IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 27197 of 2014 (Y)

PETITIONER:

ANIL M.J, AGED 37 YEARS
S/O. M.O.JOSE, MUKKONIL HOUSE, KIZHAKKUMBHAGOM KARA
ETTUMANNOR VILLAGE, ETTUMANOOR P.O.
KOTTAYAM DISTRICT.

BY ADVS.SRI.ABRAHAM MATHEW (VETTOOR)
SMT.M.J.SAJITHA
SMT.BINI ELIZABETH
SRI.SRI.ANIL ABEY JOSE
SRI.SIJI ANTONY
SMT.RIA THOMAS

RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. STATION HOUSE OFFICER,
KOTTAYAM EAST POLICE STATION
KOTTAYAN DISTRICT - 686 001.

3. DISTRICT SUPERINTEND OF POLICE
OFFICE OF THE POLICE SUPERINTEND
KOTTAYAM DISTRICT - 686 001.

R1-R3 BY SRI.TOM JOSE PADINJAREKKARA (ADDL. STATE PROSECUTOR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 27197 of 2014 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

P1 - CERTIFIED COPY OF THE FIR NO. 442/02 OF THE EAST POLICE STATION, KOTTAYAM AND FILED BEFORE JFCM-1, KOTTAYAM DT. 16.1.02.

P2 - A TRUE COPY OF THE REMAND APPLICATION SUBMITTED BY SHO BEFORE THE JFCM-1, KOTTAYAM IN CRIME NO. 442/02 DT. 19.11.02.

P3 - A TRUE COPY OF THE ADVICE MEMO DTD. 26.2.2013 ISSUED BY P.S.C.

P4 - A TRUE COPY OF MEMORANDUM NO.E2/1975/13/KTR ISSUED BY DISTRICT TRANSPORT OFFICER, KSRTC KOTTARAKKARA, DTD. 13.6.2013.

P5 - A TRUE COPY OF FINAL REPORT IN CRIME NO442/02 OF KOTTAYAM EAST POLICE STATION DTD. 20.3.2009.

RESPONDENT(S)' EXHIBITS:

ANX.R3(a): PROCEEDINGS NO.D2-60561/2015K DTD. 14.8.2015 OF DISTRICT POLICE CHIEF, KOTTAYAM.

ANX.R3(b): TRUE COPY OF THE FINAL REPORT IN CRIME NO.442/2002 OF KOTTAYAM EAST POLICE STATION.

// TRUE COPY //

P.S TO JUDGE.

ALEXANDER THOMAS, J.

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W.P.(C)No.27197 of 2014

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Dated this the 21st day of December, 2015

JUDGMENT

The prayers in this writ petition filed by the petitioner, who is accused No.6 in the impugned Ext.P-1 FIR and the impugned Ext.P-5 Final Report in Crime No.442/2002 of Kottayam East Police Station, are as follows:

> "i) issue a writ of certiorari or other appropriate writ or direction quashing Ext.P1 to the extent to which it pertains to the petitioner.
>
> i)(a) issue a writ or certiorari or other appropriate writ or direction quashing Ext.P5 to the extent to which it pertains to the petitioner.
>
> ii) direct the 2nd respondent to take steps to submit a report to the Judicial First Class Magistrate-I Kottayam deleting the name of the petitioner as the 6th accused in Crime 442/2002 of Kottayam East Police Station.
>
> iii) Pass such other orders which the petitioner may seek and this Hon'ble Court may deem fit to be granted in the interest of Justice.
>
> iii)(a)Pass such other orders to the petitioner ensuring the conditions of service of the petitioner as Reserve Driver in KSRTC shall not be affected due to the pendency of Exhibit P1 and its further proceedings or any such other order as and this Hon'ble Court may deem fit to be granted in the interest of Justice."

2. The 2nd respondent Station House Officer, Kottayam East

Police Station had registered the impugned Ext.P-1 FIR in Crime No.442/2002 of Kottayam East Police Station on 16-11-2002 against A-1 therein and 20 other identifiable but unnamed persons for offences under Secs. 143, 147, 148, 149, 324, 427 IPC and Sec.5 r/w Sec.25(1)(c) of the Arms Act 1959 and Sec.3 of the Explosive Substances Act 1908. The petitioner herein was not named as an accused in the said FIR registered on 16-11-2002. Accused No.1 was arrested on the date of incident (16-11-2002). The 7 other accused including the petitioner herein were arrested on 18-11-2002 and were produced before the jurisdictional Magistrate on 19-11-2002 and the other accused including the petitioner were remanded for two days and later released on bail. The petitioner was thus subsequently implicated as accused No.6 in the impugned crime. The allegation in the crime was regarding an attack made by the members of BMS trade union on the members of CITU union. The de facto complainant alleged that he was attacked with a 'vadival' by A-1 who was accompanied by other identifiable persons. According to the petitioner, after the registration of the crime, no effective action was taken by the investigating authorities for finalising the investigation and to submit the final report before the competent criminal court for the last more than 12 years. That the petitioner has been victimized on account of the political rivalry and that petitioner was only an autrickshaw driver and that the Police has not collected any material to support the allegations in the crime and that the investigation agency has no case that any specific overt act has been committed by the petitioner. Further, it is submitted that the allegations regarding the offence under the Explosive Act are without any substance and that even going by the case projected in the impugned crime and the impugned final report, it only states about the alleged use of crackers.

3. After the institution of this Writ Petition, initially a statement dated 02-12-2014 of the 2nd respondent, Investigating Officer was filed in this case, wherein it was stated that Investigating Officer after collecting necessary evidence had submitted the Final Report/Charge Sheet before the Chief Judicial Magistrate's Court, Kottayam on 20-03-2009. It was further stated therein that all the other connected records except the Final Report/Charge sheet were submitted before the Judicial First Class Magistrate Court-I, Kottayam and later the Final Report/Charge Sheet was submitted before the Chief Judicial Magistrate's Court. It was further averred

in the said statement that as the Final Report/Charge Sheet and the other documents have been filed in two different courts (CJM and JFCM-I, Kottayam respectively), there occurred delay in taking up the case for trial and that separate report was submitted by the Investigating Officer before the Judicial First Class Magistrate Court-I, Kottayam on 29-11-2014 for onward submission of FIR and other related documents to the Court of Chief Judicial Magistrate, Kottayam.

4. Taking note of the aforestated statement dated 2-12-2014 filed by the Investigating Officer, this Court had passed order dated 10-07-2015 directing the Chief Judicial Magistrate's Court, Kottayam to file a report before this Court as to whether the other records, except the Final Report/Charge Sheet in relation to Ext.P1 Crime, were filed before the JFMC-I, Kottayam and whether the Final Report/Charge Sheet has been filed before the Chief Judicial Magistrate's Court, Kottayam and as to whether all the records of the case including the Final Report have now been transferred to the competent criminal court concerned. The CJM was also directed to report as to which court is the competent court to conduct the trial in respect of Ext.P-1 crime, etc.

5. Further in the aforestated order dated 10-07-2015, this Court had also directed that the District Police Chief, Kottayam will also conduct an enquiry and report before this Court as to how this mistake occurred in filing the records pertaining to in this case in a bifurcated manner in two different courts and also to explain as to the reasons for the delay in completion of the trial against the accused, etc.

6. Thereafter, the District Police Chief, Kottayam filed a report dated 01-08-2015 before this Court stating that the offences in the impugned crime are triable before the Chief Judicial Magistrate's Court, Kottayam and that the FIR and other records in the impugned crime were mistakenly filed before the JFMC-I, Kottayam on 16-11-2002 instead of filing before the CJM's Court, etc. It was also stated in the report dated 01-08-2015 submitted by the District Police Chief that a separate request was submitted by the Investigating Officer to the JFMC-I, Kottayam on 29-11-2014 to transfer the FIR and connected records to the Court of CJM, Kottayam, etc.

7. In compliance with this Court's order dated 10-07-2015, the Chief Judicial Magistrate submitted report dated 28-07-2015

before this Court, wherein it is stated that the FIR was registered on 16-11-2002 which was filed before the JFCM-I, Kottayam on 17-11-2002 and subsequently all connected papers except final report were filed before the JFCM-I, Kottayam in due course and that the Investigating Officer had filed a report which was received by the JFCM-I, Kottayam on 29-11-2014 (Distribution No.409/2014) by which the Sub Inspector of Police had prayed to forward the FIR and connected papers to the CJM's court, Kottayam for trial and that the FIR and connected papers in Crime No.442/2002 were produced before the JFCM-I, Kottayam by a mistake etc. Further it is reported therein that by letter dated 01-12-2014 of the JFCM-I, Kottayam, the learned Magistrate has forwarded the FIR and connected records in that crime to the CJM's Court, which were received by the CJM's court on 02-12-2014. That it was found that no number was given to that file and that no cognizance was taken by either court. Further after verification of the available records it is reported by the CJM in the said report dated 28-07-2015 that on verifying the distribution register dated 17-9-2009, it is seen that the CJM's court has received the Final Report/Charge sheet in Ext.P1 Crime No.442/2002 and that the same was received by D-section clerk

(FIR Section) on 19-9-2009 and that even though the office of the CJM had received the Final Report in Crime No.442/2002, no number was given to that file and that there are no prima facie materials to show that the Final Report/Charge Sheet in Ext.P1 Crime was returned due to any reason and that at present it is seen that the Final Report/Charge Sheet is not seen along with the case bundle (FIR and connected papers) transferred from the JFCM-I, Kottayam and that the original of the Final Report/Charge Sheet in Ext.P1 crime filed before the CJM's court may be either misplaced or returned to Police and that enquiry will be conducted in the matter, etc.

8. Further, it is reported therein that since offence under Sec.3 of the Explosive Substances Act is exclusively triable before the Court of Sessions, only the Court of Sessions is the proper jurisdictional court which is competent to conduct the trial. Therefore it was reported by the CJM in his report dated 28-07-2015 that the competent court which is to receive the Final Report/Charge Sheet in the above circumstances is the JFCM-I, Kottayam as it is the committal court.

9. This Court after consideration of the aforestated report

dated 01-08-2015 of the District Police Chief and the report dated 28-07-2015 of the Chief Judicial Magistrate, had requested the Additional DG of Prosecutions to ensure that a proper report of the District Police Chief is submitted after examining all the factual situation in the light of the report dated 28-07-2015 of the CJM. Accordingly, the Additional D.G. of Prosecution had submitted a report dated 19-08-2015 of the District Police Chief. The said report dated 19-08-2015 of the District Police Chief discloses the following aspects:

> "4. On perusing the CD files, the following facts and defects were revealed:
>
> "a) The investigation of this case was almost completed on 03.10.2003 by Sri.K.Subhash, Sub Inspector of Police, Kottayam East Police Station who registered the FIR and conduct the investigation.
>
> b) On 03.10.2003 he submitted an application to the District Collector, Kottayam for prosecution sanction through the District Superintendent of Police, Kottayam.
>
> c) The CD file was returned to the Investigating Officer on 28.02.2004 with a direction to submit application for prosecution sanction after obtain FSL report.
>
> d) On 20.02.2005 FSL report was received.
>
> e) On 19.05.2005 the then Sub Inspector of Police, Sri.A.A.Ashraf submitted draft charge sheet before Deputy Director of Prosecution, Kottayam for approval.
>
> f) On 26.05.2005 the Deputy Director of Prosecution returned the file with a direction to submit the file before District Government Pleader and Public Prosecutor since the offence is triable by court of sessions.

g) But it is seen that the file is not submitted before the District Government Pleader for two years.

h) On 31.05.2007 the then Sub Inspector Sri.R.Madhu submitted the file before the District Government Pleader for draft charge approval.

i) On 04.06.2007 District Government Pleader approved the charge sheet and returned the file with a direction to lay the charge sheet after obtaining prosecution sanction from District Collector, Kottayam.

j) On 11.06.2007 the then Sub Inspector Sri.R.Madhu Submitted the CD file before the District Collector, Kottayam for prosecution sanction.

k) On 16.03.2009 the prosecution sanction was obtained.

l) On 20.03.2009 the then Sub Inspector K.V.Benny submitted the charge sheet before the Chief Judicial Magistrate Court, Kottayam instead of Judicial First Class Magistrate Court-I, Kottayam.

m) The charge sheet should have been filed before Judicial First Class Magistrate Court I since it being the committal Court."

10. It is further stated in paragraph 6 of the said report dated 19-08-2015 of the District Police Chief that since the offences under the Explosive Substances Act are triable exclusively by the Sessions Court and in order to cure the defects and commence the trial proceedings before the competent Sessions Court, the Final Report/Charge Sheet and connected documents have to be transferred from the CJM's court, Kottayam to the JFCM-I, Kottayam which is the committal court so that the case can be committed to the Sessions Court concerned. It is also pointed out therein that a separate report dated 13-08-2015 has already been

filed by the Investigating Officer before the CJM's Court, Kottayam praying to transfer the Final Report/Charge Sheet and connected documents in Ext.P-1 crime to the court of JFCM-I, Kottayam in order to facilitate commitment of the said case.

11. Taking note of the aforestated report dated 19-08-2015 of the District Police Chief and the aforestated report dated 28-07-2015 of the CJM's court, this Court had passed a detailed order dated 14-10-2015 ordering that the Chief Judicial Magistrate, Kottayam will ensure that expeditious steps are taken for reconstruction of the final report/charge sheet in the impugned crime, in case the original Final Report/Charge Sheet is not traceable in the office of the CJM's court. The Registry was also directed to get a report from the CJM's court, Kottayam as to the steps taken for the re-construction of the final report in the impugned crime with the assistance of the records that are available with the investigating agency, etc. Pursuant to this direction, it has been now brought to notice that the Final Report/Charge Sheet has been reconstructed with the assistance of the records available with the investigating agency and that the CJM's court has forwarded the entire files to the JFCM-I, Kottayam. Later, the JFCM-I, Kottayam as

per letter dated 09-11-2015 has informed the Registry of this Court that committal proceedings in respect of the impugned crime has been taken on file as C.P.No. 41/2015 and that some time is required to serve summons on all the 8 accused in this case and to procure their presence and that the case stands now posted to 09-12-2015 for return of summons to accused 1 to 8 and in the event that all the accused appear on the said date, the case can be committed to the Sessions Court on the said day itself and further that there is a chance for adjournment for proper service of summons on the accused persons and therefore taking into account all these contingencies at least three months' time may be required for completing the committal formalities in this case, etc. It is also now informed by the Judicial First Class Magistrate's Court-I, Kottayam that the case is now posted before that court on 31.12.2015 for further steps in committal proceedings.

12. A copy of the impugned final Report/Charge Sheet was also filed before this Court as Ext.R3(b) along with the report dated 19-08-2015 of the District Police Chief. Pursuant to this, the petitioner had made amendment of the pleadings and prayers in this Writ Petition and has produced the impugned Final

Report/Charge Sheet as Ext.P5 and has sought the amended prayers also as indicated earlier herein above. It is specifically pointed out by the petitioner in the amended pleadings that during the pendency of the impugned crime, the petitioner was selected by the Kerala Public Service Commission for appointment to the post of Reserve Driver in the Kerala State Road Transport Corporation (KSRTC) as evident from Exts.P-3 and P-4. That the petitioner after securing bail in the impugned crime in 2002 had not heard anything about the developments in the crime and the petitioner was under the bonafide belief that the case must have been referred. Later while the petitioner was working in the above post as Reserve Driver, the KSRTC authorities had received the police verification report stating that the petitioner is arrayed as accused No.6 in the impugned crime and thereupon the petitioner received various memos from the District Transport Office of the KSRTC seeking his explanation and the petitioner has informed that authority about the details available with him about the registration of the crime in 2002 and that he could reliably learn that no final report has yet been filed before the competent court. It is only thereupon the petitioner became aware that neither the final report referring the crime nor a charge sheet has been filed in the instant case by the Investigating Officer and it is in the light of these aspects that the petitioner had preferred the Writ Petition. It is also pointed out that even though he has been working as Reserve Driver since 2013, he has not been sanctioned any service benefits including leave with pay and consequently he is not in a position to avail such benefits in emergency situation. That the pendency of the impugned crime stands as a Damocle's Sword on his future and that it adversely affects his service prospects, etc. The petitioner has urged that he is in no way responsible for the delay that occurred in the submission of the final report or in the completion of the trial and that the impugned criminal proceedings are liable to be quashed in the light of the various rulings of the Apex Court relied on by him. It is in the light of these aspects that the petitioner has endeavoured to sustain the prayers which are originally incorporated in the Writ Petition and also the amended prayers sought in this Writ Petition.

13. Heard Sri.Abraham Mathew Vettoor, learned counsel appearing for the petitioner and Sri.Tom Jose Padinjarekkara, learned Addl. D.G of Prosecution and Additional State Prosecutor appearing for respondents 1 to 3.

14. In the case Kartar Singh v. State of Punjab, reported in (1994) 3 SCC 569, the Apex Court held therein that "*the concept of speedy trial is read into Art.21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution*". In the celebrated case in Hussainara Khatoon & Ors v. Home Secretary, State of Bihar reported in (1980) 1 SCC 81, the Apex Court held as thus: *"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article21. There can, therefore, be no doubt that speedy trial, meaning thereby reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21*." Further, the Constitution Bench in the celebrated case A.R. Antulay & Ors. v. R.S. Nayak & Anr reported in (1992) 1 SCC 225, the Apex Court has laid down 11 propositions, which are almost the Magna Carta in the matter of fair and expeditious conduct of criminal trial. The said 11 propositions laid down by the Constitution Bench of the Apex Court in A.R. Antulay's case supra are as follows:

> "(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as

quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of .death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, “delay is a known defence tactic”. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these

stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker[22] "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell[38] in the following words:

> *'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'*

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of . accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several

relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and .exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

Later, due to conflict regarding the setting of outer time limit for conclusion of criminal proceedings in rulings of the Apex Court as in Common Cause Case reported (1996) 4 SCC 33 and Raj Deo Sharma (ii) reported in (1999) 7 SCC 604, the matter was considered in depth by the Constitution Bench of the Apex Court in the case P.Ramachandra Rao v. State of Karnataka reported in (2002) 4 SCC 578 = 2002 (2) KLT 189 (SC).

15. In P.Ramachandra Rao's case, the appellant therein was working as an Electrical Superintendent in the Mangalore City Corporation and for the check period 1.5.1961 to 28.5.1987, he was allegedly found to have amassed assets disproportionate to his known sources of income. Final report/charge sheet accusing him of the offences under Sec.13(1)(e) read with Sec.13(2) of the Prevention of Corruption Act was made on 15.8.1994. The accused appeared before the Special Court and was enlarged on bail on 6.6.1994 and charges were framed on 10.8.1994 and the case was proceeded for trial on 8.11.1994, but trial did not commence. On 23.2.1999, the learned Special Judge directed the accused be arrested as the trial had not commenced till then and the period of two years had elapsed, which obligated to acquit the accused in terms of the directions of the Apex Court in in Raj Deo Sharma v. State of Bihar, reported in (1999) 7 SCC 604. Thereupon, the State of Karnataka preferred an appeal before the High Court impugning the issue of acquittal of the accused. The Karnataka High Court, by

the order impugned therein, allowed the appeal and set aside the order of acquittal and remanded the case to the trial court forming an opinion that the case charging an accused with corruption was an exception to the directions made in Raj Deo Sharma's case supra as later clarified by Supreme Court in Raj Deo Sharma (III). The Karnataka High Court had condoned the delay in filing the appeal against the acquittal by the State and also allowed the appeal even without issuing notice to the accused therein. Aggrieved by the same, the accused had appealed to the Supreme Court, which has led to the decision P.Ramachandra Rao's case. The seven-Judge Bench of the Apex Court in P.Ramachandra Rao's case reported in 2002 (4) SCC 578, has held in para 29 as follows:

> "For all the foregoing reasons, we are of the opinion that in Common Cause case(I) (as modified in Common Cause (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:
>
> 1) The dictum in A R Antulays case is correct and still holds the field.
>
> 2) The proposition emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A R Antulays case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.
>
> 3) The guidelines laid down in A R Antulays case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-

jacket formula. Their applicability would depend on the fact-situation of each case, it is difficult to foresee all situations and no generalization can be made.

4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time limits or bars of limitation prescribed in the several directions made in Common Cause (1), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma(I) and (II). At the most, the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A R Antulays case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time limits cannot and will not by themselves be treated any court as a bar to further continuance of the trial or proceedings and as mandatorily obliged the court to terminate the same and acquit or discharge the accused.

5) The criminal courts should exercise their available powers such as those under Section 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be better protector or such right than any guidelines. In appropriate cases, jurisdiction of High Court under Section 482 of Cr.PC and Article 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Government shall act".

16. The Apex Court in para 36 of the P.Ramachandra Rao's case supra has held as follows: *"We are deleting the bars of limitation on the twin grounds, that it amounts to judicial legislation, which is not permissible, and because they run*

counter to the doctrine of binding precedents". Further, it has been clearly held by the seven-Judge Bench in P.Ramachandra Rao's case supra that the legal principles laid down by the Constitution Bench in A.R.Antulay's case reported in (1992) 1 SCC 225, are to be followed and it was also made clear that the guidelines in A.R.Antulay's case supra are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. The Apex Court in P.Ramachandra's case supra had set aside the impugned judgments of the High Courts holding that the High Court could not have condoned the delay in filing the appeals and then allowed the appeals without notice to the accused and had directed that the High Court shall hear and decide the appeals afresh after granting notice to the accused respondent before it, in each of the appeals and consistent with the principles of law laid down therein.

17. In the case Pankaj Kumar v. State of Maharashtra & Ors. reported in (2008) 16 SCC 117, the Apex Court has held in paragraphs 23 to 28 therein, that in every case where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances and determine in each case, whether the

right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, may be quashed, unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such situation, it is open to the court to make an appropriate order as it may deem fit and equitable including fixation of time for conclusion of trial. In the light of these aspects, the Apex Court held therein that the appellant's constitutional rights recognised under Art.21 of the Constitution stood violated and that FIR was recorded on 12.5.1987 for the offences allegedly committed in the year 1981 and after unwarranted prolonged investigations involving three alleged financial irregularities, the charge sheet was submitted before the court only on 22.2.1991. That nothing happened till April 1991, when the appellant and his deceased mother filed Writ Petition seeking quashment of the proceedings before the trial court. Though the plea with regard to the inordinate delay in investigation and trial was raised by the appellant therein for the first time, their Lordships of the Supreme Court held that at that distant point of time it would be most unfair to the appellant therein to remit the matter back to the High Court after examining the said plea of the appellant. Moreover, the learned counsel for the State fairly stated therein that he had no explanation to offer for the delay in the investigation and the reason why the trial did not commence for eight long years. Nothing could be shown to attribute that the delay was in any way caused by the appellant therein. The appellant therein was a young boy of 18 years of age in the year 1981 when the alleged acts of omission and commission were allegedly committed by the concerns managed by his parents, who had since died. The Apex Court observed that there will be extreme mental stress and strain of prolonged investigation by the Anti Corruption Bureau and the Sword of Damocles is hanging perilously over his head for over fifteen years, which must have wrecked his entire career. The prosecution has also failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. In the light of these aspects, the Apex Court held that the valuable constitutional right of the appellant for speedy investigation and trial was grossly violated and therefore the impugned criminal proceedings in that case were quashed.

18. In the case Vakil Prasad Singh v. State of Bihar, reported (2009)3 SCC 335, the Apex Court in paras 27 to 30 thereof, considered the question of quashing of the impugned criminal proceedings therein due to delay and held therein that the right of speedy trial guaranteed under Art.21 is applicable not only to actual proceedings, but also includes within its sweep the preceding Police investigations as well. Taking note of the ratio laid down by the Apex Court in earlier decisions as in State of Haryna v. Bhajan Lal reported in (1992) Suppl. 1 SCC 335, Hussainara Khatoon's case reported in (1980) 1 SCC 81, A.R.Antulay's case reported in (1992) 1 SCC 225, etc. the Apex Court was of the considered view that the said case was fit one where the High Court should exercise its powers under Sec.482 of the Cr.P.C., as the State was not sure as to whether sanction for prosecuting the accused is required and if so, whether sanction has been granted or not and that the case was pending for about 17 long years and accordingly, the proceedings against the appellant therein were quashed.

19. In the case Lokesh Kumar Jain v. State of Rajasthan reported in 2013 (11) SCC 130, it was held by the Apex Court as

follows:

> "28. There is nothing on the record, even by way of counter-affidavit filed before this Court to show that record has now been traced to make it available to the investigating agency. There is no probability of finding out original documents or evidence mentioned in the counter-affidavit. Though, delay has been alleged on the part of the appellant, there is nothing on the record to suggest that the appellant caused delay in the matter of investigation. On the other hand, the silence on the part of the respondent regarding availability of the original record or other evidence before the investigating agency shows that the delay was caused due to the inaction on the part of the respondent. Therefore, in our view, keeping investigation pending for further period will be futile as the respondent including the Directorate for the State Literacy Programme is not sure whether the original records can be procured for investigation and to bring home the charges. Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be quashed."

20. After in-depth consideration of the legal principles laid down by the Apex Court in the aforestated decisions, it is clear from proposition No.4 of A.R.Anthulay's case supra that in every case where the the right to speedy trial is alleged to have been infringed, the first and foremost question to be answered is, as to who is responsible for the delay. In the instant case, there are no materials whatsoever, urged by the respondents even to remotely show that the petitioner herein or any other accused were in any way responsible for the delay in proper conclusion and finalisation of the investigation and in the commencement of the trial. On the

other hand, it can be seen that it is only in view of the institution of this Writ Petition that, the petitioner could point out the glaring delay that occurred in the not finalisation of the investigation and in the commencement of the trial.

21. The impugned Ext.P-1 FIR was registered on 16.11.2002. The petitioner and other additional accused were named in the FIR on 18.11.2002. The investigation of the case was almost completed on 3.10.2003 by the Station House Officer concerned. On 3.10.2003, the SHO had submitted the application to the District Collector, Kottayam, for prosecution sanction through the District Police Chief. The CD file was returned on 28.2.2004 with direction to submit application for prosecution sanction after obtaining the FSL report. The FSL report was received on 20.2.2005. On 19.5.2005, the Investigation Officer/SHO had submitted draft charge sheet before the Deputy Director of Prosecution for approval. On 26.5.2005, the Deputy Director of Prosecution had returned the file with the direction to submit the file before the District Government Pleader and Public Prosecutor since the offence is triable by the Court of Sessions. The file was not submitted to the District Government Pleader/Public Prosecutor for the next two

years. On 31.5.2007, the then S.I. of Police submitted the file before the Government Pleader/Public Prosecutor for approval of the draft charge. On 4.6.2007, the P.P. approved the draft charge sheet and returned the file with the direction to lay charge sheet after obtaining prosecution sanction from the District Collector, Kottayam. On 11.6.2007, the SHO submitted the CD files before the District Collector for prosecution sanction. On 16.3.2009 the prosecution sanction was obtained. On 20.3.2009, the SHO had submitted the final report/charge sheet before the Chief Judicial Magistrate's Court, Kottayam, instead of Judicial First Class Magistrate's Court,-I, Kottayam.

22. On a perusal of these aspects it can been seen that the time taken upto 20.3.2009, cannot be said to be highly unreasonable or that it amounts to undue prolongation of the investigation process. In this regard, true that there occurred some delay, but the action taken by the Police authorities concerned cannot be in any way unduly faulted with. True that the Public Prosecutor's office has taken long two years after 26.5.2005. The exact reason for the said delay is not explained. But the Police authorities cannot be in any way found fault with for the overall time

taken upto 20.3.2009. This Court, in this regard, is reminded of the words of caution observed by the Apex Court in the case State of West Bengal v. Mir Mohammed Omar & Ors reported in (2000) SCC (Cri) 1516 (para 41), which reads as follows:

> "41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above."

23. The Police authorities and the prosecution mechanism are working under various constraints like lack of proper man power and facilities, etc. Therefore, this Court is not prepared to countenance the argument that there was undue delay on the part of the investigating agency and the prosecution agency in the time taken upto 20.3.2009 in submitting the final report/charge sheet so

as to quash the proceedings. However, the crucial mistake done by them was that though the Deputy Director of Prosecution had clearly opined as early as on 26.5.2005 that the offence is one, which is exclusively triable by court of sessions in view of the offence under the provisions of the Explosives Act, they have chosen to file the final report/charge sheet before the wrong forum, viz., the Chief Judicial Magistrate's Court. It should have been noted by them that since the case is to be committed to the Sessions Court for trial, the proper jurisdictional Magistrate's Court concerned in this case for initiation of appropriate committal proceedings is the Judicial First Class Magistrate's Court-I, Kottayam, and not the Chief Judicial Magistrate's Court. Thus it is seen that all the records in the crime, except the final report/charge sheet, were filed before the proper court viz., Judicial First Class Magistrate's Court-I, Kottayam, whereas the final report/charge sheet alone was filed before the wrong forum, viz., Chief Judicial Magistrate's Court, on 20.3.2009. Even in the first report dated 1.8.2005 filed by the District Police Chief in the present case, he has proceeded on the wrong premise that the proper court in this case is the Chief Judicial Magistrate's Court and not the Judicial First Class Magistrate's Court. It is only later, after the intervention of this Court that the Addl. D.G. of Prosecutions had taken up the matter with the Police Chief, which led to the report dated 19.8.2015, in which it was correctly understood that the case is one, which is to be committed to the Sessions Court for trial and that the jurisdictional Magistrate's Court competent for the present committal proceedings is the Judicial First Class Magistrate's Court. Earlier even all the records were transferred to the Chief Judicial Magistrate's Court on the wrong understanding about competent forum. Later in view of the aforestated report dated 19.8.2015, the entire records were transferred to the correct forum, viz., Judicial First Class Magistrate's Court-I, Kottayam. As can be seen from the various records of the Chief Judicial Magistrate, the final report/charge sheet filed before that court was either misplaced or lost. It was after intervention of this Court that steps were taken by the court below to reconstruct the final report/charge sheet with the assistance of the records available with the investigating agency. Therefore, the long delay after 20.5.2009 had taken place mainly on account of the wrong understanding of the investigating agency about the proper court, wherein they are obliged to file the final report/charge sheet. It may also be noted that the office of the court below, where the final report/charge sheet was wrongly filed on 20.3.2009, had also not taken any proper steps to realise this mistake committed by the investigating officer and to take proper steps to return the records to the investigating agency in order to enable them to file it before the proper court. These mistakes that occurred in filing the final report/charge sheet before the wrong forum and in the misplacement of such records could not have been rectified but for the institution of this Writ Petition.

24. The District Police Chief in his report dated 19.8.2015 has fairly and candidly stated before this Court that all serious efforts would be taken to find out as to how the delay in the investigation and the other irregularities had occurred and the that a departmental enquiry has been ordered in that regard, as per Anx.R3(a), etc.

25. However, it is to be noted that the Constitution Bench in A.R.Antulay's case supra in proposition No.9 thereof has clearly held that though where ordinarily court comes to the conclusion that right to speedy trial of an accused has been infringed, the charges could be quashed, that this is not the only course open

and that the nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case. This cautionary principle has been reiterated by the Apex Court in the case Pankaj Kumar v. State of Maharashtra reported in (2008) 16 SCC 117, as can be seen from para 18 thereof, which reads as follows:

> '18. The exposition of Article 21 in Hussainara Khatoon (1) case [(1980) 1 SCC 81] was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225]. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) the right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is—who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including the nature of offence, the number of accused and witnesses, the work load of the court concerned, prevailing local conditions and so on—what is called, the systemic

> delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors—"balancing test" or "balancing process"—and determine in each case whether the right to speedy trial has been denied; (vii) ordinarily speaking, where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.'

26. Later the Apex Court in the case Sajjan Kumar v. Central Bureau of Investigation reported in (2010) 9 SCC 368 has also clearly held that "*the question of delay in launching a criminal prosecution may be a circumstance to be taken into consideration while arriving at a final decision. However, same may not itself be a ground for dismissing the complaint at the threshold. Moreover, the issue of limitation must be examined in the light of the gravity of the charge in question*". In this regard an ancillary contention has also been raised by the learned counsel appearing

for the petitioner contending that the continuation of the impugned criminal proceedings in this case would be in flagrant violation of the statutory mandate of limitation engrafted in Sec.468 of the Code of Criminal Procedure. Sec.468 of the Cr.P.C. reads as follows:

> *Sec.468-"**Bar to taking cognizance after lapse of the period of limitation.**-(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of limitation.*
>
> *(2) The period of limitation shall be-*
>
> *(a) six months, if the offence is punishable with fine only;*
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."*

27. It is by now well established by various rulings as in Radhakrishnan P.R & Anr. v. State of Kerala & Anr. reported in 2012 (3) KLT 88 that "*when cognizance is taken for more than one offence, the plea of limitation has to be determined with reference to the offence punishable with more severe punishment*". In the instant case, one of the charges is with respect to offence under Sec. 5(1) of the Explosives Act, which is punishable for imprisonment for a period not less than ten years. Therefore, the bar of limitation engrafted in Sec.468 of the Cr.P.C. has no direct application to the facts of this case.

28. The learned counsel appearing for the petitioner had raised serious contentions on the basis of the ruling of the Apex Court in Lokesh Kumar Jain v. State of Rajasthan, reported in (2013) 11 SCC 130 and other rulings as in Pankaj Kumar's case supra, etc. Lokesh Kumar's case supra dealt with a case wherein, on the basis of the complaint, the Police had launched the FIR in the year 2000 in respect of an incident, which had allegedly taken place in the year 1996-97, implicating the appellant therein as an accused. After investigation the Police submitted the final report on 2nd June, 2000 before the Chief Judicial Magistrate's Court. The complainant filed application on 18.11.2000 before the Chief Judicial Magistrate's Court, requesting to send back the matter to the Police for further investigation. By order dated 18.11.2000, the matter was sent back to the Police under Sec.156(3) of the Cr.P.C. and since then, the matter remained pending with the Police. The appellant therein sent various representations on a number of occasions to the Police authorities and departmental authorities and but still no action was taken by them. Neither the final report/charge sheet was prepared in the case nor the challan charge sheeting their case was filed by the Police and the matter was kept pending. It was also informed

by the Police that original copies of the bills and other documents are not available and that therefore no investigation could be made. In the facts and circumstances of that case, the Apex Court allowed the appeal by holding that there is no probability of finding out original documents or evidence mentioned in the counter affidavit. The appellant was not in any way responsible for the delay. The appellant was already exonerated in the departmental proceedings for identical charges. In the light of all these cumulative circumstances, the Apex Court found that the prolongation of the investigation any further would be futile and considering the long delay, it was held that it amounts to violation of constitutional right of speedy trial and the impugned criminal proceedings were quashed in that case.

29. Vakil Prasad Singh v. State of Bihar reported in (2009) 3 SCC 355, was a case, in which charge sheet for the offences under Secs.161, 109 and 120B of the I.P.C. and Sec. 5(2) of Prevention of Corruption Act was filed against the appellant/accused on 28.02.1982. The Magistrate had taken cognizance of the offences on 9.12.1982. In 1990, the appellant filed a petition under Sec. 482 of the Code of Criminal Procedure before the High Court

against the order passed by the Special Judge, taking cognizance of the said offences on the ground that the Inspector of Police, who had conducted the investigation and on the basis of which the charge sheet was filed, had no jurisdiction to do so. The High Court therein, by order dated 7.9.1990, had directed the prosecution to complete the investigation by an officer not below the rank of Deputy Superintendent of Police as mandated in the provisions of the Prevention of Corruption Act, within a period of three months. Still nothing had happened till 27.2.2007. The DySP had started investigation only on 28.02.2007 and ultimately he had the filed charge sheet on 1.5.2007. In the light of those facts of that case, the Apex Court held that there was inordinate delay of more than two decades in the completion of the investigation and the commencement of the trial. The Apex Court was of the categoric opinion that the said delay cannot in any way be on account of the default of the appellant/accused and that such long delay patently violates the constitutional guarantee of speedy investigation and trial conferred under Art.21 of the Constitution.

30. Pankaj Kumar's case supra dealt with a case, wherein the appellant his father were charged with mis-appropriation of huge

amounts in the purchase of spare parts. The appellant was an young boy hardly of the age of 18 years in the year 1981, when the alleged acts of omission and commission said to have been committed by the concerns managed by his parents. The crime was registered in the year 1987 for the offences allegedly committed in 1981. The charge sheet was filed only in 1991, but till then, not a single witness was examined by the prosecution. The Apex Court held therein that the prosecution failed to show any exceptional circumstances, which could be taken into consideration for condoning the prolongation and investigation of the trial. The parents of appellant/accused, who were allegedly the main culprits in the case, had also died. In the light of these facts, the Apex Court came to the considered conclusion that the extreme mental stress and strain of the prolonged investigation by the Anti Corruption Bureau and the sword of Damocles was perilously hanging over the head of the appellant for the last fifteen years, which has wrecked his entire career. He was a boy hardly of the age of 18 years at the time when the alleged act was committed by his parents, who had died later. In the light of all these cumulative attendant circumstances, the Apex Court was convinced that it was a fit case to exercise it discretion for quashment of the impugned criminal proceedings.

31. On a careful evaluation of the facts and circumstances of this case, this Court is of the considered opinion that though the appellant is no way responsible for the long delay that has occurred for the last 12 years, the time taken by the Police and prosecution agency upto 20.3.2009 cannot be said to be highly unreasonable so as to violate the constitutional right of the accused. The delay thereafter is one that is to be taken into consideration for evaluating as to the reliefs that could be given to the petitioner herein. From a close analysis of the facts and circumstances of this case, it can be seen that the Police authorities, prosecution officers as well as the even the officials of the court were seen to be under a wrong notion about the correct forum before which the final report/charge sheet has to be filed in this case.

32. On assessing the facts of this case, in the light of the legal principles laid down by the aforestated Apex Court rulings also particularly in the light of the principles laid down in A.R.Antulay's case supra, Pankaj Kumar's case supra and Sajjan Kumar's case supra, this Court is of the considered opinion that the quashment of

the impugned criminal proceedings is not the only option available before this Court. Moreover, in the light of the aforestated discussion, the facts and circumstances in the aforecited reported rulings are clearly distinguishable from the facts of this case. The ends of justice can be subserved by issuing appropriate directions to ensure that henceforth the trial process is completed within a shortest reasonable time possible under the circumstances.

33. Accordingly, it is ordered in the interest of justice that the Judicial First Class Magistrate's Court-I, Kotttayam, shall ensure that expeditious steps should be taken to ensure that the committal proceedings are completed without any further delay. After receipt of the case records, the Sessions Court concerned will ensure that the trial in this case is completed within the shortest reasonable possible, especially taking into account the fact that there occurred delay in this case after the submission of the final report/charge sheet on 20.3.2009 before the wrong forum. The Sessions Court will take all reasonable endeavours to ensure that top priority is accorded to this case for the completion of the trial and efforts may be made to ensure that the trial is completed at least a within a period of six months after receipt of the case records from the

jurisdictional Magistrate's court concerned.

34. However, it is to be noted that the petitioner cannot be left in the lurch. Justice and equity should be done to him in a modulated manner. As rightly pointed out by the learned counsel for the petitioner, the sword of Damocles is perilously hanging over the head of the petitioner as regards his very prospects in the continuance of his employment.

35. In the amended prayer No.III(a), the specific prayer of the petitioner is as follows:

> "Pass such other orders to the petitioner ensuring the conditions of service of the petitioner as Reserve Driver in KSRTC shall not be affected due to the pendency of Exhibit P1 and its further proceedings or any such other order as and this Hon'ble Court may deem fit to be granted in the interest of justice."

36. In the light of the fact that the petitioner is not in any way responsible for the delay and more particularly, in the light of the crucial fact that but for the institution of the present Writ Petition by the petitioner herein, the remedial measures would not have been taken for expediting the trial process, it is ordered that until the conclusion of the trial by the Sessions Court concerned, no further adverse action shall be taken against the petitioner in the matter of his further continuance in service, solely on account of the pendency of the impugned criminal proceedings. However, it is made clear

that depending on the final outcome of the Sessions trial, the competent authority concerned will be at liberty to take appropriate action in this regard in the matter, in accordance with law. The petitioner will be at liberty to move the appropriate forum regarding his grievance relating to withholding of admissible service benefits, on account of the pendency of the impugned criminal proceedings. It is also made clear that all the contentions available to the petitioner herein and other accused regarding the admissibility or otherwise of the documents that are now placed before the court after the reconstruction of the final report/charge sheet are left open to be decided by the Sessions Court, at the appropriate stage. Merely because this Court had granted certain interim orders in this case in the matter of reconstruction of the final report/charge sheet shall not be taken as a conclusive aspect to validate any steps in the re-construction of the records if the petitioner and other accused have valid contentions to impeach the admissibility and legality of such re-constructed documents, etc. All these aspects are to be dealt with and decided by the Sessions Court in accordance with law and the observations or findings in this judgment or in the interim orders passed by this Court in this Writ Petition shall not be taken in any manner to hamper or limit the discretion of the Sessions Court to decide on those issues, which shall be decided strictly in accordance with law. The learned counsel for the petitioner has also submitted that the petitioner has been advised to file an appropriate application seeking the remedy of discharge before the competent criminal court concerned on various grounds open to him. It is made clear that none of the observations in this judgment shall in any way preclude the discretion of the competent criminal court concerned from considering on merits such application for discharge that may be filed by the petitioner or other accused. In the event of such an application being filed by the petitioner or any other accused at appropriate stage, the court below shall consider the same on merits and orders shall be passed within six weeks from the date of receipt of the application after hearing both sides, in accordance with law.

The Judicial First Class Magistrate's Court-I, Kottayam will file a report before the Registry of this Court immediately on finalisation of the committal proceedings. The Sessions Court concerned will also file report before the Registry of this Court after receipt of the case records from the Magistrate's court.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

MJL Sd/-
sdk+ ALEXANDER THOMAS, JUDGE

///True copy///

P.S. To Judge.