

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 20TH DAY OF NOVEMBER 2020 / 29TH KARTHIKA, 1942

Tr.P(Cr1.).No.49 OF 2020

AGAINST THE ORDER/JUDGMENT IN SC 118/2018 OF ADDITIONAL SPECIAL  
SESSIONS COURT (SPE/CBI CASES)-III, ERNAKULAM

PETITIONER/S:

THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF  
KERALA.

BY ADVS.  
DIRECTOR GENERAL OF PROSECUTION  
SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

RESPONDENT/S:

- 1 SUNIL N.S.@ PULSAR SUNI  
AGED 29 YEARS  
S/O. SURENDRAN, NEDUVELIKKUDY HOUSE ELAMBAKKAPPILLY  
KARA, NETTANCITY BHAGAM, VENGOOR WEST, ERNAKULAM  
683 546.
- 2 MARTIN ANTONY,  
AGED 25 YEARS  
S/O. ANTONY, PUTHUSSERY HOUSE, THIRUMUDI KUNNUKARA,  
KORATTY EAST P.O. KORATTY, THRISSUR 680 308.
- 3 MANIKANDAN B.  
S/O. BAU, MANAPPATTIPARAMBIL HOUSE, H.NO. 95, AKG  
NAGAR, MASJID ROAD, THAMMANAM, POONITHURA, VILLAGE  
ERNAKULAM 682 038.
- 4 VIJEESH V.P.,  
AGED 30 YEARS  
S/O. RAMAKRISHNAN, MANGALASSERY HOUSE,  
CHUNDAGAPOYYIL PONNAYAM P.O. KATHIROOR, THALASSERY,  
KANNUR 670 642.
- 5 SALIM H @ VADIVAL SALIM,  
AGED 22 YEARS  
S/O. HASSAN, PALIKKAPARAMBIL HOUSE, KUNNUMPURAM,  
AIMS PONEKKARA, EDAPPALLY NORTH, ERNAKULAM 682 041.

- 6 PRADEEP,  
AGED 23 YEARS  
S/O. USHA SREEHARAN, PAZHAYANILATHTHIL HOUSE,  
CHATHANKIRI, PERINGARA VILLAGE, THIRUVALLA,  
PATHANAMTHITTA 689 101.
- 7 CHARLY THOMAS,  
AGED 43 YEARS  
S/O. THOMAS, POOPPALI HOUSE, KILIYANTHARA 32 MILE,  
VELLAMANA VILLAGE, IRITTI TALUK, KANNUR 670 703.
- 8 P. GOPALAKRISHNA @ DILEEP,  
AGED 49 YEARS  
S/O. PADAMANABHAPILLA, PADMASAROVARAM HOUSE 683  
101.
- 9 SANILKUMAR @ MESTHIRISANIL,  
AGED 41 YEARS  
S/O.K.N. PILLA, SNEHABHAVAN HOUSE, VETTIPURAM,  
MILPPARA VILLAGE, KOZHANCHERRY TALUK,  
PATHANAMTHITTA 689 641.
- 10 VISHNU,  
S/O. ARAVINDAN, KUNNATH HOUSE, CHEMBUMUKKU,  
KAKKANAD, THRIKKAKARA , NORTH VILLAGE, ERNAKULAM  
682 021.
- 11 X(VICTIM)

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 16.11.2020, ALONG WITH Tr.P(Cr1.).50/2020, THE  
COURT ON 20.11.2020 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 20TH DAY OF NOVEMBER 2020 / 29TH KARTHIKA, 1942

Tr.P(Cr1.).No.50 OF 2020

AGAINST THE ORDER/JUDGMENT IN SC 118/2018 OF ADDITIONAL SPECIAL  
SESSIONS COURT (SPE/CBI CASES)-III, ERNAKULAM

PETITIONER/S:

VICTIM  
X

BY ADVS.  
SRI.S.SREEKUMAR (SR.)  
SRI.ANEESH JAMES

RESPONDENT/S:

- 1 THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF  
KERALA-682 031.
- 2 SUNIL N.S. @ PULSAR SUNI  
AGED 29/2017, S/O. SURENDRAN, NEDUVELIKKUDY HOUSE,  
ELAMBAKKAPPILLY KARA, NETTANCITY BHAGAM, VENGOOR  
WEST, ERNAKULAM, PIN-683 546.
- 3 MARTIN ANTONY  
AGED 25/2017, S/O. ANTONY, PUTHUSSERY HOUSE,  
THIRUMUDIKKUNNUKARA, KORATTY EAST P.O., KORATTY,  
THRISSUR, PIN-680 308.
- 4 MANIKANDAN B.  
AGED 29/2017, S/O. BABU, MANAPPATTIPARAMBIL HOUSE,  
H.NO.95, AKG NAGAR, MASJID ROAD, THAMMANAM,  
POONITHURA VILLAGE, ERNAKULAM, PIN-682 038.
- 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 SALIM  
AGED 22/17, S/O. HASSAN, PALIKKAPARAMBIL HOUSE,

KUNNUMPURAM, AIMS PONEKKARA, EDAPPALLY NORTH,  
ERNAKULAM, PIN-682 041.

7 PRADEEP  
AGED 23/2017, S/O. USHA SREEHARAN,  
PAZHAYANILATHTHIL HOUSE, CHATHANKIRI, PERINGARA  
VILLAGE, THIRUVALLA, PATHANAMTHITTA, PIN-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. PADAMANABHAPILLA, PADMASAROVARAM  
HOUSE, KOTTARAKADAVU ROAD, ALUVA, ERNAKULAM, PIN-  
683 101.

10 SANILKUMAR @ MESTHIRISANIL  
AGED 41/2017, S/O. K.N.PILLA, SNEHABHAVAN HOUSE,  
VETTIPURAM, MILAPPARA VILLAGE, KOZHENCHERRY TALUK,  
PATHANAMTHITTA, PIN-689 641.

11 VISHNU  
AGED 39/2017, S/O. ARAVINDAN, KUNNATH HOUSE,  
CHEMBUMUKKU, KAKKANAD, THRIKKAKARA NORTH VILLAGE,  
ERNAKULAM, PIN-682 021.

R1 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 16.11.2020, ALONG WITH Tr.P(Cr1.).49/2020, THE  
COURT ON 20.11.2020 PASSED THE FOLLOWING:

'C.R'

**V.G.ARUN, J.**

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**Tr.P.(CrI.)Nos.49 and 50 of 2020**  
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**Dated this the 20<sup>th</sup> day of November, 2020**

**O R D E R**

The Special Public Prosecutor appointed by the State and the de facto complainant/victim in S.C.No.118 of 2018 pending on the files of the Additional Special Judge (SPE/CBI)-III, Ernakulam, seek transfer of the case to another court, on the apprehension that the Special Judge before whom the trial is being conducted is biased against the prosecution.

2. The case originated from a complaint filed by the victim, a film actor of repute, stating that, while travelling from Thrissur to Ernakulam on 17.2.2017, she was abducted and subjected to sexual assault, and that the sexually explicit act was recorded. This resulted in Crime No. 297 of 2017 being registered at the Nedumbassery Police Station. After the investigation, the final report was filed alleging commission of offences under Sections 120A, 120B, 109, 342, 366, 354, 354B, 356, 376D, 506(1), 201, 212 read with 34 of the IPC and Sections 66E and 67A of the Information Technology Act, 2000. The gist of the findings in the final report is that the crime was committed at the instance of the 8th accused, another film actor, pursuant to a conspiracy hatched by him with the other accused.

3. After completion of necessary formalities, the case was committed to the Principal Sessions Court, Ernakulam and numbered

as S.C.No.118 of 2018. While so, the victim approached this Court seeking transfer of the case to a court presided by a lady judicial officer. After due deliberation, this Court, *vide* its judgment in O.P(CrI) 344 of 2018, transferred the case to the court of the Special Judge (SPE/CBI-III), Ernakulam, finding it to be the only court in Ernakulam District, competent to try the case. The learned Special Judge framed charges on 6.1.2020 and commenced trial from 30.1.2020 onwards. As on date, the prosecution has examined 80 witnesses and has marked 49 Exhibits and 87 material objects.

4. According to the petitioners, the manner in which the learned Special Judge is proceeding with the trial, her reluctance to pass orders on petitions filed by the prosecution, and the unwarranted and derogatory comments made against the Special Public Prosecutor and the investigating agency, are reasons for the apprehension of bias.

5. Heard Sri.S.Sreekumar, learned Senior Counsel appearing for the victim and Sri.Suman Chakravarthy, learned Senior Public Prosecutor appearing for the State of Kerala.

6. The following are some of the instances, highlighted by the learned counsel for the petitioners;

- (i) The victim (PW1) was permitted to be cross-examined by the 8th accused, 4 months and 18 days after completion of cross-examination by the other accused. PW1 was bound over for an uncertain period, without considering the trauma she had to undergo during the interregnum. PW1 was subjected to searching cross-examination for nine days by the

counsel for the 8th accused and on many occasions, scandalous questions were asked, challenging the credibility of PW1 and even attacking her character. In spite of the prosecution raising objections against such questions and the mode of examination, the Special Judge refused to intervene, thereby permitting PW1 to be harassed and vexed, resulting in the witness breaking down on more than one occasion. A copy of the deposition of PW1 is made available in a sealed cover.

- (ii) Though the proceedings were held 'in camera', a battery of defence lawyers were permitted inside the court hall during the cross examination of PW1, while derogatory questions were asked by the counsel for the 8th accused, with reference to the video recording of the incident.
- (iii) Some of the witnesses were castigated by the Special Judge irked by their alleged Facebook posts, resulting in those witnesses losing their will and confidence to testify.
- (iv) The 8th accused sought a report from the Central Forensic Science Laboratory regarding the contents of the memory card furnished to him, as directed by the Honourable Supreme Court. This was permitted and the report was handed over to the 8th accused on 7.2.2020. A copy of the report was not made

available to the prosecution. Later, the 8th accused filed another application along with a questionnaire, seeking direction to the CFSL to give proper answers to the queries raised. On the request of the 8th accused, service of a copy of the application and questionnaire on the prosecution was dispensed with. Even a copy of the subsequent report received from the CFSL was not furnished.

- (v) C.M.P.No.471 of 2020 filed by the prosecution on 19.2.2020 seeking to alter the charge is kept pending without passing orders thereon.
- (vi) No order is passed on CrI.M.P.No.1299 of 2020 filed by the prosecution seeking cancellation of the bail granted to the 8th accused.
- (vii) On 14.10.2020, during the examination of PW80, the Special Public Prosecutor confronted PW80 with his 164 statement. For no apparent reason, the Special Judge got agitated and made unnecessary remarks against the Special Public Prosecutor and the investigating agency and went to the extent of stating that what was going on was not prosecution, but something else. Upon this, the Special Public Prosecutor was compelled to stop the chief examination, since the atmosphere in the court was not conducive to a fair trial. The next day, an application was moved for stopping the proceedings



for the time being, since the prosecution intended to file a transfer petition before the High Court. The Special Judge dismissed the petition and insisted that the investigating officer should make arrangements for continuing the trial. An affidavit of the Special Public Prosecutor detailing these facts is made available.

7. Having thus laid out the factual foundation for the prayer for transfer, the learned counsel put forth their legal contentions, relying on the following decisions;

8. **State of Punjab v. Gurmit Singh** [(1996) 2 SCC 384] was cited to highlight the duty bestowed on trial courts to ensure that victims of sexual assault are not harassed during cross-examination. Emphasis is laid on paragraph 22 of the judgment, which reads as under:

*"22. There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be*

*given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence."*

It is contended that a bare perusal of the cross-examination of PW1 by the counsel for the 8th accused would show that the directives of the Honorable Supreme Court were violated with impunity, by permitting questions to be asked, transgressing the limits of decency and touching upon the character of PW1.

9. Reference is made to paragraph 24 of **Gurmit Singh**, wherein the Apex Court held that, Sub-sections (2) and (3) of Section 327 Cr.P.C casts a duty on the Court to conduct the trial of rape cases, invariably 'in-camera'. It was observed that trial 'in camera' would not only be in keeping with the self respect of the victim of the crime and in tune with the legislative intent, but is also likely to improve the quality of the evidence of the prosecutrix because she would not be hesitant to depose frankly as in an open court, under the gaze of the public. It is the contention of the learned counsel that, by permitting a large number of lawyers inside the court hall, the very purpose of 'in-camera' trial was defeated.

10. Attention is also drawn to the directives in **Sakshi v Union**

**of India** [(2004)5 SCC 518] and the observation therein that rules of procedure are handmaidens of justice, meant to advance and not obstruct justice.

11. To drive home the contention regarding the right of the victim to a fair trial, reliance was placed on **Nirmal Singh Kahlon v. State of Punjab** [(2009) 1 SCC 441], wherein the right to fair trial was held to apply to the accused as well as the victim, as embodied and in Article 21 of the Constitution of India. It is the contention of the learned counsel that the trial in the instant case, if permitted to be continued before the same court, will not be a fair trial, but a one-sided affair, detrimental to the interests of the victim and in violation of her fundamental rights.

12. The decisions in **Abdul Nazar Madani v. State of Tamil Nadu** [(2000) 6 SCC 204] and **Satish Jaggi v. State of Chhattisgarh** [(2007) 3 SCC 62] are cited in support of the proposition that Section 407 Cr.P.C clothe the High Court with the power to transfer cases, when it is made to appear that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate to it.

13. Finally, it is contended that serious allegations of bias having been raised by the prosecution and the victim, it would have been fair and proper for the Special Judge to have sought permission to recuse herself from the case.

14. The proposition that free and fair trial is the *sine qua non* of Article 21 of the Constitution of India is no longer *res integra*. If the criminal trial is not free and fair and if it is biased, judicial fairness and

the criminal justice system would be at stake, shaking the confidence of the public in the system.

15. The dictionary meaning of the word '**bias**' is '*inclination or prejudice for or against one person or group, especially in a way considered to be unfair*'. The foundational principle with regard to Judicial Bias "*nemo debet esse judex in causa propria sua*", precludes a person from being a Judge in his or her own cause.

16. In one of the earliest reported decisions on the issue of judicial bias, **Manak Lal v. Dr Prem Chand Singhvi**, [AIR 1957 SC 425], the following observations were made by the Supreme Court;

*".....It is well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave, L.C. has observed in Frome United Breweries Co. v. Bath Justices [(1926) AC 586, 590] "This rule has been asserted, not only in the case of Courts of Justice and other judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others". In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is*

*obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "nemo debet esse iudex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein" [Halsbury's Laws of England, Vol 21, p. 535, para 952] . In our opinion, there is and can be on doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."*

17. In **Maneka Sanjay Gandhi v. Rani Jethmalani** [(1979) 4 SCC 167] it was held that, assurance of a fair trial is the first imperative of the dispensation of justice, and the central criterion for the court to consider, when a motion for transfer is made, is not the hyper sensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous, if the court is to exercise its power of transfer.

18. Later, in **State of West Bengal v. Shivananda Pathak** [(1998) 5 SCC 513] the Apex Court defined judicial bias and touched upon its various facets in the following words:

*“25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.*

*26. Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject-matter in dispute, or policy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy.”*

19. In **K.Anbazhagan v. Superintendent of Police** [(2004) 3 SCC 767] the Apex Court observed that the question is not whether the judge is actually biased but whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner.

20. Even in **Abdul Nazar Madani** (supra), after finding that the purpose of criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations, and when it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC, the Apex Court also held that the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises.

21. **Satish Jaggi** was a case in which transfer was sought on the ground that the presiding officer was the brother of a sitting MLA, who was a close associate of one of the prime accused. In that factual

background, the prayer for transfer was allowed with the following observation;

*“We are sure that the present Sessions Judge would have acted in the true sense of a judicial officer. But nevertheless to ensure that justice is not only done, but also seen to be done and in the peculiar facts of the case, we feel that it will be appropriate if the High Court transfers the case to some other Sessions Court in Raipur itself. We make it clear that the transfer shall not be construed as casting any aspersion on the learned Sessions Judge.”*

22. The contention of the petitioners of the Special Judge being biased ought to be examined in the above legal backdrop. When the question is one of transfer of a criminal case on the ground of judicial bias, mere allegation of apprehension of bias is not enough, the court has to see whether such apprehension is reasonable or not. The moot question here is whether the instances pointed out by the petitioners are sufficient to hold the apprehension of bias to be reasonable.

23. The contention that, Counsel for the 8th accused was permitted to cross-examine PW1 after four months of completion of cross-examination by the other accused is not of much avail, since the cross-examination was deferred awaiting CFSL report on the cloned copy of the pendrive furnished to the 8th accused, as per the direction of the Honourable Supreme Court. Further, trial had to be adjourned for almost three months in the light of the outbreak of Covid-19 and the resultant lockdown.

24. On the second contention regarding failure of the Special Judge to intervene during the cross-examination of PW1, even if this

court finds that it would have been prudent and proper for the learned Judge to have intervened as and when the victim was seemingly harassed during cross-examination, that being the requirement pointed out in **Gurmit Singh's case**, having failed to initiate appropriate and timely action to redress the grievance, the prayer for transfer on that ground cannot be entertained. The observations of the Apex Court in **Mina Lalita Baruwa v. State of Orissa** [(2013) 16 SCC 173], that courts cannot remain mute spectators during trial and should adopt a belligerent approach and should be alive and alert during trial of criminal cases, are relevant in this context.

25. On the issue of "in camera" proceedings, it would be profitable to know the genesis of the term. The term "in camera" is of Latin origin and means "in private". As per the Oxford English Reference Dictionary, the term 'in camera' is defined as 'in a judge's private room'. In the Major Law Lexicon, the term is defined as 'in chambers; in private; in the judge's private room; not in open court'. This gives a clear indication of the extent of confidentiality expected, when the trial is held 'in camera'. Therefore, by the mere fact that the trial is held inside a closed court hall, it does not become 'in camera' trial, unless the purpose of providing a comfortable atmosphere for the witnesses to depose freely, is maintained. These are aspects to be borne in mind while conducting trial 'in camera'.

26. As regards the allegation of the Special Judge having reprimanded some of the witnesses without reason, sufficient materials are not made available to substantiate the allegation.

27. As far as the contention that copies of the petition,



questionnaire and the report received from the CFSL were not made available to the prosecution is concerned, detailed order has been issued by the learned Judge stating the reason for dispensing with service of copies to the prosecution. According to the Special Judge, as per the direction of the Honourable Supreme Court in CrI.Appeal No.1794 of 2019, the court is bound to keep the CFSL report confidential until the conclusion of the trial and not allow the report to be accessed by any other agency or person, except the accused concerned or his authorised representative. The legality of the order, rendered way back on 27.2.2020, not having been challenged till date, the petitioners cannot attribute bias to the Judge.

28. On the contention of delay in passing orders on the petitions filed by the prosecution, it was always open for the prosecution to have approached this Court under its supervisory jurisdiction seeking expeditious disposal of the petitions. Further, it is not stated as to how the delay in passing the orders have prejudiced the prosecution in the conduct of the case. Needless to say that it would subserve the interest of justice if orders are passed on the petitions without delay, which the Special Judge is bound to ensure.

29. If the incidents which are alleged to have occurred on 14.10.2020 are true, it has to be unhesitatingly held that it should have been avoided. While the prosecution alleges that the Special Judge had used strong expressions against the Special Public Prosecutor and the investigating agency, in the objections filed by the accused, to the petitions for stopping the proceedings filed by the prosecution, which are produced as exhibits in the transfer petition, it

is the definite stand of the accused that no such incident had taken place. Be that as it may, it has to be ensured by all concerned that such incidents are not repeated.

30. Before concluding, I deem it appropriate to extract the following statement of Frank J. of the United States [***In re: Linahan***, 138 F. 2nd 650 (1943)], which gives an insight into the mental makeup of Judges:

*"If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions. Much harm is done by the myth that, merely by taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine."*

31. It would also be apposite to quote the statement of Mr. Justice Frankfurter in ***Public Utilities Commission of the District of Columbia v. Franklin S. Pollak***, [343 US 451 (1952) 466], as to what is expected of a judge:

*"The Judicial process demands that a judge moves within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that, on the whole, judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted."*

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 Honourable 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 predilections and prejudices and to decide the cases dispassionately, and not to recuse whenever his or her actions are questioned.

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.

For the reasons mentioned above, I find no sustainable ground to allow the prayer for transfer. Consequently, the Transfer Petitions are dismissed.

**Sd/-  
V.G.ARUN JUDGE**

*vgs*

**APPENDIX OF Tr.P (Cr1.) 49/2020**

**PETITIONER'S/S EXHIBITS:**

- ANNEXURE A TRUE COPY OF JUDGMENT DATED 25.02.2019 IN OP CRL. NO. 344 OF 2018 OF THIS HONBLE COURT.
- ANNEXURE B TRUE COPY OF THE ORDER DATED 29.11.2019 IN M.A. 130 OF 2020 IN CRL. APPEAL NO. 1794 OF 2019 BY THE HONOURABLE SUPREME COURT.
- ANNEXURE C TRUE COPY OF THE ORDER DATED 27.02.2020 IN CRL.M.P. NO. 415/2020 IN SC NO. 118/2018 OF THE ADDITIONAL SPECIAL SESSIONS COURT SPE/CBI/III ERNAKULAM.
- ANNEXURE D TRUE COPY OF THE PETITION FILED U/S. 216 OF CR.P.C. IN CRL. MP NO. 471/2020 DATED 19.02.2020 BY PROSECUTION.
- ANNEXURE E TRUE COPY OF THE ORDER NO. B1(A)-76258/2019(1) DATED 15.05.2020 ISSUED BY THIS HONBLE COURT.
- ANNEXURE F TRUE COPY OF THE ORDER NO. B1(A) 76258/2019(1) DATED 22.06.2020 ISSUED BY THIS HONBLE COURT.
- ANNEXURE G TRUE COPY OF THE CRL. M.P. NO. 1299/2020 IN SC NO. 118/2018 FILED U/S. 439/(2) OF CR.P.C. BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT SPE/CBI-III, ERNAKULAM FOR CANCELLATION OF BAIL OF A8.
- ANNEXURE H TRUE COPY OF THE CRL. M.P. NO. 1521/2020 DATED 15.10.2020 FILED BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT SPE/CBI1-III ERNAKULAM TO STOP PROCEEDINGS.
- ANNEXURE I TRUE COPY OF THE OBJECTION FILED BY 4TH ACCUSED TO CRL. M.P. NO. 1521/2020 BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT SPE/CBI-III ERNAKULAM.
- ANNEXURE J TRUE COPY OF THE OBJECTION FILED BY THE 5TH AND 6TH ACCUSED TO CRL.M.P. NO. 1521 /2020 BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT SPE/CBI -III ERNAKULAM.
- ANNEXURE K TRUE COPY OF THE OBJECTION FILED BY 7TH ACCUSED IN CRL. M.P. NO. 1521/2020 BEFORE

THE ADDITIONAL SPECIAL SESSIONS COURT  
SPE/CBI-III ERNAKULAM.

ANNEXURE L

TRUE COPY OF THE OBJECTION FILED 8TH  
ACCUSED TO CRL. M.P. NO. 1521/2020 BEFORE  
THE ADDITIONAL SPECIAL SESSIONS COURT SPE  
CBI III ERNAKULAM.

ANNEXURE M

TRUE COPY OF THE OBJECTION FILED BY 9TH  
ACCUSED TO CRL. M.P. NO. 1521/2020 BEFORE  
THE ADDITIONAL SPECIAL SESSIONS COURT  
SPE/CBI III ERNAKULAM.

ANNEXURE N

TRUE COPY OF THE ACKNOWLEDGEMENT DATED  
19.10.2020 ISSUED BY THE TAPAL SECTION OF  
THIS HONBLE COURT.

**APPENDIX OF Tr.P (Cr1.) 50/2020**

**PETITIONER'S/S EXHIBITS:**

- ANNEXURE A TRUE COPY OF FIR IN CRIME NO.297 OF 2017 OF NEDUMBASSERY POLICE STATION.
- ANNEXURE B TRUE COY OF THE JUDGMENT DATED 25.2.19 IN O.P. (CRL.) NO.344 OF 2018 OF THIS HON'BLE COURT.
- ANNEXURE C TRUE COPY OF JUDGMENT DATED 29.11.2019 IN CRL.APEAL NO.1794/2019 OF THIS HON'BLE COURT.
- ANNEXURE D TRUE COPY OF ORDER DATED 17.1.2020 IN MISC.APPL.NO.130/2020 IN CRL.APEAL NO.1794/2019 OF THE HON'BLE SUPREME COURT.
- ANNEXURE E TRUE COPY OF ORDER DATED 27.2.2020 IN CRL.M.P.NO.415 OF 2020 IN S.C.NO.118/2020 OF ADDL. SPECIAL SESSIONS JUDGE (SPE/CBI)- II, ERNAKULAM.
- ANNEXURE F TRUE COPY OF JUDGMENT DATED 9.3.2020 IN CRL.M.C.NO.758 OF 2020 OF THIS HON'BLE COURT.
- ANNEXURE G COPY OF CRL.M.P.NO.821/2020 IN S.C.NO.118 OF 2018 FILED BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT (CBI/SPE-III), ERNAKULAM.
- ANNEXURE H: COPY OF ORDER DATED 12.5.2020 IN CRL.M.P.NO.821 OF 2020 IN S.C.NO.118/2020 OF ADDITIONAL SPECIAL SESSIONS COURT (CBI/SPE-III), ERNAKULAM.
- ANNEXURE I: COPY OF CRL.M.P.NO.947 OF 2020 FILED BEFORE THE ADDITIONAL SPECIAL SESSIONS COURT (CBI/SPE-III), ERNAKULAM.
- ANNEXURE J: COPY OF ORDER IN CRL.M.P.NO.947 OF 2020 IN S.C.NO.118/2018 DATED 26.6.2020 OF ADDITIONAL SPECIAL SESSIONS COURT (CBI/SPE-III), ERNAKULAM.
- ANNEXURE K: COPY OF ORDER IN CRL.M.P.NO.1521 OF 2020 IN S.C.NO.118/2018 DATED 23.10.2020 OF ADDITIONAL SPECIAL SESSIONS COURT (CBI/SPE-III), ERNAKULAM.