

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 01ST DAY OF OCTOBER 2020 / 9TH ASWINA, 1942

Cr1.MC.No.4343 OF 2020(C)

AGAINST THE ORDER/JUDGMENT IN SC 457/2019 OF ADDITIONAL DISTRICT
COURT, KOTTAYAM

PETITIONER/S:

BISHOP FRANCO MULAKKAL
AGED 56 YEARS
S/O. IPPUNNI, BISHOP HOUSE, CIVIL LANE, JALANDHAR
CITY - 1440001, PUNJAB STATE,

BY ADVS.
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENT/S:

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

OTHER PRESENT:

SPL.PP.S.AMBIKA DEVI (FOR ATROCITIES AGAINST WOMEN
AND CHILDREN)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
01.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.G.ARUN, J.

CRL.M.C.No.4343 of 2020

Dated this the 1st day of October, 2020

O R D E R

Petitioner is the sole accused in S.C.No.457 of 2019 pending on the files of the Court of the First Additional Sessions Judge, Kottayam. The case originated from Crime No.746 of 2018 of Kuravilangad Police Station based on a complaint that, the petitioner, the Bishop of Jalandhar Diocese, Punjab under the Latin Catholic Sabha, had committed rape and unnatural sex on the *de facto* complainant, a nun at the Saint Francis Mission Home, Kuravilangad. The offences alleged against the petitioner are those punishable under Sections 342, 376(2) (k), 376(2)(n), 376C(a), 377 and 506(ii) of IPC. Upon committal of the case to the Sessions Court, the petitioner moved an application for discharge under Section 227 Cr.P.C, which was dismissed on 11.3.2020. Aggrieved, the petitioner preferred a Criminal Revision Petition before this Court and the revision was dismissed on 7.7.2020. Thereupon, the petitioner moved a Special Leave Petition before the Honourable Supreme Court, which got dismissed on 5.8.2020. Thereafter, the Sessions Case was listed for trial to 16.9.2020.

2. On 16.9.2020, CW1, the victim, was examined in chief and the chief examination being completed, C.M.P.No.1101 of 2020 was filed by the petitioner's counsel on 17.9.2020, requesting to defer the cross

examination of CW1 until the Covid-19 pandemic is brought under control or to adjourn the cross-examination by at least two months. The reason for making such prayer was the inability of the Senior Counsel appearing for the petitioner to be at Kottayam for conducting the cross-examination. It was stated in the petition that the Senior Counsel is nearing 73 years and is suffering from various age related ailments and because of the pandemic, is confined to his residence at Ernakulam.

3. The petition was disposed of by the trial court by adjourning the cross-examination by two weeks and posting the case to 5.10.2020, with the rider that no further request for adjournment will be entertained.

4. Sri.Philip T.Varghese, learned counsel for the petitioner, submits that, while refusing to grant the prayer for longer adjournment, the learned Sessions Judge failed to take into consideration the ground realities. It is submitted that the Senior Counsel had been engaged by the petitioner from the initial stage of the case and therefore, unless cross-examination is conducted by the very same counsel, that would cause substantial prejudice to the petitioner in his defence. It is contended that the Sessions Case being of the year 2019, the Court is showing undue haste by insisting to proceed with the trial. In any case, at least a breathing time should have been granted for making arrangements for the accommodation

and other facilities of the Senior Counsel, is the submission. The folly committed by the trial court should be corrected by deferring the trial, at least, till the end of this month, is the prayer.

5. Smt.Ambika Devi, learned Special Public Prosecutor, referred to the extract of the proceedings of the trial court dated 17.9.2020 and submitted that the proceedings reflect application of mind and a well balanced approach by the Court. It is submitted that the nature of the allegations and the personalities involved require the case to be concluded at the earliest. It is pointed out that the *de facto* complainant is being provided round the clock protection due to threat from various quarters, which is yet another reason to complete her cross-examination without delay. Finally it is submitted that the Additional District and Sessions Court-I, Kottayam is equipped to conduct examination of witnesses through video conferencing mode and it would be possible for the Senior Counsel to conduct cross-examination of CW1 and other witnesses through the virtual mode.

6. As rightly observed by the learned Sessions Judge, the requirement under Section 309(1) Cr.P.C is of continuing the trial on a day-to-day basis until all the witnesses in attendance have been examined, unless the court, for reasons to be recorded, finds adjournment beyond the following day to be necessary. The Proviso to Section 309(1) mandates completion of trial relating to offences under Section 376 within a period of two months from the date of filing of the

charge sheet. Though the mandate of the proviso do not completely denude the trial court's power to grant adjournment, it is clearly indicative of the restricted manner in which the power should be exercised.

7. It has to be noted that, in spite of chief-examination of CW1 being completed on 17.9.2020, the learned Sessions Judge adjourned the trial by two weeks. Therefore, the submission that the petitioner was not granted even breathing time for making arrangements is without substance. In situations like this, it is for the court to balance various factors like convenience of the counsel, the mandate of the Code, the situation in which the victim and other witnesses are placed etc. The trial court having done such balancing act to perfection, by adjourning the cross-examination by two weeks, I find no reason to interfere with that decision. In my considered opinion, it would be in the interest of all concerned to see that the case attains finality at the earliest.

8. The apprehension expressed by the learned counsel for the petitioner in the wake of the rampant spread of Covid-19 pandemic is well-founded. But, it is high time for us to accept this reality and move on with our affairs. In any case, the wheels of the justice delivery system cannot be permitted to come to a grinding halt by reason of the pandemic.

In the result, the CrI.M.C is dismissed. In view of the submission of the learned Special Public Prosecutor, of the trial court being equipped for video conferencing, it is directed that in the event of the petitioner seeking permission to conduct cross-examination of witnesses through video conferencing mode, such request shall be considered positively.

Sd/-
V.G.ARUN, JUDGE

vgs

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A

**TRUE COPY OF THE APPLICATION FILED BY THE
PETITIONER AS CMP NO. 1101/2020 IN SC NO.
457/2019 DATED 17.09.2020.**