



2023:KER:34597

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 20<sup>TH</sup> DAY OF JUNE 2023 / 30TH JYAISHTA, 1945

TR.P(CRL.) NO. 35 OF 2023

IN SC 461/2022 OF ADDITIONAL DISTRICT COURT-I,MAVELIKKARA

PETITIONERS/ACCUSED NOS.1 TO 5:

- 1 NAISAM  
AGED 42 YEARS  
S/O SHAMSUDHEEN, MANNANCHERY PANCHAYATH,  
17TH WARD, AMBANAKULANGARA, MACHANAD COLONY,  
ALAPPUZHA DISTRICT, PIN - 688538.
- 2 AJMAL  
AGED 28 YEARS  
S/O ABDUL KHADER, CHIRAPPURATH, MANNANCHERY P.O,  
ALAPPUZHA DISTRICT, PIN - 688538.
- 3 ANOOP  
AGED 36 YEARS  
S/O ABDUL HAMEED,  
ALAPPUZHA MUNICIPAL, MULLATH WARD,  
MUNDVAADAKKAL HOUSE, ALAPPUZHA DISTRICT, PIN - 688538.
- 4 MUHAMMED ASLAM  
AGED 32 YEARS  
S/O JAMAL KUTTY, IRANGATT HOUSE, ALAPPUZHA MUNICIPAL  
KOTTAMKULANGRA WARD, ARYAD SOUTH VILLAGE,  
AVALOOKKUNNU P.O, ALAPPUZHA DISTRICT, PIN - 688006.
- 5 ABDUL KALAM @ SALAM  
AGED 35 YEARS  
S/O ABOOBACKAR, MANNANCHERY PANCHAYTH, 4TH WARD,  
PONNAD P.O, MANNAMCHERY VILLAGE, NJARAVELIL,  
ALAPPUZHA DISTRICT, PIN - 688538.
- 6 ABDUL KALAM  
AGED 43 YEARS  
S/O, ABDUL KAREEM,  
MANNANCHERY PANCHAYATH, 17TH WARD, ADIVAARAM,  
DARUSABEEL HOUSE, ALAPPUZHA DISTRICT, PIN - 688538.



- 7        SAFARUDHEEN  
         AGED 25 YEARS  
         S/O SALEEM, THAIVELIKKAM HOUSE, ALAPPUZHA MUNICIPAL,  
         MANNANCHERY PANCHAYATH, MULLATH WARD, MULLATH VALAPP,  
         ALAPPUZHA DISTRICT, PIN - 688538.
- 8        MANSHAD  
         AGED 33 YEARS  
         S/O MANSOOR, MANNANCHERY PANCHAYTH, MANNANCHERY  
         VILLAGE, UDUMBITHARA (H), ALAPPUZHA DISTRICT,  
         PIN - 688538.
- 9        JASEEB RAJA @ AKKU  
         AGED 34 YEARS  
         S/O RAJA, ALAPPUZHA MUNICIPAL, MULLATH WARD,  
         ALAPPUZHA WEST VILLAGE, KADAVATHUSSERY CHIRAYIL HOUSE,  
         ALAPPUZHA DISTRICT, PIN - 688538.
- 10       NAVAS  
         AGED 49 YEARS  
         S/O SAYD MUHAMMED, ALAPPUZHA MUNICIPAL, PALACE WARD,  
         VATTAKKATTUSSERY, ALAPPUZHA DISTRICT, PIN - 688538.
- 11       SHAMEER  
         AGED 37 YEARS  
         S/O SALEEM, THAYILL HOUSE, ARAYAD SOUTH PANCHAYATH,  
         10TH WARD AVALOOKKUNNU P.O, KOMALAPURAM VILLAGE,  
         ALAPPUZHA DISTRICT, PIN - 688006.
- 12       NASEER  
         AGED 50 YEARS  
         S/O MUHAMMED ABU, KANNARKKATT, NORTH ARYAD P.O,  
         ALAPPUZHA DISTRICT, PIN - 688521.
- 13       SAKER HUSSAIN  
         AGED 36 YEARS  
         S/O ABOOBACKER, CHAVADIYIL HOUSE, MANNAMCHERY  
         PANCHAYATH, 17TH WARD, MANNANCHERY VILLAGE,  
         ALAPPUZHA DISTRICT, PIN - 688538.



14 SHAJI @ POOVATHINGAL SHAJI  
AGED 47 YEARS  
S/O ABOOBACKER, THEKKE VELIYIL, MANNAMCHERY PANCHAYATH,  
17TH WARD , ALAPPUZHA DISTRICT, PIN - 688538.

15 SHERNAS ASHRAF  
AGED 38 YEARS  
S/O ASHRAF, ALAPPUZHA MUNICIPAL,  
MO WARD, MULLAKKAL VILLAGE, NOORUDHEEN PURAYIDATHIL,  
ALAPPUZHA DISTRICT, PIN - 688011.

BY ADVS.  
SUNNY MATHEW  
NIKITTA TRESSY GEORGE

**RESPONDENTS/COMPLAINANT & STATE:**

- 1 THE STATION HOUSE OFFICER  
ALAPPUZHA POLICE STATION, ALAPPUZHA DISTRICT,  
PIN - 688001.
- 2 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.

\*ADDL R3 LISHA JOHNSON  
W/O. RANJITH SREENIVAS, KUNNUMPURATH, M.O. WARD,  
ALAPPUZHA

\*ADDL R3 IS IMPEADED AS PER ORDER DATED 20.6.2023 IN  
(Crl.M.A.No.2 of 2023)

BY ADVS.  
SRI. SRUTHY N BHAT

SRI.GRACIOUS KURIAKOSE



2023:KER:34597

**Tr.P.(Crl.) No.35/2023**

**:4:**

SRI.P.VIJAYABHANU

SRI.VIPIN NARAYAN, SR. PP

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 20.06.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**"CR"**

**ORDER**

This petition is filed under Section 407 of the Code of Criminal Procedure, 1973 ("the Code" for the sake of brevity) with a prayer to transfer S.C.No. 461/2022 from the file of the Court of the Additional Sessions Judge - I, Mavelikkara to any other court in the State.

2. The grievance of the petitioner is that they reasonably apprehend that they will not get a fair trial if the Court of the Additional Sessions Judge - I, where the case is presently pending, is permitted to proceed with the case.

3. The contentions of the petitioners are as under:

The petitioners are the accused Nos. 1 to 15 in S.C.No. 461/2022 on the file of the Additional Sessions Judge, Mavelikkara. They are accused of having committed the murder of Adv. Renjith Sreenivasan, a practicing lawyer at Alappuzha. They face indictment for having committed offenses punishable under Section 120B, 143, 147, 148, and 302 r/w. Section 149 of the IPC.



4. The circumstances highlighted by the petitioners to seek transfer of the proceedings are as under:

- a) Though the case was posted for trial on 1.3.2023, certain prosecution records were not furnished to the accused, which include clone copies of CCTV footage, forensic reports, etc. Though this Court deferred the trial till 15.3.2023, the learned Sessions Judge posted the case on 15.3.2023 and issued summons to the witnesses. An unwanted urgency is being shown by the learned Sessions Judge.
- b) On March 15, 2023, the accused were summoned before the court, at which point they were instructed to remove their face masks. Subsequently, CW1—the deceased's mother, a 72-year-old woman who stands as the prosecution's key eyewitness—was invited to approach the accused's dock. The learned Sessions Judge proceeded to call each of the accused by name, requesting that they raise their hands in turn. This procedure was employed to enable CW1 to identify each defendant accurately. The above questionable procedure raises significant concerns regarding the impartiality of the learned Sessions Judge.



- c) On that very day, the learned Sessions Judge issued a warning, stating that should the witness encounter any difficulty in identifying the accused, they would be summoned to the vicinity of the witness stand. On the same day itself, Sri Wakarul Islam, the counsel who was appearing for all the accused, submitted Annexure-A3 detailing the events of the court proceedings wherein he raised his apprehension.
- d) The charge was read over to the accused on 12.12.2022. On 31.3.2023, on which day the case was posted, the learned Sessions Judge informed the counsel that certain clerical errors had crept into the court charge and the same had to be corrected. The learned counsel appearing for the accused was not informed beforehand that there were material changes in the charge. However, on 31.3.2023, the learned Sessions Judge read over an amended charge, which contained material changes. The accused were not heard on the amended charges.
- e) Even before the trial, copies of the FSL reports were not furnished to the accused. In the said circumstances, the accused Nos. 6, 10, and 15 filed a petition under Section 207 of the Cr.P.C. requesting that



copies of the FSL report be supplied to the accused. The said application was rejected, and the accused were directed to apply for a certified copy. The accused had to approach this Court and file Crl.M.C.No. 3349/2023 and this Court passed an interim order on 20.4.2023 recording the undertaking of the ADGP that copies of the report of the Forensic Science Lab would be furnished. Though the said order was produced and free copies of FSL reports were sought, the learned Sessions Judge, after mentioning that there is no direction to supply free copies, treated Annexure-A9 memo as an application, and only one certified copy of the FSL report was issued. The rest of the accused were not furnished with copies.

- f) The trial commenced on April 17, 2023. PW1 was called to the stand, and upon the prosecutor's request to the witness to identify the accused, the learned Sessions Judge took the unusual step of individually bringing each defendant to the witness dock for identification. Despite objections raised by the counsel representing the accused, the Sessions Judge continued with this unconventional method for identification, however after noting the objections raised





by the learned counsel. This fact would be evident from Annexure A 10.

- g) On 1.5.2023, Adv. M. Asokan, the lead lawyer for the defense, passed away unexpectedly. On 2.5.2023, the matter was reported to the learned Sessions Judge. However, even affording an opportunity to engage a new and experienced lawyer to conduct the trial, the case was posted to 3.5.2023, the day on which the funeral of the late Advocate was scheduled to be held. Though an application was filed to adjourn the trial, the same was dismissed by the learned Trial Judge. Thereafter another application was filed by accused Nos. 1, 4, 5 and 12 seeking adjournment of the examination of witnesses for a period of one month. The said application was also dismissed by Annexure-A14 order.

5. Highlighting the above circumstances, Sri. Sunny Mathew, the learned counsel, submits that the accused entertains a reasonable apprehension that the trial judge is prejudicially disposed against the petitioners and that the petitioners will not get a fair trial.



6. In view of the grievances raised by the petitioners, a copy of the transfer petition was forwarded to the learned Sessions Judge, and her report was sought.

7. In the report forwarded to this Court by the Sessions Judge, the following aspects are highlighted.

- a) The petitioners had earlier filed Tr.P. (Crl.) No.22/2022 before this court, and it was by judgment dated 14.9.2022 that this Court had withdrawn the case pending on the files of the Additional Sessions Court -II, Alappuzha, and had transferred the same to the Additional Sessions Court, Mavelikkara. The charge sheet and all records had been furnished to the accused even prior to the transfer.
- b) After receiving the files in the transferee court, the learned Special public prosecutor filed an application for sending the pen drives to get clone copies and also to get forensic reports with respect to some of the material objects.



- c) In the meantime, the court was served with three directions - two from the administrative side and one from the judicial side - to dispose of the case as expeditiously as possible. It was with a view to complying with the orders that the summons was issued to the witnesses.
- d) The proceedings were stayed by this court in terms of the interim order in Crl.M.C.No.1697/2023.
- e) After the case was received by the court on 10.10.2022, repeated adjournments were sought by the accused for appointing their own advocate. They continuously sought time to engage lawyers. In the said circumstances, Adv. Prem Deep K.P. was appointed as legal aid counsel.
- f) After hearing the prosecution and the accused, the charge was framed on 16.12.2022. Summons were issued to the witnesses from 1.3.2023 onwards.
- g) On 1.3.2023, Adv. Vakkar K.S. entered appearance for accused No. 15 and submitted before the court that the trial had been stayed.



However, no orders were produced. The case was accordingly adjourned to 3.3.2023 and thereafter to 16.3.2023 and then to 17.3.2023.

- h) On 17.3.2023, the interim order in Crl. M.C.No. 1697/2023 was produced. The case was accordingly posted on 31.3.2023.
- i) As there were clerical mistakes in the chargesheet with respect to the number of accused persons referred in some of the heads of charges, the charge was again read over to the accused, who pleaded not guilty. Thereafter, the case was posted to 5.4.2023. Pursuant to orders issued by this Court in Crl.M.C.No.1697/2023, the case was scheduled for trial to commence on and from 17.4.2023.
- j) The learned Sessions JUDGE has denied the assertion in the transfer petition that the court had asked the accused to remove their masks and to come near the witness box and that their names were called out loud in order to facilitate the identification by CW1. It is stated that the court was unaware of the identity of CW1 at that stage.



- k) It is further stated that while appearing in Court, each of the accused was attired in identical white clothing and wore white masks, concealing a significant portion of their faces, reaching up to their eyes. When the learned Sessions Judge requested that they remove their masks for individual identification, they were reluctant. Nevertheless, they were informed that during the examination of the witnesses, it would be necessary for them to remove their masks to facilitate identification by the witness.
- l) Concerning the identification of the defendants, the learned Sessions Judge has stated that CW1 was about 72 years of age and was having impaired vision. This made it difficult for her to identify the accused, who were positioned roughly 10 meters away. Their identity was obscured by masks and identical attire. Due to her inability to discern the faces of the accused, the accused, who was standing on the far right of the dock, was asked to come closer to the witness box. This was objected to by the counsel representing the accused. The accused insisted that all 14 defendants be brought to the witness box simultaneously.



However, the witness expressed her fear, voicing concerns that she might faint if all the accused approached her at once. The protocol adopted by the learned Sessions Judge has been documented in the deposition.

8. I have heard Sri Sunny Mathew, the learned counsel appearing for the petitioner, Sri Gracious Kuriakose, the learned ADGP, and Sri P. Vijayabhanu, the learned Senior Counsel who appeared for the victim.

9. I have carefully considered the submissions advanced, and I have gone through the report of the learned Sessions Judge placed before this Court.

10. The records will show that cognizance was initially taken by the Sessions Court Alappuzha. The accused No 1 to 5 had approached this Court and had filed Tr.P.(CrI) No.22/2022 seeking transfer of the case to Ernakulam. The request for transfer was made on the ground that the Advocates of the Alappuzha Bar and the Clerks refused to cooperate with the Trial. A learned Single Judge, by order dated 9.1.2023, withdrew the case from the Additional Sessions Court - II, Alappuzha, and the same was transferred to the Additional District Court, Mavelikkara. Specific directions were also issued to conclude the



trial as expeditiously as possible. The order passed by this Court was challenged before the Apex Court by filing S.L.P. (Crl) No.10703/2022 and though the Apex Court did not interfere with the order, the right of the accused to approach this Court seeking modification was left open. In the said circumstances, the accused Nos. 1 to 5 preferred Tr.P.(Crl.) No.86/2022 before this Court contending that the lawyers in Mavelikkara were also not cooperating with the trial. The prayer was to withdraw the case and transfer the same to any other competent court at Kottayam. This Court, while refusing to transfer the case, issued directions to the District Police Chief, Alappuzha, to ensure sufficient police assistance and deployment of police force during the trial in the court premises to ensure that the lawyers appearing for the petitioners are able to conduct the trial without any apprehension as to their safety. As the case had already been scheduled for trial to commence from 16.1.2023, this Court granted the accused breathing time to find out a counsel of their choice. The learned Sessions Judge was directed to defer the trial for a period of one month. In this background, the circumstances projected by the petitioners that the trial before the Sessions Judge, Mavelikkara, may not be fair and the same would result in a miscarriage of justice can be appreciated.



11. The first grievance projected is that the Sessions Judge proceeded to commence the trial without strictly complying with Section 207 of the Cr.P.C. and did not furnish the forensic reports. From the report of the learned Sessions Judge, it is clear that it is pursuant to orders issued by this Court that the case was transferred, and even prior to the transfer, the chargesheet and accompanying documents were served to the accused. It was while the case was pending before the Additional Sessions Judge, Mavelikkara, that the Special Public Prosecutor had filed the application for sending the pen drives to get clone copies and also the forensic reports in respect of some of the material objects. The learned Sessions Judge has reported that as some of the documents had already been received by the learned counsel appearing for the accused, they were asked to file an application specifying the document/report, a copy of which was required. However, the petitioners chose to approach this Court and filed Crl. M.C. No.1697/2023 contending that trial was being proceeded with without serving copies of records, and this Court had stayed the Trial. The learned counsel also had raised a contention that in spite of orders passed by this Court to serve copies of the reports, only one copy was served. I find that in the petition itself, the petitioners have admitted that one counsel was representing all the accused during the formal postings. Nothing





prevented the petitioners from requesting additional copies of the report. Having appreciated the rival submissions, I am of the considered opinion that there is no error in the procedure adopted by the learned Sessions Judge.

12. The next contention advanced by the learned counsel is that on 15.3.2023, the accused were asked to remove their face masks, and an opportunity was granted to CW1 to identify the accused. It is also alleged that the learned Sessions Judge had called out the names of the accused, and they were asked to raise their hands. The learned Sessions Judge has denied that such an incident had occurred on that day. The accused were all wearing identical white clothing and white masks covering a substantial portion of their face. It was with a view to see their face, that masks worn by them were ordered to be removed. However, the accused were reluctant. It is in the said circumstances that the learned Sessions Judge had informed the accused that they may have to remove their masks when the witnesses are in the box to give them an opportunity to identify the accused. It does not appear to me that the Sessions Judge has committed any error by informing the accused about the procedure that would follow when the witnesses are in the dock. As far as the presence of CW1 on 15.3.2023 is concerned, the learned Sessions Judge



has emphatically stated that she was unaware of the identity of the lady and her presence on that day. There is no reason to doubt the statement of the learned Sessions Judge as the subsequent events would reveal.

13. The next grievance highlighted by the learned counsel appearing for the petitioners is with regard to the procedure adopted by the learned Sessions Judge when CW1 was in the dock. A copy of the deposition of PW1 is placed before this Court. I shall extract the relevant portion.

The witness wants to see the accused persons, but she could not identify all those persons who are standing in the dock, which is nearly 10 meters away from the witness box. All the accused are standing in the dock with white coloured dresses and white face masks. The persons standing on the extreme left side was asked to come near the witnesses. But that was objected by the all the learned defence counsel appearing for the accused stating that all accused are to be asked to come near the witness box. Then the witness said “എല്ലാവരും കൂടി എന്റെ അടുത്തുവന്നാൽ എനിക്ക് പേടിയാണ്. ഞാൻ തല കുറങ്ങി വീണു പോകും.” (If everyone comes near me I will be terrified. I may faint.) Then the learned defense counsel requested for recording the said procedure, and that is recorded. (sic)

14. There is no case for the petitioners that the accused were asked to stand in chronological order. The person standing on the extreme left was called first. A reading of the deposition would show that the name of the accused was asked by the learned Sessions Judge only after the witness had



either identified or failed to identify the person. The procedure to randomly summon the accused to the dock while the aged mother of the deceased was giving evidence cannot be said to be a procedure that is irregular or illegal. Further, one cannot fail to note that PWs 1 to 3, who are the occurrence witnesses, were unable to identify the accused by their name or in the rank in the charge sheet. This fact would show that the highlighted grievance that CW1 was summoned on 15.3.2023, that she was granted an opportunity to identify the accused, and that the accused by their name was summoned to the witness box to facilitate identification are without merit.

15. The next grievance projected by the learned counsel is that the charge was altered without notice. The learned Sessions Judge has reported that on 17.3.2023, the accused had produced the order of stay in Crl. M.C.No.1697/2023. The case was accordingly posted on 31.3.2023. As some clerical mistakes were noted, with respect to the number of accused persons referred to in some of the heads of charges, the charges were again read over, and all of them pleaded not guilty. It was thereafter that the case was posted on 5.4.2023, awaiting orders of this Court. Sri. Sunny Mathew has highlighted that the charge which is read over contained material changes. However, the



fact remains that under Section 216 of the Cr.P.C., the court may alter or add to any charge at any time before judgment is pronounced. The only requirement is that such alteration or addition shall be read and explained to the accused. The Code also stipulates that if the alteration or addition to a charge is such that proceeding immediately with the trial is not likely to prejudice the accused in his defense or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. In the case on hand, the learned Sessions Judge has followed the correct procedure, and I find no irregularity or illegality in the same.

16. The next grievance is with regard to the refusal of the learned Sessions Judge to adjourn the trial owing to the unexpected demise of the lead counsel appearing for the accused. There is some force in the submission of the learned counsel that instead of granting breathing time to the accused to engage another lawyer, the learned Sessions Judge posted the case on 3.5.2023. In her report, the learned Sessions Judge has highlighted that she was already in receipt of three directions, two from the administrative side and one from the judicial side, to dispose of the case as expeditiously as possible.



The case involves the murder of a lawyer and has garnered much media attention. The learned Sessions Judge is also working under a great deal of pressure, and it is her duty to manage her court in the most efficient manner and to conclude the trial. Ideally, the learned Sessions Judge ought to have granted some more time to enable the accused to engage a new lawyer. However, that was not done. The same cannot be a reason to conclude that the learned Sessions Judge is prejudiced against the advocate. The fact remains that the petitioners have approached this Court and obtained a stay of proceedings. Much time has elapsed thereafter.

17. Much argument was advanced by the learned counsel that the failure of the learned Sessions Judge to adhere to a procedure hitherto followed creates an apprehension of bias on the part of the Judge. The learned counsel has forcefully argued, relying on the judgment of the Apex Court in **State of Punjab v. Davinder Pal Singh Bhullar and Ors.**<sup>1</sup>, that the question is not whether the Judge is actually biased or not, but the question is whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. However, the Apex Court has also held that the allegations of judicial bias are required to be

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<sup>1</sup> [2011 (14) SCC 770]



scrutinized, taking into consideration the factual matrix of the case in hand. It is also settled that prayer for transfer can be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively, and without any bias.

18. In **Maneka Sanjay Gandhi v. Rani Jethmalani**<sup>2</sup>, speaking for a Bench of three learned Judges of the Apex Court, V.R. Krishna Iyer, J. observed as under

"2. 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 hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."



19. In **Abdul Nazar Madani v. State of T.N.**<sup>3</sup>, the Hon'ble Supreme Court, while dealing with the application for transfer, has expressed the following view in paragraph No. 7, which reads as under:

"7. ... 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. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."

20. In **Ram Chander v. State of Haryana**<sup>4</sup>, it was observed by the Hon'ble Apex Court that if a criminal court is to be a effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. The court, the prosecution, and the defense must

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<sup>3</sup> [(2000) 6 SCC 204]

<sup>4</sup> AIR 1981 SC 1036



work as a team whose goal is justice, a team whose captain is the judge.

21. In **Nahar Singh** (supra), it was observed by the Apex Court that while it is true that Judges are human beings, not automatons, but it is imperative for a judicial officer, in whatever capacity he may be functioning, that he must act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision, which according to his conscience is the right one on the basis of materials placed before him. There is no exception to this imperative.

22. In **Berely v. Xavier**<sup>5</sup>, this Court has noticed an increasing tendency to file such transfer petitions on the basis of unfounded allegations against Criminal Courts. This Court observed that such actions have a demoralizing effect on the criminal judiciary and seriously affect the administration of criminal justice. No person should contribute anything to the demoralization of the criminal judiciary. Apparently, the threat of filing a transfer petition is being held as Damocles's sword against judicial officers.

23. The Bench and the Bar must harmoniously collaborate to ensure a fair trial, a fundamental right of all the stakeholders. In the pursuit of justice,

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<sup>5</sup>

[1986 KLT 1078]





mutual respect and cooperation between the Bench and the Bar are indispensable. Their relationship should be cordial, with each complementing the other. To fulfill the constitutional mandate, the Bench and the Bar must conduct themselves in a manner that upholds the esteemed prestige and integrity of the judiciary. Even the slightest disharmony jeopardizes the very foundation of the system, with potentially disastrous consequences. We need to acknowledge that the mounting backlog of cases has stretched the dockets to their limits, creating a stressful environment for both the Bench and the Bar. The trial judge, far from being a passive arbiter, is expected to be an active participant in the process. Our courts have consistently affirmed that a trial judge who lacks the passion to unearth the truth and dispense justice becomes a liability to the system. A trial judge must remain committed to their mission within the criminal justice delivery system. Counsel defending the accused must recognize this truth and wholeheartedly cooperate with the trial. The utmost standards of propriety, decency, and self-respect must be upheld, ensuring that the courtroom never becomes a platform for disseminating hatred, discord, or dissent. The judicial officers should conduct themselves in a manner that precludes any perception of bias.



24. Having considered the arguments of both parties and the report of the learned Sessions Judge, I find that the contention of the petitioners that the trial before the Additional Sessions Judge, Mavelikkara, may not be fair and would result in a miscarriage of justice, is misplaced and cannot be accepted. This Court is unable to infer that there is a reasonable apprehension of bias or deviation from the procedure, as alleged in the petition.

25. I find no merit in this petition for transfer, and this petition is dismissed.

**Sd/-**

**RAJA VIJAYARAGHAVAN V.,  
JUDGE**

*PS/19/6/2023*



**APPENDIX OF TR.P(CRL.) 35/2023**

**PETITIONER ANNEXURES**

Annexure A1	A TRUE COPY OF THE ORDER DATED 28.02.2023 PASSED BY THIS HON'BLE COURT.
Annexure A2	A TRUE COPY OF THE PROCEEDING DATED 03.03.2023 OF THE FIRST ADDITIONAL SESSIONS COURT, MAVELIKKARA.
Annexure A3	A TRUE COPY OF THE AFFIDAVIT FILED BY ADV. WAKARULISLAM.
Annexure A4	A TRUE COPY OF THE PROCEEDINGS OF LEARNED TRIAL JUDGE DATED 27.03.2023 AND ON 31.03.2023.
Annexure A5	A TRUE COPY OF THE COURT CHARGE DATED 16.12.2022.
Annexure A6	A TRUE COPY OF THE CHARGE DATED 31.03.2023.
Annexure A7	A TRUE COPY OF THE ORDER DATED 12.04.2023 IN CRL.M P NO.478/2023 IN S.C NO.461/2022 PASSED BY THE ADDITIONAL SESSIONS JUDGE-I, MAVELIKKARA.
Annexure A8	A TRUE COPY OF THE ORDER DATED 20.04.2023 IN CRL.M.C NO. 3349/2023 PASSED BY THIS HON'BLE COURT.
Annexure A9	A TRUE COPY OF THE MEMO DATED 26.04.2023 BEFORE THE TRIAL COURT.
Annexure A10	A TRUE COPY OF THE DEPOSITION OF PW1 IN S.C 461/2022.



2023:KER:34597

**Tr.P.(Crl.) No.35/2023**

**:28:**

- Annexure A11      A TRUE COPY OF THE PETITION IN CRL.M.P NO.  
577/2023.
- Annexure A12      A TRUE COPY OF THE ORDER DATED 02.05.2023  
IN CRL.M.P NO.577/2023 IN S.C NO.461/2022.
- Annexure A13      A TRUE COPY OF THE PETITION IN CRL.M.P  
NO.580/2023 IN S. C NO.461/2022 FILED BY  
THE ACCUSED NO.S 1,4,5 AND 12.
- Annexure A14      A TRUE COPY OF THE ORDER DATED 03. 05.2023  
IN CRL.M.P NO.580/2023 IN S. C NO.461/2022  
PASSED BY THE ADDITIONAL SESSIONS JUDGE-I,  
MAVELIKKARA.