



2024:KER:49597

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 21ST DAY OF JUNE 2024 / 31ST JYAISHTA, 1946

CRL.MC NO. 5224 OF 2024

CRIME NO.1171/2022 OF PONKUNNAM POLICE STATION, KOTTAYAM

PETITIONER/ACCUSED:

AKHIL SABU
AGED 22 YEARS
S/O.SABU,MADAPPALLIL HOUSE, CHIRAKKADAVU P.O.,
CHIRAKKADAVU, KOTTAYAM, PIN - 686520

BY ADVS.
NAVANEETH.N.NATH
SHINTO THOMAS
GAUTHAM KRISHNA E.J.
ABHIRAMI S.

RESPONDENT/COMPLAINANT:

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

BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
21.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**CR****ORDER**

Dated this the 21st day of June, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (for short, 'the Cr.P.C.' hereinafter), and the prayers herein are as under:

- i. *To call for the records of the Sessions Case No.749/2022 pending before the Honourable Fast Track Special Court, Erattupetta.*
- ii. *To quash the proceedings dated 14/06/2024 in Sessions Case No.749/2022 on the files of the Honourable Fast Track Special Court, Erattupetta.*
- iii. *Issue a direction to the respondent to furnish copies of all the evidences, material and documents gathered during the course of investigation to the petitioner.*

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



3. The learned counsel for the petitioner would submit that, Criminal Rules of Practice in Kerala, 1982 (for short, 'the Rules, 1982' hereinafter) got amended and Rule 19(4) incorporated w.e.f. 19.5.2022. Therefore, compliance of Rule 19(4) of the Rules, 1982, is mandatory, before start of trial. However, in the case at hand, though the case stands posted for trial on 22.6.2024, Rule 19(4) of the Rules, 1982, not complied. Therefore, the right of the accused to fairly defend the case has been taken away and in such view of the matter, non-compliance of Rule 19(4) of the Rules, 1982, would require interference with direction to the trial court to ensure compliance of Rule 19(4) of the Rules, 1982. The learned counsel for the petitioner placed reliance on the decision of the Apex Court in **Manoj & Ors. v. State of Madhya Pradesh**, reported in [2022 LiveLaw (SC) 510] holding that, *in the interests of fairness, the prosecution should as a matter of rule, in all criminal trials, comply with Rule 4 of Draft Rules of Criminal Practice, 2021, and furnish the list of statements,*



documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.

4. Resisting the contention, the learned Public Prosecutor would submit that, as on 14.6.2024, the learned Public Prosecutor, in compliance of Rule 19(4) of the Rules, 1982, filed statement to the effect that the prosecution only intended to adduce evidence, based on the statements that form part of the charge and copies thereof, which were furnished to the accused. Further, it is submitted that, on earlier two occasions, when the case was scheduled for trial, the accused got adjourned the same and the victim, who has been studying in Bangalore, has been disturbed by getting adjournments on flimsy reasons. According to the learned Public Prosecutor, since Rule 19(4) of the Rules, 1982, has been complied, the grievance of the petitioner is of no avail and the attempt is nothing, but, to protract the trial. Therefore, this petition only to be dismissed.



5. Addressing the controversy involved, as per the decision in **Manoj & Ors.** (supra), in paragraph Nos.177, 178 and 179, the Hon'ble Supreme Court observed as under:

“177. In this manner, the public prosecutor, and then the trial court's scrutiny, both play an essential role in safeguarding the accused's right to fair investigation, when faced with the might of the state's police machinery.

178. This view was endorsed in a recent three judge decision of this court in Criminal trials guidelines regarding Inadequacies and Deficiencies, in re v. State of Andhra Pradesh. This court has highlighted the inadequacy mentioned above, which would impede a fair trial, and inter alia, required the framing of rules by all states and High Courts, in this regard, compelling disclosure of a list containing mention of all materials seized and taken in, during investigation to the accused. The relevant draft guideline, approved by this court, for adoption by all states is as follows:

*"4. SUPPLY OF DOCUMENTS
UNDER SECTIONS 173, 207 AND
208 CR.PC.*



Every Accused shall be supplied with statements of witness recorded under Sections 161 and 164 Cr.PC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer (I.O) in accordance with Sections 207 and 208, Cr.PC.”

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.”

179. In view of the above discussion, this court holds that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, comply with the above rule, and furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer. The presiding officers of courts in criminal trials shall ensure compliance with such rules.”



After the said verdict, Rule 19(4) of the Rules, 1982, amended in 2022 and the same reads as under:

19.4) Every accused shall be supplied with statement of witnesses recorded and a list of documents as are mentioned in Sections 173, 207 and 208 of the Code. In addition, every accused shall be supplied with a list of the material objects which the Investigation Officer relies upon. The list shall also specify those statements, documents and material objects that are not relied upon by the Investigating Officer.

6. On a plain reading of Rule 19(4) of the Rules, 1982, it is clear that, the accused shall be supplied with statements of witnesses recorded and a list of documents, as mentioned in Sections 173, 207 and 208 of the Cr.P.C. In addition to that, every accused shall be supplied with a list of material objects which the Investigating Officer relies upon. The list also shall specify the statements, documents and materials that are not relied upon by the Investigating



Officer.

7. Reading of Section 173(5)(a) and (b) of the Cr.P.C., it has been provided as under:

173(5) : *When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report--*

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

8. Similarly, Sections 207 and 208 of the Cr.P.C. provides as under:

207. Supply to the accused of copy of police report and other documents.

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

(i) the police report;

(ii) the first information report recorded under section 154;



(iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.



208. Supply of copies of statements and documents to accused in other cases triable by Court of Session.

Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

- (i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;*
- (ii) the statements and confessions, if any, recorded under section 161 or section 164;*
- (iii) any documents produced before the Magistrate on which the prosecution proposes to rely:*

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

9. In order to address the grievance of the petitioner, a report from the learned Special Judge was called for, and



as per report, dated 21.6.2024, the learned Special Judge reported as under:

C.M.P.No.153/2024 was filed by the learned defence counsel under Rule 19(4) of Criminal Rules of Practice on 12.06.2024 and it was allowed on the same day and prosecution was directed to furnish the list and was posted to 14.06.2024. On 14.06.2024, the investigating officer has filed a statement u/r.19(4) of Crl.Rules of Practice wherein he stated that he is only relying on the statements of the witnesses, documents and material objects produced along with the charge and that the copy was served to the learned defence counsel. (copy of the same is attached herewith). As the learned defence counsel accepted the same CMP was closed and the case was scheduled for trial from 18.06.2024 to 02.07.2024. On 18.06.2024, as it was submitted by the learned Special Public Prosecutor that CW1 is having exams, the trial witnesses were not conducted. On that day, the learned Special Public Prosecutor filed a detailed list u/r. 19(4) of Crl. Rules of Practice after serving copy to learned defence counsel, wherein he



stated that he relies on 30 documents and 5 MOs. (The copy of the same is also attached herewith).

In this regard, I may also humbly submit that the trial of this case was originally scheduled from 01.06.2024 to 13.06.2024. But as there was no sitting on 01.06.2024, the case was called on 03.06.2024. On that day the learned defence counsel filed CMP stating that the accused is admitted in hospital for treatment of urinary infection. The same CMP was allowed and stop memo was issued against the witnesses and the case was posted to 12.06.2024 for scheduling for trial. On 04.06.2024 CW1 was available and she had availed leave from her college at Bangalore as submitted by the Special Public Prosecutor. But she could not be examined as. Stop memo was issued to witnesses due to illness of accused. Hence in order to avoid inordinate delay, I posted the case to the nearest possible date and it was on 12.06.2024 the next posting date CMP No. 153/2024 was filed.

I may also submit that in the proceedings sheet instead of Criminal Rules



of Practice I have written Sec. 19 (4) of Criminal Procedure Code. It was due to an oversight on my part.

10. Going by the list submitted by the learned Public Prosecutor, as stated in Annexure A2 proceedings, the same would recite that the prosecution would rely upon the statements of the witnesses and documents appended to the final report without specifying the same by a separate list. However, the learned counsel for the petitioner placed copy of another statement, dated 18.6.2024, served upon to the accused, wherein the documents to be relied upon by the prosecution specifically mentioned as Sl.Nos. 1 to 30 and the MOs to be relied upon are shown in Sl.Nos.1 to 5.

11. In the instant case, the crucial question is, what are the materials to be supplied to the accused before start of trial in obedience to mandate of Rule 19(4) of the Rules 1982. Rule 19(4) of the Rules, 1982 makes it clear that, *every accused shall be supplied with statements of witnesses recorded and a list of documents, as mentioned in*



Sections 173, 207 and 208 of the Cr.P.C. In addition to that, every accused shall be supplied with a list of material objects which the Investigating Officer relies upon. The list also shall specify those statements, documents and material objects that are not relied upon by the Investigating Officer.

Going by the plain meaning of Rule 19(4) of the Rules, 1982, what is intended is, supply of statements of witnesses recorded and list of documents as are mentioned in Sections 173, 207 and 208 of the Cr.P.C. and no other documents. At the same time, the list shall specify those statements, documents and material objects that are not relied upon by the Investigating Officer. Therefore, when the prosecution gives a list stating that the prosecution intended to rely on the statements and documents form part of the final report by specifying the same in a list filed before start of trial and specifying those statements, documents and material objects that are not relied upon by the Investigating Officer, the mandate of Rule 19(4) of the Rules, 1982, said to be complied. In the instant case, the prosecution given an



initial statement specifying that the prosecution would rely on the documents and statements produced along with the final report and no other documents and statements. Again, the list of statements, documents and MOs, the prosecution intended to rely on, were filed by the learned Public Prosecutor.

12. Thus, in the instant case, the matters discussed above would show that, Rule 19(4) of the Rules, 1982 has been perfectly complied and the grievance of the petitioner in this regard is not *bona fide*. In this connection, it is relevant to note that, even though, on earlier two occasions, when the trial got adjourned, no such grievance addressed by the petitioner. Now the challenge has been raised when the case posted for trial for the third time. That would indicate that there is attempt to protract the trial.

Holding so, this petition is dismissed.

Registry is directed to forward a copy of this order to all Criminal Courts in the District Judiciary, with direction to ensure compliance of Rule 19(4) of the Criminal Rules of



Practice in Kerala, 1982, before start of trial, by directing Public Prosecutors giving a specific posting for the said compliance and start trial only after ensuring the compliance of the mandate of Rule 19(4) of the Rules, 1982, without fail.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL.MC 5224/2024

PETITIONER'S ANNEXURES

ANNEXURE A1 A TRUE COPY OF THE CRIMINAL
MISCELLANEOUS PETITION (CMP) IN THE
SESSIONS CASE 749/2022 OF HON'BLE
FAST TRACK SPECIAL COURT,
ERATTUPETTA, DATED 12TH JUNE 2024

ANNEXURE A2 A TRUE COPY OF THE MEMO FILED BY THE
PROSECUTION DATED 16.04.2024

ANNEXURE A3 A TRUE COPY OF THE ECOURT PROCEEDINGS
DATED 14/06/2024

RESPONDENT'S ANNEXURES : NIL