2024:KER:18009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 6TH DAY OF MARCH 2024 / 16TH PHALGUNA, 1945

OP(CRL.) NO. 108 OF 2024

CRIME NO.5/2020 OF ATTINGAL EXCISE CIRCLE OFFICE, THIRUVANANTHAPURAM

S.C.NO.82 OF 2021 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.3:

GOKUL RAJ
AGED 26 YEARS
S/O. RAJAN, CHITHIRA HOUSE, NEAR GIRLS' HIGH SCHOOL, ATTINGAL, CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DISTRICT, PIN - 695101

BY ADV NIREESH MATHEW

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031

BY SR. PUBLIC PROSECUTOR SRI. K DENNY DEVASSY

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 15.2.2024, THE COURT ON 06.03.2024 DELIVERED THE FOLLOWING:

2024:KER:18009

'C.R'

A. BADHARUDEEN, J.

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O.P(Crl.) No.108 of 2024

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Dated this the 6th day of March, 2024

J U D G M E N T

This Original Petition (Crl.) is one filed under Article 227 of the Constitution of India and the petitioner is the 3rd accused in S.C.No.82/2021 on the files of the Narcotic Drugs and Psychotropic Substances Act Special Court (Additional Sessions Court-IV), Thiruvananthapuram.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the State.

3. In this petition the petitioner seeks the following reliefs:

> *"i) Direct the Additional District and Sessions Court-IV, Thiruvananthapuram to dispose of S.C.No.82/2021 within a period 6 months taking into account of the illness of the Counsel for the petitioner as evident from Exhibit P4 Medical Certificate.*
>
> *ii) Grant such other and further reliefs as this Hon'ble*

Court may deem fit and proper in the facts and circumstances of the case.

iii) dispense with the filing of the translation of vernacular documents."

4. The learned counsel for the petitioner submitted that the petitioner has been arrayed as 3rd accused in S.C.No.82/2021, on alleging commission of offences punishable under Section 20(b)(ii)(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act (`NDPS Act' for short hereinafter). According to the learned counsel for the petitioner, though the earlier bail applications filed by the petitioner were dismissed as per Ext.P1 and P2 orders, subsequently the petitioner as well as the 4th accused were released on bail as per Ext.P3 order of this Court. It is submitted that, at the time when Ext.P2 order was passed, this Court directed the trial court to dispose of the case within a period of 3 months from the date of receipt of a copy of this order. Thereafter, in obedience to the directions of this Court the trial court proceeded with the trial and the petitioner was defended by

Advocate Celine Wilfred of Trivandrum Bar. Though the lawyer representing the petitioner sought adjournment for a period of 6 months to conclude the trial pointing out her illness, the trial court not was inclined to grant the same.

5. The report from the learned Special Judge was called for and it was reported by the learned Special Judge that in accordance with the direction issued by this Court trial started in this case and prosecution examined PW1 to PW18 and Exts.P1 to P94 and MO1 to MO21 were marked. Now the case stands posted for examination of CW24, the one and only witness remaining on the side of the prosecution. It was also reported that by the time Advocate Celine Wilfred expired.

6. So the crux of the matter is adjournment sought for on the ground of illness of the lawyer, who subsequently died. In this connection, I am inclined to address the question as to what extent an Advocate has right to seek adjournment of trial, according to his/her convenience?

(a) Procedure under Code of Civil Procedure:

7. Order XVII pertains to adjournment of trial. Rule 1 states that if sufficient cause is shown, the Court may adjourn the hearing of a suit from time to time and such reasons shall be recorded in writing. However, the proviso to Rule 1 states that, in any case, no more than three adjournments shall be granted to a party during the hearing of the suit. Rule 2 of Order XVII states that costs may be imposed on the party seeking adjournment. Rule 2(b) further states that no adjournment shall be granted at the request of the party except where the circumstances are beyond the control of the party.

8. Advocates appearing for the parties usually seek adjournment for trial and hearing for multiple reasons. Order XVII of the C.P.C. governs adjournments in civil cases and Section 309 of the Cr.P.C. deals with powers of the criminal court to postpone or adjourn proceedings. **Rule 2(c) of Order XVII** provides that the pleader of a party is engaged in another Court shall not be a ground for adjournment. Furthermore, **Rule 2(d) of Order XVII** provides that where the illness of a pleader or his inability to conduct the

case for any reason is put forwarded as a ground for adjournment the Court shall not grant such adjournment, unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

9. As regards the increased adjournments in trials, the Hon'ble Supreme Court in the decision in ***Shiv Cotex v. Tirgun Auto Plast (P) Ltd. and Others*** reported in **[(2011) 9 SCC 678]** held as under:

> ***"14.*** *Second, and equally important, the High Court upset the concurrent judgment and decree of the two courts on misplaced sympathy and non-existent justification. The High Court observed that the stakes in the suit being very high, the plaintiff should not be non-suited on the basis of no evidence. But who is to be blamed for this lapse? It is the plaintiff alone. As a matter of fact, the trial court had given more than sufficient opportunity to the plaintiff to produce evidence in support of its case. As noticed above, after the issues were framed on 19-7-2006, on three occasions, the trial court fixed the matter for the plaintiff's evidence but on none of these dates any evidence was let in by it. What should the court do in such circumstances? Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?*

15. *It is sad, but true, that the litigants seek-and the courts grant-adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.*

16. *No litigant has a right to abuse the procedure provided in CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in the proviso to Order 17 Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 CPC should be maintained. When we say "justifiable cause" what we mean to say is, a cause which is not only "sufficient cause" as contemplated in sub-rule (1) of Rule 1 of Order 17 CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these*

persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive.

17. *However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit."*

10. The COVID-19 pandemic and the restrictions thereof gave pleaders and parties legitimate reasons to seek adjournments, since there were multiple government orders restricting symptomatic people from leaving their houses and entering public life. That apart, Courts were hesitant to permit pleaders in poor health from appearing before them. However, due to effective control of the pandemic, COVID symptoms ceased to be grounds for adjournment.

11. In the decision in ***Rafiq & anr. v. Munshilal & anr.***, reported in [1981 AIR 1400], the Apex Court held as under:

"3. The disturbing feature of the case is that under our present

adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A. K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A. K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned

advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A. K. Sanghi."

(b) Procedure under Criminal Procedure Code:

12. Section 309 confers the power to postpone or adjourn proceedings. It states that every inquiry or trial shall continue from day-to-day until all the witnesses in attendance have been examined, unless the Court records reasons for adjourning it beyond the following day. The proviso to the section states that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party. No

adjournment shall be granted on the ground that the pleader of a party is engaged in another Court. The explanation to S.309 states that adjournment or postponement may be granted in appropriate cases on terms which may include payment of costs by the prosecution or the accused.

13. The Hon'ble Supreme Court has held in the decision in ***Chaudhary v. State (Delhi Administration)*** reported in [1984 AIR 618] as under:

> *"2. We think it is an entirely wholesome practice for the trial to go on from day-to-day. It is most expedient that the trial before the Court of a Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. It is necessary to realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which makes an adjournment inevitable, proceed de die in them until the trial is concluded."*

14. In the decision in ***N.G.Dastane v. Shrikant S.Shivde & another*** reported in [(2001) 6 SCC 135], the Apex Court dealt with definition of `misconduct' under Section 35(1) of the Advocates Act, 1961 and speaking for the 3 Bench his Lordship Honourable Justice K.T.Thomas, who penned the judgment, discussed the same in paragraphs 15 to 23 as extracted hereunder:

> "***15.*** *Chapter V of the Advocates Act, 1961 (for short "the Act") contains provisions for dealing with the conduct of advocates. The word "misconduct" is not defined in the Act. Section 35 of the Act indicates that the misconduct referred to therein is of a much wider import. This can be noticed from the wording employed in sub-section (1) of that section. It is extracted herein:*
>
> > *"35. (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee."*
>
> ***16.*** *The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to*

help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency if it infringes such norms or standards and it can be regarded as misconduct.

***17.** In Black's Law Dictionary "misconduct" is defined as:*

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour; its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

***18.** The expression "professional misconduct" was attempted to be defined by Darling, J., in A Solicitor, ex p, Law Society, in re in the following terms:*

> *"If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct."*

***19**. In R.D. Saxena v. Balram Prasad Sharma this Court has quoted the above definition rendered by Darling, J., which was subsequently approved by the Privy Council in George Frier Grahame v. Attorney-General and then observed thus: (SCC p. 275, para 19)*

> *"19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression 'misconduct, professional or otherwise'. The word 'misconduct' is a relative term. It has to be considered with reference to the*

subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

20. *An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct.*

21. *In State of U.P. v. Shambhu Nath Singh this Court has deprecated the practice of courts adjourning cases without examination of witnesses when such witnesses are in attendance. We reminded the courts thus:*

"We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy

cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

22. *When the Bar Council in its wider scope of supervision over the conduct of advocates in their professional duties comes across any instance of such misconduct it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by mala fides, the Bar Council a has a statutory duty to forward the complaint to the Disciplinary Committee.*

23*. In Bar Council of Maharashtra v. M.V. Dabholkar a four-Judge Bench of this Court had held that the requirement of "reason to believe" cannot be converted into a formalised procedural*

roadblock, it being essentially a barrier against frivolous enquiries."

15. The Hon'ble Supreme Court in ***R.D.Saxena v. Balaram Prasad Sharma*** reported in [AIR 2000 SC 2912], which defining the term 'misconduct' held in paragraph Nos.19 to 23, as under:

"19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

20. Corpus Juris Secundum, contains the following passage at page 740 (vol. 7) :

"Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the Court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

21. The expression "professional misconduct" was attempted to be defined by Darling, J., in In Re A Solicitor ex parte the Law Society, (1912) 1 KB 302, in the following terms:

"If it is shown that an Advocate in the pursuit of his profession has done something with regard to it which would be reasonably

regarded as disgraceful or dishonourable by his professional brethern of good repute and competency, then it is open to say that he is guilty of professional misconduct."

22. In this context it is to be mentioned that the aforesaid definition secured approval by the Privy Council in George Frier Grahame v. Attorney General, Fiji, AIR 1936 PC 224. We are also inclined to take that wide canvass for understanding the import of the expression "misconduct" in the context in which it is referred to in Section 35 of the Advocates Act.

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct."

16. In the decision in ***Doongar Singh & Ors. v. State of Rajasthan*** reported in [2017 KHC 6819 : 2018 (1) KHC SN 10 : 2018(1) KLD 170 : 2017 (13) SCALE 752 : 2018(1) KLT 629 : 2018 (13) SCC 741] also, the Apex Court addressed the examination of witnesses within the ambit of Section 309 of Cr.P.C and held that the trial courts conducting criminal trial to be mindful of not giving adjournment after commencement of the evidence in serious criminal cases and eyewitnesses must be examined by the prosecution as soon as possible. In the said decision, the Apex

Court also directed the High Courts to issue appropriate directions to the trial courts for compliance. In paragraph 13 it was concluded as under:

> *"13. To conclude:*
>
> *(I) The Trial Courts must carry out the mandate of S.309 of the Cr.P.C as reiterated in judgments of this Court, inter alia, in [2001 KHC 377 : 2001 (4) SCC 667 : 2001 (2) KLT 159 : 2001 SCC (Cri) 798 : AIR 2001 SC 1403 : 2001 All LJ 835 : 2001 CriLJ 1740],* ***State of U.P v. Shambhu Nath Singh and Others****; [2002 KHC 1356 : 2002 (7) SCC 334],* ***Mohd. Khalid v. State of W.B****; [2015 KHC 4054 : 2015(3) SCC 220 : 2015 (1) KHC SN 17 : 2015 (1) KLD 399 : 2015 (1) KLT SN 114 : AIR 2015 SC 1206 : 2015 CriLJ 1442],* ***Vinod Kumar v. State of Punjab***
>
> *(1) KLT SN 114 : AIR 2015 SC 1206 : 2015 CriLJ 1442.*
>
> *(ii) The eye-witnesses must be examined by the prosecution as soon as possible.*
>
> *(ii) Statements of eye -witnesses should invariably be recorded under S.164 of the Cr.P.C as per procedure prescribed thereunder."*

17. In the decision in ***Lt. Col. S.J.Chaudhary v. State (Delhi Administration)*** reported in [AIR 1984 SC 618], the Apex Court held as under:

> ***(A) Criminal P.C.(2 of 1974), S.231-Sessions trial – Must***

proceed de die in diem until concluded.

The trial before the Court of a Session must proceed and be dealt with continuously from its inception to its finish. It will be in the interest of both prosecution and the defence that the trial proceeds from day to day. Sessions cases must not be tried piecemeal. Once the trial commences, he must except for a very pressing reason which makes an adjustment inevitable, proceed de die in diem until the trial is concluded."

18. In the decision rendered by a Division Bench of the Karnataka High Court, after considering the decision in ***R.D.Saxena****'s case (supra),* in paragraph Nos.6 and 7, observed as under:

"6. As could be seen from the observations made in the two decisions extracted above, a party to a litigation has an absolute right to appoint an advocate of his choice, to terminate his services, and to appoint a new advocate. The party has the freedom to change his advocate any time and for whatever reason. However, fairness demands that the party should inform his advocate already on record, though this is not a condition precedent to appoint a new advocate.

7. There is nothing known as irrevocable vakalatnama. The right of a party to withdraw vakalatnama or authorization given to an advocate is absolute. Hence, a party may discharge his advocate any time, with or without cause by withdrawing his vakalatnama

> *or authorization. On discharging the advocate, the party has the right to have the case file returned to him from the advocate, and any refusal by the advocate to return the file amounts to misconduct under S.35 of the Advocates Act, 1961. In any proceeding, including civil and criminal, a party has an absolute right to appoint a new Advocate. Under no circumstance, a party can be denied of his right to appoint a new advocate of his choice. Therefore, it follows that any rule or law imposing restriction on the said right can't be construed as mandatory. Accordingly, Courts, Tribunals or other authorities shall not ask for 'no objection' of the advocate already on record, to accept the vakalatnama filed by a new advocate."*

A plain reading of the above mentioned provisions of law in the C.P.C. and the Cr.P.C. and the case law on the point of adjournments, if the pleader/advocate does not prepare for the case and seeks an adjournment, it can lead to costs being imposed on his/her party and to be realised from the pleader/advocate.

19. Order XVII Rule 1(e) of C.P.C. provides that where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court is not

ready to examine or cross-examine the witness, the Court may, if it thinks fit record the statement of witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of witness, as the case may be, by the party or his pleader not present or not ready as aforesaid. Adjournments in criminal cases also shall be in compliance with Section 309 of the Cr.P.C. Thus, on no stretch of imagination convenience of a party or his lawyer can interdict the process of trial or hearing in civil or criminal cases, subject to limited exceptions already stated. Further, the courts' convenience supersedes the convenience of party/ies or his/their lawyers, in the matter of trial and hearing of cases. Therefore, the Court has a legal duty to start trial in accordance with the convenience of the court subject to the conditions provided in Order XVII of the C.P.C and Section 309 of the Cr.P.C. and to hear and dispose of cases, and such power cannot be interdicted merely on the ground of inconvenience of the party/ies or his/their lawyers and if such a proposition is accepted, the day-to-day trial envisaged under Section 309 of the Cr.P.C and

the mandate of Order XVII of the C.P.C would become redundant and law does not permit the same. However, Courts can consider adjournment or postponement in accordance with law, as herein above extracted in appropriate cases and on payment of cost considering the facts of the case.

20. Before parting, I am forced to refer the present scenario and the menace of adjournments which would stand in the way of disposing cases in a time bound manner, before the trial courts, appellate courts and the High Court, tantamounts to denial of justice to the real aggrieved persons. Since I am dealing with Second Appeals, Execution Second Appeals, Miscellaneous Second Appeals and Regular Second Appeals, I had a glimpse on the total pendency of matters during the month of February, 2024. Registry placed statements showing the total pendency which is 12,536. The year wise pendency is extracted hereunder:

#	CaseType	Description	For	1980	1994	1995	1996	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1	ESA	8.00 Execution Second Appeals	A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	Ex.SA	8.00 Execution Second Appeals	A	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	7	1	8	7	3	6	6	5	5	5	2	0
3	MSA	9.00 Miscellaneous Second Appeals	A	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	1	1	0	0	1	7	1	0	0	2	2	0
4	MSA(FS)	9.01 MISCELLANEOUS SECOND APPEAL (FOOD SAFETY AND STANDARDS ACT)	A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	1	1	1	0	1	0	0
5	RSA	6.00 Second Appeals/Regular Second Appeals	A	0	0	0	0	0	0	0	0	0	0	8	13	6	1	3	2	3	1	5	6	0	1	9	1	3	27	106	145	225	107	0
6	SA	6.00 Second Appeals/Regular Second Appeals	A	0	0	0	0	0	0	1	2	4	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	ESA	8.00 Execution Second Appeals	H	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
8	Ex.SA	8.00 Execution Second Appeals	H	0	0	0	0	0	0	0	0	0	0	3	0	1	0	0	2	3	1	2	3	5	5	4	6	2	7	8	3	1	4	1
9	MSA	9.00 Miscellaneous Second Appeals	H	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	2	0	0	1	0	4	0	2	2	14	6
10	MSA(FS)	9.01 MISCELLANEOUS SECOND APPEAL (FOOD SAFETY AND STANDARDS ACT)	H	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	6	1	4	7	7	3	3	0
11	RSA	6.00 Second Appeals/Regular Second Appeals	H	0	0	0	0	0	0	0	0	0	92	107	159	175	148	293	355	370	386	627	816	811	898	929	991	1015	978	659	560	493	504	95
12	SA	6.00 Second Appeals/Regular Second Appeals	H	1	1	1	1	3	5	29	37	66	43	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
				1	**1**	**1**	**1**	**3**	**5**	**30**	**39**	**73**	**141**	**119**	**173**	**183**	**149**	**296**	**360**	**376**	**388**	**634**	**833**	**820**	**913**	**952**	**1014**	**1035**	**1028**	**786**	**722**	**732**	**636**	**102**
		FINAL COUNT																																**12546**

21. In so far as the Second Appeals are concerned, in admitted matters, detailed hearing is absolutely necessary to address the substantial question/s of law formulated. Therefore, the Judge also should have to study the case thoroughly to hear and dispose of the matters in a time bound manner. At present, even though the Judge studies the cases, by halting on sleepless nights and expresses willingness to dispose of the cases, after hearing both sides with a view to reduce the pendency, some Advocates are not co-operating with the Court and they are seeking adjournment on various grounds and `illness' is their last weapon. I have been granting such adjournments in plenty and the proceedings of this Bench would speak for the same. No doubt, some adjourment requests on the ground of illness are genuine, but majority are not. In such situation, it is very difficult to identify the genuine requests on the ground of illness. It is shocking to note that nobody is cared of the position of the Judge, who is prepared and ready to hear a matter posted for hearing with endorsement `hearing finally', 'last chance' and 'for disposal'. In such matters also, some advocates seek

adjournment again and invariably the ground for adjournment is 'illness'. Then, the Judge would be put into dilemma and dejection, because the Judge feels that, his hard work giving a go-by to sound sleep being spoiled.

22. Even though lawyers are duty bound to co-operate with the Court in the matter of disposal and that is what is intended by co-operation between the Bar and the Bench in letter and spirit, time bound disposal of cases could not be materialized because of unnecessary adjournments. This is the biggest menace and the same is the reason for huge pendency of matters before all courts. In this connection, I am inclined to have an arithmetical glimpse of the present scenario, in as much as second appeals are concerned. The position is not much different in other categories of cases which I dealt earlier.

23. As I have already pointed out, in order to dispose of Second Appeals, study of matters by the Judge prior to detailed hearing is necessary. So, the number of cases a Judge can dispose

of may be 4 or 5, per day. The total number of working days in an year as far as the High Court is concerned is 210 days. If a Judge decides to dispose of 4 Second Appeals per day without fail, then also the total number of days required to dispose of these cases, (excluding the expected filing) is 3134 days, ie., 14.92 years (calculated year on the rate of 210 working days). When, 4 newly filed cases added daily 30 years period also not sufficient to dispose of the second appeals pending before this Court.

24. If a Judge is able to dispose of 5 cases per day, then also the number of days required to clear the pendency is 2507, which is equivalent to 11.93 years. When, 5 newly filed cases added daily 24 years period also not sufficient to dispose of the second appeals pending before this Court. If this is the scenario, how could this pendency be reduced without co-operation of the lawyers, by avoiding unnecessary adjournments.

25. As I have already mentioned, since some Advocates are regularly getting matters adjourned on the ground of

illness and this Court noticed by naked eye that those submissions were wrong and made for the purpose of getting adjournments, (the details of the said notice are not being disclosed for the time being) when adjournment will be sought on the ground of illness, that too, after repeated adjournments when the case if posted for hearing and disposal 'finally' or a 'last chance', this Bench is not in a position to identify genuine requests of lawyers, who actually suffering illness or infirmity. It is worth to mention that a section of lawyers have been co-operating with this Court in the matter of timely disposal of cases and their attitude is appreciable.

26. Coming back, in this matter, the learned counsel appeared for the petitioner is no more, taking note of the interest of fair trial and to provide an opportunity for the accused to defend him properly, a reasonable time in this case can be granted in the interest of justice. Therefore, I am inclined to allow this Original Petition as under:

In the result, the Original Petition(Crl.) stands allowed

directing the learned Special Judge to provide two weeks' time from the date of receipt of a copy of this judgment for the petitioner to appoint a lawyer of his choice, so as to facilitate him to study the case, and to continue the trial thereafter on a convenient day and complete the trial within a period of six weeks thereafter.

Ordered accordingly.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(CRL.) 108/2024

PETITIONER'S EXHIBITS

EXHIBIT P1	**TRUE PHOTO COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN B.A NO.7864/2021 DATED 28.10.2021**
EXHIBIT P2	**TRUE PHOTO COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN B.A NO.9752/2022 DATED 08.02.2023**
EXHIBIT P3	**TRUE PHOTO COPY OF THE COMMON ORDER PASSED BY THIS HON'BLE COURT IN B.A NOS.6339/2022 AND 4079/2023 DATED 31.05.2023**
EXHIBIT P4	**TRUE PHOTO COPY OF THE MEDICAL CERTIFICATE ISSUED FROM JUBILEE MEMORIAL HOSPITAL, THIRUVANANTHAPURAM DATED 02.02.2024**

RESPONDENT'S EXHIBITS NIL

//TRUE COPY//

PA TO JUDGE