



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 14.08.2018
ORDERS PRONOUNCED ON : 21.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.(MD)No.15813 of 2015 and
WP(MD)Nos.14213 of 2016 and 2525 of 2018 and
MP(MD)Nos.1 and 2 of 2015 and 7627 of 2017 and
WMP(MD)No.2706 of 2018

Cr1OP(MD)No.15813 of 2015

S.Kumaresan

...Petitioner / Accused No.7

Vs

1.The State represented by
The Inspector of Police,
Thattarmadam Police Station,
Thattarmadam,
Thoothukudi District.

2.The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.

... Respondent/Complainant

3.Murugesan.

... respondent /Defacto complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in PRC No.63 of 2000 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi District and quash the same as illegal and devoid of merits forthwith.

For Petitioner	: Mr.S.Palanivelayutham
For respondents 1 and 2	: Mr.K.Chellapandian, Additional Advocate General, Assisted by Mr.K.Chandrasekar, Additional Public Prosecutor
For respondent No.3	: Mr.T.A.Ebenezer

WP(MD)No.14213 of 2016

Murugesan

... Petitioner

vs.

1.The Registrar General,
High Court of Madras,
Chennai.



2.The Superintendent of Police,
CBCID, South Zone,
Madurai.

3.The Inspector of Police,
Thattarmadam Police Station.

4.The Inspector of Police,
Sathankulam Police Station.

... Respondents

[R3 and R4 are suo motu impleaded vide
Court order dated 08.08.2016]

PRAYER : Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the first respondent to take appropriate action to find out the case records in PRC No.63 of 2000 pending on the file of the Judicial Magistrate, Sattankulam and also to reconstruct the case records for speedy committal within stipulated time by considering the petitioner's representation dated 12.09.2015 and consequently direct the 2nd respondent to register an FIR and to take proper action against the persons who are responsible for such missing Court and Police records and pass orders within stipulated time as may be fixed by this Court.

For Petitioner	: Mr.T.Ebenezer
For Respondent No.1	: Mr.G.Thalaimutharasu
For Respondents 2 to 4	: Mr.B.Bhagawathi, Government Advocate

WP(MD)No.2525 of 2016

S.Kumaresan

... Petitioner

vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Home,
Fort St.George,
Chennai - 600 009.

2.The Director General of Police,
Santhome High Road,
Chennai - 600 009.

3.The Superintendent of Police,
Thoothukudi District,
Korampallam,
Thoothukudi.



4.The Deputy Superintendent of Police,
Sathankulam Region,
Sathankulam,
Thoothukudi District.

5.The Inspector of Police,
Thattarmadam Police Station,
Thattarmadam,
Thoothukudi District.

6.The Inspector of Police,
Sathankulam Police Station,
Sathankulam,
Thoothukudi District.

7.B.Balachandran,
Deputy Superintendent of Police,
Enquiry Officer, Sathankulam,
Thoothukudi District.

8.K.Poonusamy

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, to call for the impugned order dated 20.01.2018 under Reference P1/54457/971/2017-N.Re/122 / SDO.SKM / 2017 - P1 / 54457 / 971 / 2017 - N.Ref.122 / SDO. SKM / 2017 - P1 / 54458 / 972 / 2017 N.Ref/121 / SDO.SKM / 2017 - P.CAMP / 289 / DSP SKM / 2017 passed by the 4th respondent and quash the same as illegal and consequently direct the Respondents 1 and 2 to appoint appropriate authority above the cadre of the 7th Respondent for conducting proper enquiry as per the law and initiate suitable proceedings if the guilty of the 8th Respondent is proved in the enquiry proceedings forthwith.

For Petitioner	: Mr.S.Palani Velayutham
For Respondent No.1 to 6	: Mr.B.Bhagawathi Government Advocate
For Respondent No.7	: Mr.M.Natarajan
For Respondent No.8	: Mr.K.Appadurai

COMMON ORDER

All the three cases are dealt with together and a common order is passed, since the issues involved and the parties involved are the same in all the above three cases.

2.The Criminal Original Petition will be taken as the base case and the parties will be identified in accordance with their nomenclature in the Criminal Original Petition.

3. Brief facts of the case:

3.1. On 07.10.1987, 6 named persons and a few others, armed with deadly weapons took away the father and brother of the third respondent in a Van at about 12.00 Noon. In the said incident, it is alleged that the above said persons took away certain articles and also gold chain from the mother of the third respondent. On the same day, at about 5.00pm, the third respondent went to the second respondent Police Station and complained about the incident and the same was reduced into writing and an FIR was registered in Crime No.593 of 1987 for the offences under Sections 397 and 364 of IPC.

3.2. The second respondent took up the investigation in the case and in the course of investigation, 7 more accused persons were added based on the confession given by the named accused and totally 13 persons were made as accused in the case. Some of the accused persons were arrested and some of them surrendered before the Court. In the course of investigation, the FIR was altered and certain provisions were added to the existing offences and an altered FIR came to be registered for the offences under Sections 147, 148, 120 (B), 450, 395 r/w 397, 365, 342 and 392 IPC. This alteration was made after adding 7 accused persons as mentioned above.

3.3. The Investigating Officer examined 27 witnesses and recorded their statements and also seized certain objects under the cover of Mahazar in the presence of the witnesses and after completion of the investigation, a final report was filed before the Judicial Class Magistrate, Tiruchendur on 05.05.1988 and the same was taken on file in PRC No.2 of 1988. Due to bifurcation of District, the criminal case was transferred from the Sathankulam Police Station to the newly formed Thattarmadam Police Station and the connected case diary was also transferred and sent to the newly formed Police Station on 21.03.1990.

3.4. The petitioner herein (who was A-8 at that point of time and is presently ranked as A-7) filed Crl.OP No.10177 of 1988 to quash the final report. The case papers were sent to the High Court during the pendency of the Criminal Original Petition. Subsequently, the Crl.OP came to be dismissed on 21.02.1991 and at the time of passing the order of dismissal, High Court had specifically directed the case records to be sent back to the lower Court namely, Judicial Magistrate Court, Tiruchendur.

3.5. In the year 2000, a Judicial Magistrate Court was newly formed at Sathankulam. In spite of the order of the High Court, the case bundles never got transferred to the Judicial Magistrate Court, Tiruchendur and as a result of the same, no case papers went to the newly formed Judicial Magistrate Court, Sathankulam. With the available records, the Judicial Magistrate Court, Sathankulam took those records on file in PRC No.63 of 2000. There was absolutely no movement in the case and the whole proceedings came to a standstill. In the meantime, A-1, A-6 and A-10 died. A-3, A-7, A-11, A-12 and A-13 are absconding accused and NBWs are pending against them and due to the non-availability of the Court case bundle, the pending NBWs were not executed.



3.6. The petitioner herein also filed a petition for withdrawal of the case before the Judicial Magistrate, Sathankulam in CRL MP Nos. 3373 and 3580 of 2015 and both those petitions were dismissed by the learned Judicial Magistrate by orders dated 21.07.2015. The petitioner has also filed WP(MD)No.17044 of 2015, claiming compensation and the same is also pending.

3.7. While so, the petitioner has filed CRL OP(MD)No.15813 of 2015 to quash PRC No.63 of 2000, on the file of the learned Judicial Magistrate, Sathankulam, on the ground that the case is pending for more than three decades without any progress and he has been facing mental agony for more than 30 years by facing the case before the Court, in which many accused and witnesses have died. The petitioner has taken a further ground that his attempts by filing applications for withdrawal of the cases also failed before the Judicial Magistrate Court and therefore, the continuance of the case without any progress for the last 30 years is a valid ground to quash the proceedings. The petitioner has raised a further ground that he was roped into the case falsely by the Police, since the petitioner was fighting a legal battle against the Police through Consumer Protection Society and therefore, there is mala fide intention on the part of the Police to rope him in the case.

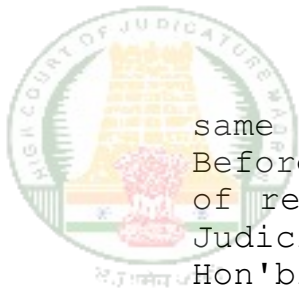
3.8. The petitioner also filed WP(MD)No.2525 of 2018 before this Court to take action against one Ponnusamy, who was originally the Sub-Inspector of Police at Thattarmadam Police Station on the ground that he was misleading the Magistrate Court and was not placing the correct facts for adjudication before the said Court.

3.9 The third respondent, who is the de facto complainant has filed WP(MD)No.14213 of 2016 before this Court, seeking for a direction to the Registrar General to take action to find out the case records for speedy trial of the case and to take action against the persons, who are responsible for the missing bundle in the Court and the missing records in the Police Station.

4. It is at this stage, the above cases were listed for hearing. In the interregnum, this Court passed an order dated 17.08.2015 in CRL OP(MD)No.15813 of 2015, to call for a status report from the learned Judicial Magistrate, Sathankulam. Pursuant to the orders passed by this Court, the learned Judicial Magistrate, Sathankulam submitted a report dated 01.09.2015, which reads as follows:

" I hereby humbly submit that the status report of PRC No.63 of 2000 on the file of the Judicial Magistrate, Sathankulam as called for in the reference cited above.

I humbly submit that the case in PRC No.2/88 on the file of Principal District Munsif-Cum-Judicial Magistrate Court, Tiruchendur was transferred to this Court on the point of the Jurisdiction in the year 2000 and the case records were received by this Court on 18.02.2000, and the



same was taken on file in this Court as PRC No.63/2000. Before transferring this case to this Court, material part of records in PRC 2/88 on the file of the, then 2nd class Judicial Magistrate, Tiruchendur was called for by the Hon'ble High Court, Madras for consideration for quash petition in CRL MP 10177/88.

I further submit that though the dismissal order passed by Hon'ble High Court in the quash petition in Crl MP No. 10177/88 dated:01.02.91 was received by the then Judicial Magistrate Court at Tiruchendur on 01.03.1991, the material part of records submitted to the Hon'ble High Court were not received back. The Judicial Magistrate, Tiruchendur submitted several letters to the Hon'ble High Court, Madras requesting to send the above said records. The original material parts of the records submitted to the Hon'ble High Court were not received back by the Principal District Munsif-cum-Judicial Magistrate Court at Tiruchendur till transfer the case to this Court, in the year 2000. The immaterial parts of the records alone were transferred to this Court. In the circumstances the case is pending without any improvement till this date.

Further, I submit that as per the direction of the Hon'ble Chief Judicial Magistrate, Thoothukudi Tmt.T.Neelavathi, Junior Assistant of this Court was deputed to attend the Hon'ble High Court, Madras on 22.09.2011 and 23.09.2011 for ascertaining the transmission of lower Court records after disposal of CrlMP NO.10177/88. She attended the Madras High Court, at Chennai on 22.09.2011. She submitted a report in which she stated that the registers belongs to 20 years back and they searched it and finally told her that the records are untracable.

I submit that as per the direction of the Hon'ble Madras High Court, the Deputy Superintendent of Police, Sathankulam has reconstructed some of the document and it was received from the Principal District Munsif - cum - Judicial Magistrate at Tiruchendur. But the material documents viz 1.Complaint., 2.FIR., 3.Charge Sheet and list of witnesses and 4.Form 95 were not reconstructed. If the above said material documents are not reconstructed. If the above said material documents are not reconstructed further proceedings in this case cannot be possible.

I further submit that while the case was pending for reconstruction of the above said materials records, the Inspector of Thattarmadam P.S. send report to this Court on 01.02.2014 and 20.12.2014 by stating that originally this case was registered in Sathankulam P.S.in the year 1987 and then it was transferred to Thattarmadam P.S in which the above said material records were not transferred as per the available pending file. As per the report of the Inspector of Thattarmadam P.S. Material records of this case are not available in their station file for reconstruction of the same in this case.



I humbly submit that on perusal of this case records, this case has been pending from the year 1988 without any progress for want of records. In this case charge sheet has been laid against 13 accused out of them the 1st accused was died on 10.04.2004, NBW is pending against A2, A5, A6 and A9 to A12 and other accused are appearing through their counsel till date. In the meantime A7 Kumaresan file Crmp.No. 3373/2015 and Crmp.No.3580/2015 U/s 321 CrPC seeking either to commit the case or to withdraw the case which were dismissed on 21.07.2015. In the meantime the Assistant Public Prosecutor informed this Court that he has sent his opinion to the concerned authorities as this is fit case for withdrawal. Now the case is posted on 01.10.2015 for further proceedings awaiting proper written reply from the Government side."

This Court also passed an order dated 25.07.2018 in WP(MD)No.14213 of 2016 as follows:

" The learned counsel appearing for the petitioner would submit that this petition has been filed to direct the first respondent to take appropriate action to find out the case records in P.R.C.No.63 of 2000 pending on the file of the Judicial Magistrate, Sattankulam and also to reconstruct the case records for speedy committal, within stipulated time by considering petitioner's representation dated 12.09.2015 and consequently to direct the second respondent to register an FIR and to take proper action against the persons, who are responsible for such missing of Court documents and police records.

2.The learned Judicial Magistrate, Sathankulam has submitted a report before this Court in D.No.2554 of 2015, dated 01.09.2015 stating that some of the documents have been reconstructed by the Deputy Superintendent of Police, Sathankulam and the same was received, but the material documents viz., 1.Complaint, 2.F.I.R., 3.Charge Sheet and list of witnesses and 4.Form 95 were not reconstructed and therefore, not able to proceed with the case further in the absence of said documents.

3.In the light of the aforesaid report, the learned counsel for the petitioner would submit that the petitioner has filed the writ petition before this Court in the year 2016 seeking for the aforesaid prayer.

4.The learned counsel appearing for first respondent/Registrar General seeks two weeks time to trace out the said papers and submit a report before this Court.



5.It is very unfortunate that the department also not in a position to produce the documents for the reconstruction of the case bundle and the Registry of this Court has not traced out the case bundles for the past these years. At this juncture, the Deputy Inspector General of Police, Tirunelveli Region is directed to submit a report before this Court on 08.08.2018.

6.At the request of the learned Additional Public Prosecutor and the learned counsel appearing for the first respondent, post the matter on 08.08.2018 for filing report.

5.Pursuant to the orders passed by this Court, the Deputy Registrar (Criminal Side) of this Court has filed a report dated 06.08.2018, as follows:

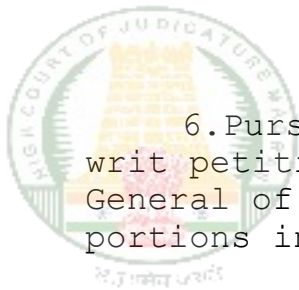
"It is submitted that the following report is respectfully submitted in this matter:

1.Earlier, an interim report of the then Deputy Registrar(Crl.Side) High Court, Madras dt. 12.08.2016 was filed in the above matter. It is prayed that the said report may be treated as part and parcel of this further report.

2.Despite the sincere efforts taken to search the record in PRC No.2/1988 on the file of the Judicial Magistrate, Tiruchendur (now PRC No.63/2000 on the file of the Judicial Magistrate, Sathankulam) alleged to have been received by this Registry, for the case in Crl.MP.No. 10177/1988 on the file of this Hon'ble Court, which was disposed on on 01.02.1991, in the Criminal Section, the same is not traceable.

3.Due to the efflux of time, about 30 years, the old preparation Register for the year 1988 wherein the details of the despatch of such records to the lower Court could be available, is also not traceable.

It is further respectfully submitted that in the earlier interim report dated 12.08.2016, it was submitted that as soon as the said Preparation Register is traced, the details of the despatch of the trial Court records received for CrIOP.No.10177/1988 will be submitted for onward transmission to the Madurai Bench of Madras High Court at Madurai. As the tracing out of the said Register is still at the very same status, it is prayed that this Hon'ble Court may be pleased to grant one month time to trace out the preparation register, to find out the details of the whereabouts of the said records."

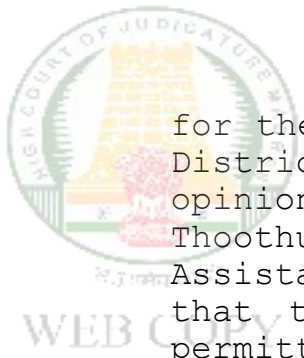


6. Pursuant to the orders passed by this Court in the above said writ petition, a report has been filed by the Deputy Inspector General of Police, Tirunelveli Range, dated 06.08.2018. The relevant portions in the report are extracted herein under:

" 21) It is further submitted that in obedience of the orders of the Honourable High Court, all the available records in connection with the case in Sathankulam Police Station Crime No.593/1987 was deeply scrutinized and the aforesaid facts were ascertained. Moreover, on 06.08.2015, the Inspector of Police, Thattarmadam Police Station submitted a proposal to the Superintendent of Police, Thoothukudi District for withdrawal of the said criminal case on the following grounds:

"The case is pending for past 28 years without any progress the case bundles not yet found in the Judicial Magistrate Court so far; There is no case diary or charge sheet connected records found in Thattarmadam Police Station also. The case was registered before Hon'ble High Court, Chennai during the year 1988. The Hon'ble High Court Chennai directed the Judicial Magistrate, Tiruchendur to send all the documents for perusal. After the perusal by the Hon'ble High Court, the charge sheet file was not returned to Judicial Magistrate, Tiruchendur. Likewise, the CD file was not handed over to Thattarmadam Police Station during the year 1990 by Sathankulam Police Station. Presently, the case is pending in Sathankulam Judicial Magistrate Court. In this case out of total number of 13 accused A-1 died and Death Certificate submitted before the Court. A-6, A-10 died and Death certificate are available. NBWs are pending against A-3, A-7, A-11, A-12 and A-13, A-2, A-4, A-5, A-8 and A-9 have not appearing before the Court but filing 317 CrPC petitions, regularly for condoning their absence and it was kept alive. There is no progress in this case for years together because of the unavailability of the charge sheet and other vital documents. Hence, I request to do the needful to withdraw the case."

The same was also endorsed and recommended by the then Deputy Superintendent of Police, Sathankulam Sub -Division and Assistant Public Prosecutor, Grade-II, Judicial Magistrate Court, Sathankulam. In turn, the Superintendent of Police, Thoothukudi District forwarded the proposal with his recommendations to the Collector, Thoothukudi District vide letter No.C1/42360/2015 dated 28.09.2015



for the withdrawal of the case. The Collector, Thoothukudi District, in turn requested to obtain and forward the opinion of the Assistant Director of Prosecution, Thoothukudi for further action. During the discussion, the Assistant Director of Prosecution, Thoothukudi affirmed that the withdrawal of the case at this stage is not permitted, as per the judgment delivered by the Hon'ble High Court, Madras reported in 2015(1)LW (CRL) 540.

22). It is submitted that despite all our efforts taken to trace the CD file in ended in vain. However, certified cop of the FIR issued by the Court has been procured from the complainant. Under these circumstances it is submitted that the vital documents required for conducting trial proceedings viz., (I) Original Complain, (II) FIR (III) Charge Sheet, (IV) Memo of Evidence, (V) List of Documents and (VI) Form -95 etc., are totally missing. In the absence of those documents there is least possibility for reconstructing the case diary with the available records.

7.A reading of the above said reports clearly points out the fact that the CD file pertaining to the case is not available at Thattarmadam Police Station right from the year 1990 onwards and the Court records are not available at Judicial Magistrate Court, Sathankulam and these Court records went missing right from the year 1991 onwards and the original records never got transferred from the High Court to the Judicial Magistrate Court. The report of Deputy Registrar (Criminal Side) also makes it clear that the High Court Registry is not able to trace the transfer of records from this Court to the Judicial Magistrate Court, Tiruchendur after the dismissal of CrIOP No.10177 of 1988 in February 1991.

8.In this scenario, there has been absolutely no development in the case, which is pending in PRC No.63 of 2000, for the last 30 years due to want of records. In the meantime, several accused persons have died and several witnesses have also died and there is no light in the end of the tunnel.

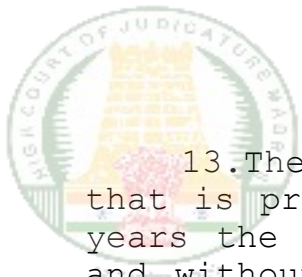
9.The learned Additional Advocate General representing the Police would submit that even reconstruction of the bundle is not possible due to the missing of the vital documents and therefore, a proposal has been mooted for withdrawal of the criminal case itself, since the case has been pending without any progress in the PRC stage for the last 30 years and the said proposal is pending before the Assistant Director of Prosecution, Thoothukudi. The learned Additional Advocate General, further submitted that in the absence of original complaint, FIR, memo of evidence, list of documents, Form-95, which are vital documents, there is not even a possibility for framing charges in this case. The learned Additional Advocate General also made a faint attempt to throw the blame on the petitioner for missing of records.



10.The learned Counsel Mr T.A.Ebenezer appearing on behalf of the third respondent submitted that the petitioner by filing one petition after another has ensured that the case has been delayed sufficiently. The learned Counsel would further submit that the petitioner is responsible for missing of records and therefore, action must be taken against the petitioner and he must be enquired with regard to the missing of records from the Police Station as well as the Court. He would further submit that whatever records are available, the same must be reconstructed and lower Court must be directed to proceed further with the case in accordance with law.

11.The learned Counsel for the petitioner would submit that the petitioner has been suffering untold mental agony for the last 3 decades and the case has been pending absolutely without any progress. The petitioner is now aged about 68 years and more than half of his life has been spent in Court proceedings and out of frustration, the petitioner has been filing various applications, in order to conclude the proceedings, which have been pending without any progress and without any chances of being reconstructed and continued. The learned Counsel for the petitioner would further submit that for the lapse on the part of the Police and the Court, in missing the records, an attempt is made to throw the blame on the petitioner and that the petitioner by no stretch of imagination can be made responsible for the same. The learned Counsel would further submit that except for the ipsi dixit of the learned Additional Advocate General and the Counsel for the third respondent, there is not an iota of material to show that the petitioner was responsible for the missing records. Learned counsel for the petitioner further submitted that there has been unreasonable delay in this case and right of the petitioner for a speedy trial has been denied in this case. The learned Counsel would further submit that right of speedy trial is a part of fair, just and reasonable procedure implicit under Article 21 of the Constitution of India and the said fundamental right is being deprived to the petitioner by keeping the case pending for more than 30 years without any progress. The learned Counsel would further submit that apart from the delay, entire case has been foisted against the petitioner, who was not even named in the FIR and Police have roped in the petitioner in this case with mala fide intention to wreak vengeance, for the involvement of the petitioner in the case against the Police conducted on behalf of the Consumer Protection Society in the year 1987. Therefore, the learned Counsel for the petitioner would submit that the proceedings that are pending in PRC No.63 of 2000 is liable to be quashed.

12.The learned Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court dated 29.09.2006 in Moti Lal Saraf Vs. State of Jammu & Kashmir in Appeal (Crl)No. 774 of 2002, and also a judgment of this Court dated 05.01.2007 in Krishnasingh Vs. State represented by its Inspector of Police in Crl.OP No.7626 of 2006.



13. The present case is a reflection of sorry state of affairs that is prevailing in the justice delivery system. For the last 30 years the case has been pending in PRC stage without any progress and without any chances of progress in future. The reason is even more shocking, which is that the records namely CD file in the Police Station and the Court records are missing for the last 27 years without being traced. Reports filed by Police, learned Judicial Magistrate and Deputy Registrar (Criminal Side), reveals that there is no scope for tracing the records in this case. Interestingly, till now no one has taken any action to fix the person / persons, who are responsible for the missing of records. In the meantime, many accused persons have died and many witnesses have died and the case itself has come to a grinding halt. There is also no scope for reconstruction of records, since the vital documents are missing. The fact that the State itself is taking steps to withdraw the case, shows that the Police themselves have lost the hope of any progress in this case.

14. There is not an iota of material to show that the petitioner was responsible for the missing records. This Court cannot proceed on the basis of mere suspicion or surmises against the petitioner and make him responsible for the missing records. The fact that neither police nor the Court really bothered to fix the person responsible for the missing of records for the last 30 years, makes it difficult for this Court to order for an enquiry on the missing records, at this length of time. Such an enquiry will become an empty formality since 30 years have passed.

15. The Hon'ble Supreme Court in Moti Lal Saraf Vs State of Jammu & Kashmir has held as follows:

"The appellant, in the instant case, has been facing the criminal prosecution for almost more than two and a half decades. The speedy trial is an integral part of Article 21 of the Constitution. In the instant case, in the last twenty six years, not even a single prosecution witness had been examined. It was urged that for more than one reasons, the prosecution, in the instant case, cannot be permitted to continue. The proceedings taken by the respondents against the appellant were clearly an abuse of process of law."

16. The learned single Judge of this Court had an occasion to deal with a case, which is more or less similar to the present case. The relevant portions from the judgment are extracted hereunder:

"4. Heard the learned Additional Public Prosecutor. The learned Additional Public Prosecutor submitted that the First Information Report was registered in the year 1980 and P.R.C. was numbered in the year 1993 as P.R.C.No.15 of 1993 on the file of the learned Judicial



Magistrate, Krishnagiri, and due to bifurcation of the District, the same was transferred to the learned Judicial Magistrate, Poochampalli, in P.R.C.No.16 of 2000. It is also submitted by the learned Additional Public Prosecutor that the records in respect of this case were not available and as such the learned Magistrate was directing the reconstruction of the documents for the purpose of conducting trial.

5.

6.This is an unfortunate case, wherein, the First Information Report was registered against the petitioner as early as on 04.09.1986 for the alleged offences under Section 4(1)(A) r/w Sections 7(1)(c) and 14(A) of the Tamil Nadu Prohibition Act. Thereafter, in the year 1993, the Investigating agency said to have completed the investigation and filed the final report and the same was taken in P.R.C.No.15 of 1993 on the file of the learned Judicial Magistrate, Krishnagiri and due to bifurcation of the District the case was transferred to the learned Judicial Magistrate, Poochampalli, and renumbered as P.R.C.No.16 of 2000. It is also seen from the materials available on record that the case was simply adjourned periodically necessitating the petitioner to appear for all the hearings right from the year 1994 onwards, but unfortunately, till date there is absolutely no progress at all and not even the charge is framed in this case.

7.This Court is surprised to note that only now after a period of more than a decade the learned Magistrate directed the authorities concerned to reconstruct the documents for the purpose of trial in this case. The materials available on record does not disclose that the documents and records relating to the case were available for reconstruction. However, this Court is of the considered view that allowing the proceedings to continue against the petitioner after a long period, viz., more than two decades would amount to clear case of abuse of process of law.

8.The Hon'ble Supreme Court has held in MOTI LAL SARAF V. STATE OF JAMMU & KASHMIR reported in IV (2006) CCR 141 (SC) that,

"49. It is the bounden duty of the Court and the prosecution to prevent unreasonable delay.

50. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay



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by imposing on the Courts and on the prosecution an obligation to proceed with reasonable dispatch.

51. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments, and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

52. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the Criminal proceedings are quashed".

9.The principle of law laid down by the Apex Court in the decision cited supra is squarely applicable to the instant case as in this case, the First Information Report was registered as early as in the year 1986 and the final report was filed as early as in the year 1993 and till date there is absolutely no progress and added to that even the records of the case were not available and as such the proceedings initiated against the petitioner pending in P.R.C.No.16 of 2000 on the file of the learned Judicial Magistrate, Poochampalli, is liable to be quashed . Accordingly, the entire proceedings is quashed. In view of allowing this petition, the connected Miscellaneous Petitions are closed."

17.it is also relevant to take note of the following judgments of the Hon'ble Supreme Court.1.Vakil Prasad Singh Vs State of Bihar, reported in (2009) 2 SCC (Cri) 95 and 2.Ranjan Dwivedi Vs. Central Bureau of Investigation, reported in (2012) 8 SCC (Cri) 495.

17.1. In Vakil Prasad Singh Vs State of Bihar, cited supra, the Hon'ble Supreme Court has held as follows:

18. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Cr.P.C. (In particular, Sections 197, 173, 309, 437 (6) and 468 etc.) and the constitutional protection enshrined in Article 21



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of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in Maneka Gandhi Vs. Union of India & Anr.⁴, in Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar⁵, this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means (1978) 1 SCC 248 (1980) 1 SCC 81 reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in Hussainara Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr.⁶. 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.

20.

21. Notwithstanding elaborate enunciation of Article 21 of the Constitution in Abdul Rehman Antulay (supra), and rejection of the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal trial shall not proceed, pronouncements of this Court in "Common Cause" A Registered Society Vs. Union of India (UOI) & Ors.⁷, "Common Cause", A Registered Society Vs. Union of India & Ors.⁸, Raj Deo Sharma Vs. State of Bihar⁹ and Raj Deo Sharma II Vs. State of Bihar¹⁰ gave rise to some confusion on the question whether an outer time limit for conclusion of criminal proceedings could be prescribed whereafter the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused. The confusion on the issue was set at rest by a seven-Judge Bench of this court in P. Ramachandra Rao Vs. State of Karnatak¹¹.



Antulay's case (supra) as correct and the one which still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of right to speedy trial, it was held that guidelines laid down in the A.R. Antulay's case (supra) are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied as a strait-jacket formula.

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

23. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 of Cr.P.C. to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court under Section 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. The outer limits or power of limitation expounded in the aforementioned judgments were held to be not in consonance with the legislative intent.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. 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, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25. 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, 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 a situation, it is open to the court to



make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

17.2. In *Ranjan Dwivedi Vs. Central Bureau of Investigation*, cited supra, the Hon'ble Supreme Court has held as follows:

19. Our Constitution does not expressly declare that right to speedy trial as a fundamental right. The right to a speedy trial was first recognised in the *Hussainara Khatoon's* case, AIR 1979 SC 1360, wherein, the court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. Subsequently, in a series of judgments, this Court has held that 'reasonably' expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21 of the Constitution of India.

20. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a three fold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.

21. The reasons for the delay is one of the factors which courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which occasioned by action or inaction of the prosecution is one of the main factors which will be taken note by the courts while interjecting a criminal trial. A deliberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution. However, unintentional and unavoidable delays or administrative factors over which prosecution has no



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control, such as, over- crowded court dockets, absence of the presiding officers, strike by the lawyers, delay by the superior forum in notifying the designated Judge, (in the present case only), the matter pending before the other forums, including High Courts and Supreme Courts and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trial within a reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be violative of accused's right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trial requirement focuses on only one factor i.e. the reason for the delay and the attending circumstances bear on the inquiry only to the extent to the sufficiency of the reason itself.

22.

23. The length of the delay is not sufficient in itself to warrant a finding that the accused was deprived of the right to a speedy trial. Rather, it is only one of the factors to be considered, and must be weighed against other factors. Moreover, among factors to be considered in determining whether the right to speedy trial of the accused is violated, the length of delay is least conclusive. While there is authority that even very lengthy delays do not give rise to a per se conclusion of violation of constitutional rights, there is also authority that long enough delay could constitute per se violation of right to speedy trial. In our considered view, the delay tolerated varies with the complexity of the case, the manner of proof as well as gravity of the alleged crime. This, again, depends on case to case basis. There cannot be universal rule in this regard. It is a balancing process while determining as to whether the accused's right to speedy trial has been violated or not. The length of delay in and itself, is not a weighty factor.

18. The following principles emerge from the above judgments:

(a) A reasonable expeditious trial is integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.



(b) The guarantee of a speedy trial is intended to relieve the accused of the anxiety and public suspicion due to unresolved criminal charges and to provide reasonably prompt administration of justice.

(c) This right is applicable not only to the criminal proceedings in the Court, but also includes within its sweep preceding Police investigation as well.

(d) The right to a speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of case.

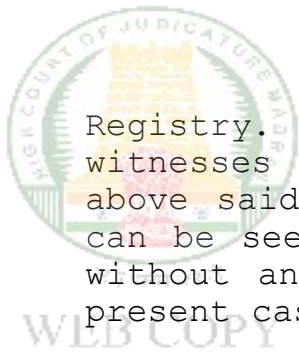
(e) When the Court feels, having regard to the nature of the offences and other relevant circumstances, quashing of proceedings may not be in the interest of justice, it is open to the Court to make an appropriate order as it may deem it just and equitable including fixing of time frame for conclusion of trial.

(f) The reason for the delay is one of the factors, which the Courts should assess in determining as to whether, a particular accused has been deprived of his or her right to a speedy trial and if the delay is attributable to the accused, any length of delay will not be sufficient to quash the proceedings since the accused cannot take advantage of his own wrong.

(g) The unintentional and unavoidable delays or administrative factors, over which, the prosecution has no control, as a result of which, there is failure to complete the trial within a reasonable time, cannot be said to be violative of the accused's right to a speedy trial and such delays need to be excluded, while deciding, whether there is unreasonable delay and unacceptable delay.

(h) The length of delay does not give rise to per se conclusion of violation of right to a speedy trial and the conclusion can be arrived at only on a case to case basis and there cannot be a universal rule in this regard.

19. The delay has occasioned, due to the missing records both in the Police Station as well as in the Court and reports have been filed to the effect that the records cannot be reconstructed. There is not an iota of material to show that the petitioner is responsible for the missing of records. The petitioner has not contributed for the delay in the proceedings and his earlier petition for quash filed in the year 1988 and subsequent applications filed for withdrawal of case in the year 2015 before the Magistrate Court cannot be held to be the reason for the delay in proceedings. There is absolute slackness on the part of the police and also the Court Registry in not taking effective steps at the earliest point of time to trace the records and therefore the delay is attributable only on the part of the Police and the Court



Registry. The death of some of the accused persons and also the witnesses has virtually taken away the sting in the case. When the above said principles are applied to the present case on hand, it can be seen that there is an admitted delay of more than 30 years without any progress and not even charges have been framed in the present case.

20. The delay is so enormous and that there is risk of evidence being lost by passage of time and memory of the available witnesses would have dimmed by passage time and no useful purpose will be served in continuing with the proceedings.

21. In view of the impossibility in reconstructing the records, there is no scope for making progress in this case. No useful purpose will be served by keeping the proceedings pending endlessly without any light in the end of the tunnel. The petitioner has gone through the anxiety associated with the suspended prosecution due to unresolved criminal charges for the last 30 years which delay is not attributable to him and hence, his right to a speedy trial under Article 21 of the Constitution of India, has been violated.

22. Under such circumstances, this Court in exercise of its jurisdiction under Section 482 of Criminal Procedure Code is left with no other option, except to quash the proceedings pending in PRC No.63 of 2000 on the file of the learned Judicial Magistrate, Sathankulam.

23. The above petitions are disposed of in the following manner:
i) CRLOP(MD)No.15813 of 2015 stands allowed and the proceedings in PRC No.63 of 2000, on the file of the learned Judicial Magistrate, Sathankulam is hereby quashed.
ii) in view of the order passed in CRLOP(MD)No.15813 of 2015, no further orders are required to be passed in WP(MD)No.2525 of 2015 and the same is closed.
iii) in view of the reasons stated supra and in view of the fact that the proceedings in PRC No.63 of 2000 on the file of the Judicial Magistrate, Sathankulam has been quashed, no further direction can be issued in this regard and WP(MD) No.14213 of 2016 is closed.
iv) in the facts and circumstances of the case, there shall be no orders as to costs. Consequently, all connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)



To

- 1.The Registrar General,
High Court of Madras,
Chennai.
- 2.The Judicial Magistrate,
Sathankulam.
- 3.The Secretary,
Department of Home,
Fort St.George,
Chennai - 600 009.
- 4.The Director General of Police,
Santhome High Road,
Chennai - 600 009.
- 5.The Superintendent of Police,
CBCID, South Zone, Madurai.
- 6.The Superintendent of Police,
Thoothukudi District,
Korampallam,
Thoothukudi.
- 7.The Deputy Superintendent of Police,
Sathankulam Region,
Sathankulam,
Thoothukudi District.
- 8.The Inspector of Police,
Thattarmadam Police Station,
Thattarmadam,
Thoothukudi District.
- 9.The Inspector of Police,
Sathankulam Police Station,
Sathankulam,
Thoothukudi District.

+1cc to M/S.M.NATARAJAN, Advocate SR.No. 79600
+1cc to M/S.K.APPADURAI, Advocate SR.No. 79601
+2cc to M/S.T.A.EBENEZER, Advocate SR.No. 79851 & 79852
+1cc to Special Government Pleader, SR.No. 79630
+1cc to M/S.S.PALANI VELAYUTHAM, Advocate SR.No. 80081

Common order made in
Crl.O.P. (MD) No.15813 of 2015
and
WP (MD) Nos.14213 of 2016
and 2525 of 2018
21.08.2018

dsk

JM/RP/SAR 2/05.09.2018/21P/16C