

CrI.MC.3911 & 3923/2020

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 06TH DAY OF OCTOBER 2020 / 14TH ASWINA, 1942

CrI.MC.No.3911 OF 2020(H)

AGAINST THE ORDER/JUDGMENT IN SC 1114/2011 OF SPE/CBI COURT,
TRIVANDRUM

PETITIONER/S:

FR. THOMAS KOTTOOR
AGED 71 YEARS
S/O. LATE K.T MATHEW, KOTTOOR HOUSE, KIDANGOOR,
KOTTAYAM, KERALA.

BY ADVS.

SRI.B.RAMAN PILLAI (SR.)

SRI.R.ANIL

SRI.M.SUNILKUMAR

SRI.SUJESH MENON V.B.

SRI.CHACKO SIMON

SRI.T.ANIL KUMAR

SRI.THOMAS ABRAHAM (NILACKAPPILLIL)

SHRI.MAHESH BHANU S.

SMT.S.LAKSHMI SANKAR

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION

REPRESENTED BY ITS STANDING COUNSEL, HIGH COURT OF
KERALA, KOCHI - 682031.

R1 BY SRI. SASTHAMANGALAM S. AJITHKUMAR, SC FOR
C.B.I.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06.10.2020, ALONG WITH CrI.MC.3923/2020(A), THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

CrI.MC.3911 & 3923/2020

2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 06TH DAY OF OCTOBER 2020 / 14TH ASWINA, 1942

CrI.MC.No.3923 OF 2020 (A)

AGAINST THE ORDER/JUDGMENT IN SC 1114/2011 OF SPE/CBI COURT,
TRIVANDRUM

PETITIONER/S:

SR.SEPHY
AGED 57 YEARS
D/O.JOSEPH, ST.JOSEPHS GENERALATE, S.H.MOUNT,
KOTTAYAM, KERALA (KANGRATHUMOOTHY HOUSE,
KURUMULLOOR, KOTTAYAM) .

BY ADVS.
SRI.SOJAN MICHEAL
SRI.CHACKO SIMON

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS STANDING COUNSEL, HIGH COURT OF
KERALA, KOCHI - 31.

R1 BY SRI. SASTHAMANGALAM S. AJITHKUMAR, SC FOR
C.B.I.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06.10.2020, ALONG WITH CrI.MC.3911/2020(H), THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

V.G.ARUN, J.

CRL.M.C.Nos.3911 and 3923 of 2020

Dated this the 6th day of October, 2020

O R D E R

It is disheartening to note that criminal proceedings pertaining to a crime of 1992 is yet to attain finality, whether it be by reason of providence or design. As of now, the trial of that case; S.C.No.1114 of 2011, on the files of the Additional Sessions Judge/Special Judge (SPE/CBI), Thiruvananthapuram has commenced. The petitioners in the Crl.M.Cs, who are the accused, pray for a direction to defer the examination of witnesses scheduled from 14.09.2020 to 09.10.2020 until further orders.

2. The brief facts, leading to the filing of the Crl.M.Cs, are as under:-

The examination of witnesses in the case had commenced from 26.08.2019 and by 17.02.2020, examination of most of the witnesses, except the investigating officers and other official witnesses was completed. Meanwhile, the trial court permitted the prosecution to let in evidence regarding Narco Analysis, Brain Mapping and Polygraph test conducted on the accused. The accused challenged the order before this Court in Crl.M.C Nos.8616 and 8617 of 2019 and the trial court was interdicted from letting in such evidence. Thereupon, the

prosecution filed a petition under Section 309 before the trial court requesting to defer examination of the remaining witnesses, stating that the CBI intended to challenge the order in Crl.M.C Nos.8616 and 8617 of 2019 before the Apex Court. The request for deferring the trial was turned down by the Special Judge and a fresh list of 15 witnesses was submitted by the prosecution on 17.02.2020. Examination of those witnesses (CWs 115 to 133) was scheduled from 02.03.2020 to 05.03.2020. In the meanwhile, the CBI moved this Court against rejection of the request for deferring the trial and as per order dated 26.02.2020 in Crl.M.C No.1524 of 2020, further proceedings in the case was directed to be deferred for three months.

3. While the case was thus being adjourned, the Prosecutor moved an application on 26.08.2020, seeking to schedule the trial of the remaining witnesses and the learned Special Judge, overruling the objections raised by the accused, scheduled the examination of CWs 115 to 132 from 14.09.2020 to 09.10.2020. Aggrieved, the Crl.M.Cs are filed.

4. This Court, by order dated 14.09.2020 directed the trial to be deferred by two weeks, taking into account the fact that the defence counsel, the accused and some of the witnesses are senior citizens and that witnesses from outside the State will have to be in quarantine before giving evidence in court.

5. The learned Counsel for the petitioners submit that the

pandemic situation has worsened over the past two weeks and therefore, the trial should be deferred until the situation improves. It is submitted that under the prevailing circumstances, it is impossible for the Senior Counsel appearing for the first accused to travel from Ernakulam, where he is residing, to Thiruvananthapuram for conducting cross-examination of the prosecution witnesses.

6. The learned Standing Counsel for the CBI submits that SC No. 1114 of 2011 is one of the oldest pending criminal case in the State and that the situation arising from the spread of Covid-19 pandemic cannot be projected as a reason for further delaying disposal of the case. It is submitted that the Special Judge's Court is equipped with facility to conduct trial through video conferencing and that, if necessary, the defence counsel can conduct cross-examination of witnesses through the virtual mode.

7. The harsh reality of the threat of corona virus continuing for some more time has to be accepted by all. The functioning of the courts should continue, lest the justice delivery system will come to a grinding halt. To ensure such functioning, the stakeholders should adapt to alternative methods like online filing and video-conferencing. The issues arising due to the pandemic situation and the resultant lock down has been dealt with by the Apex Court and this Court through its directives. In those directives, video conferencing is one of the accepted modes to be resorted. Of course, the Honourable

Supreme Court has directed that evidence shall not be recorded through video conferencing, without mutual consent of both parties.

8. It would be worthwhile to note the following observations of the Honourable Supreme Court in **State of Maharashtra v. Praful B.Desai** [(2003) 4 SCC 601], rendered in the context of Section 284 Cr.P.C:

“20. Recording of evidence by video-conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can observe his or her demeanour. In fact the facility to playback would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of playback would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in court. All these objects would be fully met when evidence is recorded by video-conferencing. Thus no prejudice, of whatsoever nature, is caused to the accused. Of course, as set out hereinafter, evidence by video-conferencing has to be on some conditions.”

9. Resolution of the issue involved herein require balancing of various factors like the need to complete the trial in one of the oldest

criminal cases, the difficulties faced by the accused and their lawyers due to the pandemic situation, the availability of video conferencing facility in the Special Court and the directives issued by the Honourable Supreme Court and the High Court.

10. The learned Counsel for the petitioners point out that a staff member of the Special Judge's Court was tested positive for Corona virus in the recent past, resulting in the court being closed for two days. It is submitted that the situation may continue for some more time and that, in any event the earlier schedule having broken down, the trial will have to be rescheduled.

Taking all the above factors into consideration, the Crl.M.Cs are disposed as follows:

- (i) The trial in S.C.No.1114 of 2011 shall be rescheduled to the nearest possible date and examination of witnesses conducted on a day-to-day basis, as mandated by Section 309(1) Cr.P.C.
- (ii) If, for any reason, the Senior Counsel is unable to be physically present in court for conducting the cross-examination of the witnesses, permission shall be granted for conducting cross-examination through video conferencing mode, on appropriate request in that regard being made. In such event, a junior counsel with technical know-how shall be permitted to

be present in court to assist the Senior Counsel. All efforts shall be taken to maintain audio and video quality throughout the video-conferencing. Any technical snag occurring during cross-examination can be brought to the notice of the learned Special Judge.

Sd/-
V.G.ARUN, JUDGE

vgs

APPENDIX OF Cr1.MC 3911/2020

PETITIONER'S/S EXHIBITS:

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|--------------|--|
| ANNEXURE I | TRUE COPY OF THE ORDER IN CRL.M.A.
NO.1/2020 IN CRL.M.C. NO.1524/2020 DATED
26.02.2020. |
| ANNEXURE II | TRUE COPY OF CRL.M.P NO. 69/2020 DATED
26.08.2020 IN SC NO.1114/2011 ON THE FILE
OF THE HON'BLE ADDL. SESSION'S
JUDGE/SPECIAL JUDGE(SPE/CBI) ,
THIRUVANANTHAPURAM. |
| ANNEXURE III | TRUE COPY OF THE OBJECTION FILED BY THE
PETITIONER DATED 27.08.2020 IN
CRL.M.P.69/2020 IN SC NO. 1114/2011 ON THE
FILE OF THE HON'BLE ADDL.SESIONS
JUDGE/SPECIAL JUDGE(SPE/CBI) ,
THIRUVANANTHAPURAM. |
| ANNEXURE IV | TRUE COPY OF THE B DIARY IN SC NO.1114/2011
ON THE FILE OF THE HON'BLE ADDL. SESSION'S
JUDGE/SPECIAL JUDGE(SPE/CBI) ,
THIRUVANANTHAPURAM FROM 17.02.2020 TO
27.08.2020. |

APPENDIX OF CrI.MC 3923/2020

PETITIONER'S/S EXHIBITS:

ANNEXURE I	TRUE COPY OF THE ORDER IN CRL.M.A.NO.1/2020 IN CRL.M.C.NO.1524/2020 DATED 26/02/2020.
ANNEXURE II	TRUE COPY OF THE PETITION B6Y FILED BY CBI AS CRL.M.P.NO.69/2020 DATED 26/08/2020 IN S.C.NO.1114/2011.
ANNEXURE III	TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 27/08/2020.
ANNEXURE IV	TRUE COPY OF THE 'B DIARY' IN S.C.NO.1114/2011 ON THE FILE OF THE HON'BLE ADDL. SESSION'S JUDGE/SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM FROM 17/02/2020 TO 27/08/2020.