it's time to take the stock and it's time to leave the justice delivery system alone, to do its job. Although criticism is the backbone of democracy and the media is expected to do that, in this case, it is seen transgressed the limits of fairness, reasonableness and rationality.

46. Thus, after carefully going through the entire materials placed before me, I am of the view that the petitioner could not make out a case for an order for transferring the case

from the Principal Sessions Court, Ernakulam. It is also a relevant fact that, now, there is a time limit fixed by the Honourable Supreme Court, which will expire on 31.01.2023. Every endeavour must be taken by all the parties concerned to complete the trial of the case within the said period and this Court expects that all would work for it, in tandem.

Accordingly, this transfer petition is dismissed.

Sd/-

ZIYAD RAHMAN A.A.  
JUDGE

pkk

APPENDIX OF TR.P (CRL.) 52/2022**PETITIONER'S ANNEXURES:**

- ANNEXURE A1 TRUE COPY OF THE JUDGMENT DATED 20/11/2020 IN TRP.(CRL) 49/2020 AND TRP.(CRL). 50/2022.
- ANNEXURE A2 TRUE TRANSCRIPT OF THE CONVERSATION.
- ANNEXURE A3 TRUE COPY OF THE ORDER DATED 28/6/2022 IN CRL.MP NO.891/2022 IN SC 118/20218 OF THE ADDL.SPECIAL SESSIONS COURT, (SPE/CBI)-III, ERNAKULAM.
- ANNEXURE A4 TRUE COPY OF THE CYBER FORENSIC ANALYSIS REPORT NO.DD-523/22/B2-7575/FSL/22 DATED 11/7/2022
- ANNEXURE A5 TRUE COPY OF THE JUDGMENT DATED 5/7/2022 IN OP (CRL.) NO.257/2022.
- ANNEXURE A6 TRUE COPY OF THE LETTER DATED 2/8/2022 TO THE REGISTRAR (JUDICIAL), HIGH COURT OF KERALA.
- ANNEXURE A7 TRUE COPY OF THE NOTICE D.NO.246/2022 DATED 4/8/2022 OF ADDITIONAL SPECIAL SESSIONS COURT, (SPE/CBI)-III, ERNAKULAM.
- ANNEXURE A8 TRUE COPY OF THE APPLICATION DATED 6/8/2022 FILED BEFORE THE PRINCIPAL SESSIONS COURT, ERNAKULAM IN SC NO.118 OF 2018.
- ANNEXURE A9 TRUE COPY OF THE APPLICATION DATED 5/8/2022 IN SC 118 OF 2018 OF THE PRINCIPAL SESSIONS COURT, ERNAKULAM.
- ANNEXURE A10 TRUE COPY OF THE JUDGMENT DATED 1/7/2022 IN TR.P. (CRL). NO.43/2021.
- ANNEXURE A11 A TRUE COPY OF THE REQUEST DATED 21.7.2022
- ANNEXURE A12 A TRUE COPY OF THE REPLY DATED 4.8.2022

**RESPONDENTS' ANNEXURES :**

- ANNEXURE R1 (A) A TRUE COPY OF 161 STATEMENT OF SRI. SAI SANKAR
- ANNEXURE R1 (B) A TRUE COPY OF 161 STATEMENT OF DINESAN IG
- ANNEXURE R1 (C) A.C.D CONTAINING THE CDR OF SRI.SANTHOSH
- ANNEXURE R1 (D) A CHART SHOWING THE CALL DETAILS BETWEEN THE PHONE NUMBERS OF ADV. SANTHOSH AND THE TRIAL JUDGE.
- ANNEXURE R1 (E) A COPY OF THE MESSAGE DETAILS RETRIEVED FROM THE MOBILE PHONE OF A8
- ANNEXURE R1 (F) A COPY OF THE SUPPLIMENTARY CHARGE
- ANNEXURE R3 (A) A TRUE COPY OF THE JUDGMENT DATED 25.02.2019 IN O.P (CRL.) NO. 344 OF 2018
- ANNEXURE R3 (B) A TRUE COPY OF THE APPLICATION DATED 29.12.2021 FILED BY ADV. SUNIL KUMAR K.B. SPECIAL PUBLIC PROSECUTOR BEFORE THE TRIAL COURT
- ANNEXURE R3 (C) A TRUE COPY OF THE ORDER DATED 19.4.2022 IN CRL.MA NO.6/2022 IN CRL.MC NO.803/2022
- ANNEXURE R3 (D) PAGE NUMBER 18 AND 19 OF THE FINAL REPORT DATED 22.11.2017
- ANNEXURE R3 (E) A TRUE TRANSLATED COPY OF EVIDENCE OF PW12 NELSON DAS FILED BEFORE THE HON'BLE APEX COURT IN SLP (CRL.) NO. 8047 OF 2021
- ANNEXURE R3 (F) A TRUE TRANSLATED COPY OF EVIDENCE OF PW45 MANOJ KUMAR FILED BEFORE THE HON'BLE APEX COURT IN SLP NO.8047/2021.
- ANNEXURE R3 (G) A TRUE AND CORRECT COPY OF THE APPLICATION DATED 21.01.2022 FILED BY THE RESPONDENT STATE BEFORE THIS HON'BLE COURT
- ANNEXURE R3 (H) A TRUE COPY OF THE ORDER DATED 28.01.2021 PASSED BY THE HON'BLE APEX COURT IN SLP (CRL.) NO. 8047 OF 2021

- ANNEXURE R3 (I) A TRUE COPY OF THE ORDER DATED 01.02.2022 PASSED BY THE ADDL. SESSION COURT (SPE/CBI)-III, ERNAKULAM IN CRL.M.P. NO. 2466 OF 2021 IN SC NO. 118 OF 2018
- ANNEXURE 9 A TRUE COPY OF THE SCREEN SHOT OF THE TELECAST BY REPORTER TV DATED 26.4.2022
- ANNEXURE 9 (A) TRUE COPY OF THE SCREENSHOT OF THE TELECAST IN REPORTER TV WITH THE PHOTOGRAPH OF ANOOP ON 26.04.2022
- ANNEXURE 9 (B) TRUE COPY OF THE PRINTOUT FROM E-COURTS PORTAL REGARDING S.C. NO. 118/2018 DATED 17.12.2019
- ANNEXURE 9 (C) TRUE COPY OF THE PRINTOUT FROM E-COURTS PORTAL REGARDING S.C. NO. 118/2018 DATED 16.07.2021
- ANNEXURE 9 (D) TRUE COPY OF THE JUDGMENT IN O.P (CRL) NO. 344/2018 DATED 25.02.2019
- ANNEXURE 9 (E) TRUE COPY OF THE ORDER OF THE SUPREME COURT OF INDIA IN M.A. NO. 1228/2021 IN CRL. A. NO. 1794/2019 DATED 16.08.2021
- ANNEXURE R9 (F) TRUE TYPED COPY OF THAT PETITION FILED IN W.P. (CRL) NO. 445/2022 WITH THE DATE 25.04.2022 THAT WAS FURNISHED TO THE MEDIA BY THE PETITIONER
- ANNEXURE R9 (G) TRUE COPY OF THE ORDER OF THE HIGH COURT OF KERALA IN CRL. M. APPL NO. 16/2022 IN CRL. M.C NO. 803/2022 DATED 01.06.2022
- ANNEXURE R9 (H) TRUE COPY OF THE ORDER PASSED BY THE HON'BLE SUPREME COURT OF INDIA IN SPECIAL LEAVE TO APPEAL (CRL) NO. 6273/ 2020 DATED 15.12.2020
- ANNEXURE R9 (I) TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT OF INDIA IN M.A. NO. 62/ 2022 IN CRL. APPEAL NO. 1794/ 2019 DATED 24.01.2022
- ANNEXURE R9 (J) TRUE COPY OF THE I.A NO. 105395/2022 IN CRL APPL NO. 1794/2019 BEFORE THE SUPREME

COURT OF INDIA DATED 25.07.2022 FILED ON  
29.07.2022

ANNEXURE 9 (K) TRUE TRANSCRIPT OF THE VOICE CLIP WITH  
COMMENTS OF THE 9TH RESPONDENT

ANNEXURE 9 (L) TRUE COPY OF THE ORDER PASSED BY THE  
HON'BLE SUPREME COURT OF INDIA IN M.A. NO.  
1434/2022 IN M.A NO.62/2022 IN CRL.A. NO.  
1794/2019

//TRUE COPY//

SD/- PS TO JUDGE