

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2020

PRONOUNCED ON : 05.10.2020

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.NO.8936 OF 2018

Veerasangili Kanniah Thanabalan
@ V.K.T.Balan .. Petitioner/Accused

Vs.

State represented by
The Deputy Superintendent of Police,
Crime Branch, C.I.D.,
Metro wing, Chennai - 28. ... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records pertaining to the proceedings in
P.R.C.No.174 of 2010 pending committal on the file of the XI
Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 and
quash the same.

For Petitioner : Mr.K.Elangovan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

सतयमेव जयते
O R D E R

This case was taken up through video conferencing.

2. This criminal original petition has been filed seeking
to call for the records pertaining to the proceedings in
P.R.C.No.174 of 2010 pending committal on the file of the XI
Metropolitan Magistrate Court, Saidapet, Chennai - 600 015 and
quash the same.

3. The incident in this case took place when the Sri
Lankan Tamil issue was at its crescendo and emotions were ruling
the roost; one Balasingham was the confidant of LTTE supremo
Prabhakaran and was his spokesperson; he was residing in

D.No.135-E, Elliot's Beach Road, Besant Nagar, Chennai - 90; there was a bomb explosion in the early hours on 23.12.1985 near his house, in connection with which, a case in Sasthri Nagar Police Station Crime No.1427 of 1985, for the offences under Section 307 IPC and Section 4(b) of the Explosive Substances Act, 1908, was registered. During the course of investigation, it came to light that a bomb with timer device was placed near the house of Balasingam for assassinating him, however, he survived.

4. Based on reliable information, the CB-CID conducted searches in various places in Tamil Nadu and seized forged travel documents like Sri Lankan passports, Indian Passports, American and Canadian dollars, etc. Therefore, the CB-CID registered a case in Crime No.27 of 1986 on 07.06.1986 for the offences under Section 120-B IPC, Section 3 of the Official Secrets Act, 1923, Rule 7 of the Foreigners Order, 1948 r/w Sections 14 and 13 of the Foreigners Act, 1946, Rule 3 r/w 6 of the Passport (Entry into India) Rules, 1950 and Section 12(b) of the Passports Act, 1967. The CB-CID arrested Kandasamy (A1), V.K.T.Balan (A2), Ranjan (A3), Manavai Thambi (A4) and Radhakrishnan (A7) on 07.06.1986 and Pavani @ Lati (A5) on 27.06.1986. However, Premkumar @ Kannan (A6) is still in abscondance.

5. Based on the confession statements of the arrested accused, the CB-CID seized various items including gelatin sticks and it came to light that it was this group that had planned to assassinate Balasingam and had placed the time bomb near his house. Radhakrishnan (A7) turned approver and he was tendered pardon by the III Metropolitan Magistrate, George Town, Chennai, on 21.08.1986. The case in Sasthri Nagar Police Station Crime No.1427 of 1985 relating to the explosion near Balasingam's house was transferred to the CB-CID and was merged with CB-CID Crime No.27 of 1986.

6. During the course of investigation, the police had seized several incriminating documents including the following note:

"Mr.Dixit in Colombo is in touch with Srimavo and Anura also with Mr.T. As Mrs.Srimavo recently gave speeches against Mr.T., Dixit is trying to patch up and to bring some understanding with SLFP. India wants some tension in the south through Mrs.Srimavo. At the same time they advice her to have good relationship with Mr.T. I spoke to T. As it is T. will not join or come to some understanding with Mrs.Srimavo. He will only support the President and work with him. India forcing the President to settle this problem not to help Tamils, to make

President unpopular and make divisions in the U.N.P. also to allow Srimavo to gain power.....U.S.S.R. is very keen to change the Government of Sri Lanka as soon as possible. India is instrumental for the purpose..... RAW had asked LTTE to do activities on Sinhala Civilians in the border District."

The seized documents were sent to the Handwriting Expert for comparison with the handwritings of the accused.

7. Since the accused were found to be involved in passing secret informations about India to their masters in Sri Lanka, authorization under Section 13(3) of the Official Secrets Act, was obtained from the Government of India on 06.10.1987. As prosecution for an offence under the Official Secrets Act can only be by way of a complaint by an Officer authorized by the Central Government, Mr.K.Chellamuthu, Deputy Superintendent of Police, CB-CID, who was authorized by the Central Government by order dated 06.10.1987, filed a complaint in the Court of Additional Metropolitan Magistrate, Egmore - 8, on 17.12.1987, against Kandasamy (A1), V.K.T.Balan (A2), Ranjan (A3), Manavai Thambi (A4), Pavani (A5) and Premkumar (A6), for the offences under Sections 120-B IPC r/w Section 3(1)(c), 5(1)(b) r/w Section 5(4) of the Official Secrets Act, 1923 and 307 IPC and Section 4(a) of the Explosive Substances Act, 1908, Section 3(1)(c) and 5(1)(b) r/w Section 5(4) of the Official Secrets Act, 1923, Section 9 r/w Section 3(1)(c), 5(1)(b) r/w Section 5(4) of the Official Secrets Act, 1923, Section 307 IPC r/w 109 IPC, Section 4(a) of the Explosive Substances Act, 1908 and Section 4(a) r/w Section 6 of the Explosive Substances Act, 1908.

8. It may be pertinent to state here that the offence of attempt to commit the murder of Balasingam, punishable under Section 307 IPC, by planting explosives, was also included in the complaint, since the said offence along with the offence under the Official Secrets Act, were committed in the course of the same transaction. In other words, under normal circumstances, a final report would have been filed by the police in respect of the attempt on the life of Balasingam, but, since the offence under the Official Secrets Act was committed in the course of the same transaction, the CB-CID obtained authorization from the Central Government and filed a single complaint.

9. Kandasamy (A1) and Ranjan (A3) absconded after they were released on bail and is reported that Ranjan (A3) is dead now. It is also reported that Manavai Thambi (A4) has died and Pavani (A5) is absconding. Premkumar (A6) was never arrested during investigation and is shown in the complaint as absconding accused. Only V.K.T.Balan (A2) is available for trial.

10. In the meanwhile, the complaint was taken on file as C.C.No.15361 of 1987 by the Additional Metropolitan Magistrate and was transferred to the file of the II Metropolitan Magistrate Court, Egmore. Again the case was transferred from the file of the II Metropolitan Magistrate Court, Egmore, to the file of the XI Metropolitan Magistrate Court, Chennai and was re-numbered as C.C.No.10271 of 2010. At that juncture, it was found that the case should not have been given C.C.No., since committal proceedings are required and hence, the case was assigned P.R.C.No.174 of 2010.

11. In the transit of the case from one Court to another, several documents were irretrievably lost. Under such circumstances, V.K.T.Balan has filed the present quash application, on the ground that, thirty years has lapsed without any progress in the case, he has been subjected to a long ordeal which has to be drawn to an end.

12. Heard Mr.K.Elangovan, learned counsel for V.K.T.Balan, the petitioner herein and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/ State, on various dates by video conferencing.

13. On 14.09.2020, this Court passed a detailed order, which reads as follows:

"This case is taken up through video conferencing.

2. Today, Mr.C.Vijayakumar, I.P.S., Superintendent of Police, CBCID, Mr.M.Sathyaseelam, Deputy Superintendent of Police, CBCID, OCU-I, Chennai, Mr.J.Mahesh, I.P.S., Q-Branch Superintendent of Police, Mr.D.Gopinath, Deputy Director of Prosecution, Chennai Zone, Mr.R.V.Raja Kumar, learned XI Metropolitan Magistrate, Chennai, Mr.D.Kiraharaj, learned Assistant Public Prosecutor, Grade-I, attached to Directorate, Chennai, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent, Mr.A.Balamurugan, learned counsel for the petitioner and V.K.T.Balan, the petitioner herein, are present.

3. Pursuant to the order dated 08.09.2020, the CBCID has nominated Mr.M.Sathyaseelan, Deputy Superintendent of Police, CBCID, OCU-I, Chennai, to be the Officer-in-Charge of this case. The CBCID has filed a status report, wherein, they have stated that out of 43 documents sought by them, 23 documents were furnished by the XI Metropolitan

Magistrate, Chennai and out of 54 statements sought by them, 40 statements were furnished to them by the XI Metropolitan Magistrate, Chennai.

4. This case was initially filed before the II Metropolitan Magistrate Court, Chennai and it has been transferred to the file of the XI Metropolitan Magistrate Court, Chennai. It is also brought to the notice of this Court that, by order dated 25.06.2014 in CrI.M.P.No.225 of 2014, this case was transferred under Section 401 Cr.P.C. by the Chief Judicial Magistrate, Chennai, from the file of the XI Metropolitan Magistrate Court, Chennai, to the file of the IV Metropolitan Magistrate Court, Chennai.

5. In the opinion of this Court, because of such unnecessary transfers, the documents have got lost in transit.

6. V.K.T.Balan, the accused herein, submitted that he has no grievance against the present XI Metropolitan Magistrate, Chennai and what he wants is an expeditious disposal of his case.

7. Mr.R.V.Rajakumar, learned XI Metropolitan Magistrate,, Chennai, submitted that pursuant to the order of transfer passed by the Chief Metropolitan Magistrate, the records were transferred to the file of the IV Metropolitan Magistrate Court, Chennai, but, they were returned to the file of the XI Metropolitan Magistrate Court, Chennai, on the ground that, some documents were missing and that they would not receive incomplete papers. On this ground, this case has been languishing on the file of the XI Metropolitan Magistrate Court, Chennai, till date.

8. In Saidapet Court Complex, the IV Metropolitan Magistrate Court is in the 2nd floor and the XI Metropolitan Magistrate is in the 3rd floor. Therefore, no great prejudice will be caused to the accused, if the preliminary enquiry in this case is done by the XI Metropolitan Magistrate, Chennai. Therefore, the order of transfer dated 25.06.2014 in CrI.M.P.No.225 of 2014 passed by the Chief Metropolitan Magistrate, is hereby set aside and the XI Metropolitan Magistrate, Chennai, shall take all steps to reconstruct the papers and proceed with the enquiry in P.R.C.No.174 of 2010.

9. This Court is given to understand that the CBCID has only one Assistant Public Prosecutor, in the XI Metropolitan Magistrate Court, Chennai, who is over burdened. Hence, it is imperative that an Assistant Public Prosecutor, Grade-I, be nominated to handle this case, exclusively, before the XI Metropolitan Magistrate Court, Chennai. This Court directs the Deputy Director of Prosecution, Chennai, to nominate Mr.D.Kiraharaj, learned Assistant Public Prosecutor, Grade-I, attached to the Directorate, for assisting the XI Metropolitan Magistrate, Chennai, for reconstruction of the records and for conducting the enquiry in P.R.C.No.174 of 2010.

11. The IV Metropolitan Magistrate, Chennai, is directed to make available the scanner and photocopier for the XI Metropolitan Magistrate, Chennai, to take legible copies of the records.

12. One week time is granted to the prosecution to file a detailed report with regard to the genesis of the case and the trajectory of this case beginning from the date of the offence till date.

Post the matter on 21.09.2020 at 2.30 p.m."

14. Pursuant to the above order, Mr.D.Kiraharaj, Assistant Public Prosecutor, Grade-I, has filed a status report, which is self-explanatory and reads as under:

"I. On scrutinizing the case records, as per Memo of Evidence 91 Witnesses were cited including official witnesses. Out of which 67 witnesses statements recorded u/s 161(3) Cr.P.C are well available remaining 24 witnesses are official witnesses

m. As per the List of documents, 75 Documents were cited by the Investigating Agency. Out of which 42 Documents were not available in the case bundle,

n. On 22.02.2018 learned XI MMC informed to CMM vide D.No. 315 of 2018 in respect of 42 missing documents

i. Out of which 9 Documents were traced and added in the main bundle

ii. The Learned XI MMC writes a letter to Government Departments for asking second copy of 6 Documents to initiate, to re-construct it. (List enclosed). If collected in future, it will be sent to trial court.

iii. Remaining $27 + 6 = 33$ Documents were unable to be traced and not possible to re-construct. (List enclosed)

4. I submit that the learned XI Metropolitan Magistrate and myself took effective measures to re-construct the missing documents, whereas, it is not possible to re-arrange it, since those documents are not available either within the CBCID office or the courts.

5. With these available documents, the investigating Agency and the Committal court (XI MMC) are ready and willing to commit it to the sessions court with new list of Documents (excluding the documents which were unable to re-construct/ re-arrange / not traceable documents)

6. I submit that I have perused court records from the court and Police records with the CBCID office, came to know that almost all the documents are available except those that are specifically listed annexed herewith and ready for committal.

7. It is pertinent to note that copy of the complaint along with documents were supplied u/s 207 Cr.P.C. to the VKT Balan, after perusal of the said records, he filed petition u/s 207 Cr.P.C. on 22.03.1995.

8. The accused VKT Balan had pointed out 11 documents were not supplied to him. Out of 11 documents 6 documents only available in the bundle and 5 documents are unable to trace and re-construct. That is S.No. 4, 5, 7, 8, 9, and 10 are available and S.No. 1, 2, 3, 6 and 11 of Sec 207 Cr.P.C. petition are not available.

9. I submit that subject to the direction given by this Hon'ble court the committal court is ready to commit the case with available documents to the trial court / Special court.

10. The committal court - XI MMC - is seeking direction from this Hon'ble court, to direct the Sessions court to take on file with the available documents mentioned in the new documents list filed by the complainant herein.

11. I submit that for and on behalf of the accused VKT Balan his counsel appeared u/s 205 Cr.P.C. Next hearing date of the case is 24.09.2020 for further proceedings

12. I herewith enclosed

- a. List of Available documents,
- b. List of Not available and unable to find out/
re-construct documents,

c. list of attempted to re construct documents and Hence it is therefore prayed that this Hon'ble court may be pleased to accept this status report and permit the committal Court XI- MMC, Saidpet, Chennai to commit P.R.C.No.174 of 2010 - pending on the file of the XI MMC- Chennai."

15. Mr.K.Elangovan, learned counsel for the petitioner submitted that except the petitioner, all the other accused are either dead or absconding and it is not known as to how many witnesses are alive and hence, the right of the petitioner under Article 21 of the Constitution of India for speedy trial has been infringed and therefore, the prosecution deserves to be quashed. He further submitted that Mr.Balasingam himself is dead.

16. Refuting the submissions made by the learned counsel for the petitioner, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State submitted that, apart from the approver, there are several other witnesses who are alive and just because some of the accused are dead or in abscondance, the prosecution cannot be quashed.

17. This Court gave its anxious consideration to the rival submissions.

18. The death of Balasingam subsequently will not in any way enure to the advantage of the accused and the attempt on his life can be proved through other witnesses, who are available.

19. In Ranjan Dwivedi Vs. Central Bureau of Investigation¹, the Supreme Court refused to quash the Samastipur bomb blast case, even though the occurrence in that case was in the year 1977. In the said case, the Supreme Court has held as follows:

"22.The second limb of the argument of the learned Senior Counsel Shri Andhyarujina is that the failure of completion of trial has not only caused great prejudice to the petitioners but also to their

1 AIR 2012 SC 3217 : (2012) 8 SCC 495

family members. Presumptive prejudice is not alone dispositive of a speedy trial claim and must be balanced against other factors. The accused has the burden to make some showing of prejudice, although a showing of actual prejudice is not required. When the accused makes a prima facie showing of prejudice, the burden shifts on the prosecution to show that the accused suffered no serious prejudice. The question of how great a lapse it is, consistent with the guarantee of a speedy trial, will depend on the facts and circumstances of each case. There is no basis for holding that the right to speedy trial can be quantified into specified number of days, months or years. The mere passage of time is not sufficient to establish denial of a right to a speedy trial, but a lengthy delay, which is presumptively prejudicial, triggers the examination of other factors to determine whether the rights have been violated.

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 the 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 the 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. "

20. A similar view was echoed by the Supreme Court in *Niranjan Hemchandra Sashittal and Another Vs. State of Maharashtra*² in the following paragraph:

"24. It is to be kept in mind that on the one hand, the right of the accused is to have a speedy

trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time-limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective."

21. In this case, the allegations against the accused are indeed very serious. It is alleged that they were passing secret information on India to their handlers in Sri Lanka. Notwithstanding that, they planned to assassinate Balasingam, to achieve which, they placed high power explosives with timer device near his house. The bomb did explode, but, fortunately no one was injured. In the facts and circumstances of the present case, the prosecution cannot be quashed on the ground of delay. The loss of records cannot also be a good reason to quash a prosecution and that secondary evidence can be adduced in a case, where, a document has been lost.

22. The learned counsel for the petitioner submitted that the final report and the relied upon documents that were furnished to the petitioner under Section 207 Cr.P.C. have been irretrievably lost in the 2015 Chennai Floods.

23. Taking into consideration the facts and circumstances of the case, the following directions are passed:

i.	the XI Metropolitan Magistrate Court, Saidapet, Chennai, shall furnish photocopies of the available documents to the petitioner at free of cost;
ii.	the XI Metropolitan Magistrate Court, Saidapet, Chennai, shall complete the committal proceedings within a period of three months from the date of receipt of a copy of this order provided the petitioner cooperates;
iii.	the petitioner has been permitted to be represented by his pleader under Section 205 Cr.P.C; however, he shall appear in person when the committal order is passed; and

iv	Mr.D.Kiraharaj, learned Assistant Public Prosecutor (Grade-I), shall handle the committal proceedings before the XI Metropolitan Magistrate Court, Saidapet, Chennai.
v	The Court of Session, Chennai shall accept the committal papers with the available documents sent by the XI Metropolitan Magistrate, Saidapet, Chennai and proceed with the case in accordance with law.

In this result, this criminal original petition is dismissed with the above directions.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The XI Metropolitan Magistrate, Chennai.
2. The Sessions Court, Chennai.
3. The Deputy Superintendent of Police, Crime Branch, C.I.D., Metro wing, Chennai - 28.
4. The Public Prosecutor, Madras High Court, Chennai - 600 104.
5. Mr.D.Kiraharaj, Assistant Public Prosecutor (Grade I), XI Metropolitan Magistrate Court, Saidapet, Chennai.
6. The Section Officer, Criminal Side, High Court, Madras-104.

Cr1.O.P.No.8936 of 2018

KJ(CO)
CS/03/11/2020