



2024:KER:66881

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024/14TH BHADRA, 1946

CRL.MC NO.6592 OF 2024

CRIME NO.VC/2/12/KTM/2012 OF VACB, KOTTAYAM

AGAINST THE ORDER/JUDGMENT DATED 26.06.2024 IN CRL.M.P
797/2024 IN CC NO.3 OF 2014 OF ENQUIRY COMMISSIONER AND
SPECIAL JUDGE (VIGILANCE), KOTTAYAM

PETITIONER/ACCUSED:

VARGHESE KURUVILA, AGED 54 YEARS,
S/O.A.B.KURUVILA, ADIYAYIL HOUSE,
PERINGARA VILLAGE, CHATHANKARY P.O.,
PATHANAMTHITTA, PIN - 689112.

BY ADVS.
AKHIL VIJAY
C.S.AJAYAN

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU,
KOTTAYAM COLLECTORATE P.O.,
KOTTAYAM, PIN - 686002.

BY ADVS.
RENJITH B.MARAR, AMICUS CURIAE
A.RAJESH, SPECIAL PUBLIC PROSECUTOR(VIGILANCE)
REKHA.S, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23.08.2024, THE COURT ON 05.09.2024, PASSED THE FOLLOWING:



'C.R'

O R D E R

Dated this the 5th day of September, 2024

Can the accused in a criminal trial lay his hands on statements, documents and material objects collected during the course of investigation, but which are not relied upon by the Investigating Officer? It is this question which falls for consideration in this Criminal Miscellaneous Case, which stems from the interpretation of Rule 19(4) of the Criminal Rules of Practice, Kerala, 1982 (the Rules, for short). Before referring to the Rule as such, it is necessary to advert to the factual premise, which occasioned the above Crl.M.C. The petitioner is the sole accused in C.C.No.3/2014 of the Special Court, Kottayam. The offences alleged are under Section 7 and Section 13(1) (d), read with Section 13(2) of the Prevention of Corruption Act. The case was



scheduled for trial on 05.08.2024. While so, on 15.05.2024, the petitioner/accused filed an application (Annexure-A2) under Rule 19(4) of the Rules, seeking a direction to furnish a list of documents and material objects, including the statements, documents and material objects which are not relied upon by the investigation officer. By Annexure-A3 order, the same was dismissed by the learned Special Judge, finding that Rule 19(4) was introduced as an amendment of the year 2022, whereas the final report in the case was filed as far back as, in 2014. Learned Special Judge found that there was no mandate to supply the documents sought for in Annexure-A2 application at the time of filing the final report. On such premise, Annexure-A2 was dismissed vide Annexure-A3, which is under challenge in this Crl.M.C.

2. Having regard to the complexity of the issue



involved, this Court appointed Sri.Renjith B. Marar as the Amicus Curiae.

3. Heard Sri.Akhil Vijay, learned counsel for the petitioner; Smt.Rekha.S, learned Senior Public Prosecutor for the 1st respondent; Sri.A.Rajesh, learned Special Public Prosecutor for the 2nd respondent and also the learned Amicus.

4. This Court will first deal with the submissions made by the learned Amicus. Learned Amicus would invite the attention of this Court to the history and genesis of the right recognised under Rule 19(4) to a *suo motu proceeding* registered by a three Judges Bench of the Honourable Supreme Court under Article 32 of the Constitution, titled In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials v. State of Andhra Pradesh and



Others reported in 2021 (3) KHC 273 : 2021 (10) SCC 598 ('*suo motu proceeding*', for short). The Honourable Supreme Court took note of common deficiencies in criminal trials and the dichotomy in certain practices adopted by trial courts. Lack of clarity and uniformity in the Criminal Rules of Practice formulated by various High Courts in the country was also taken stock of. A Draft Rules on Criminal Practice, 2021 was propounded by the learned Amici curiae appointed in that case, to which the response of various States were called for. After considering their response, the Draft Rules, appended to the judgment in *suo motu proceeding*, was accepted and finalised by the Honourable Supreme Court, with suitable modifications. All High Courts were directed to take expeditious steps to incorporate the Draft Rules on Criminal Practice, 2021 to the rules governing criminal trials. Necessary directions



were issued to State Governments as well.

5. One among the aspects, which gained the attention of the Honourable Supreme Court in the Draft Rules is regarding the list of documents and statements, which are furnished to the accused at the commencement of trial, which is specifically dealt with in paragraph no.11 of the *suo motu proceeding*, to which my attention is invited by the learned Amicus. Paragraph no.11 is extracted here below:

"11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr.PC, the



magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.PC. for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified. [Rule 4(i)]"

6. The modified Rule 4(i) in the Draft Criminal Rules on Practice, 2021 appears as follows:

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

i. 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, 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."

7. It is in accord with the directions in the *suo motu proceeding* and the Draft Rules on Criminal Practice, 2021 that Rule 19(4) was introduced to the Criminal Rules of Practice in Kerala, which reads thus:

"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."

8. Another three Judges Bench of the Honourable Supreme Court considered the issue again in Manoj and others v. State of Madhya Pradesh [2023 (2)



SCC 353]. The Honourable Supreme Court took stock of the directions contained in the *suo motu proceeding* and opined in paragraph no.179 that the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials comply with the rule and furnish the list of statements, documents, material objects and exhibits, which are not relied upon by the Investigating Officer. There was a direction to the presiding officers of courts in criminal trials to ensure compliance of the Rule.

9. A three Judges Bench of the Honourable Supreme Court again considered the issue in Ponnusamy P. v. State of Tamil Nadu [2022 SCC Online SC 1543]. In paragraph no.11 of Ponnusamy P. (supra), the Supreme Court took stock of an earlier decision of the Supreme Court in Siddhartha Vasisht @ Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1]



and also Manoj and others (supra).

10. Thereafter, the Honourable Supreme Court took stock of the dictum laid down in Manjeet Singh Khera v. State of Maharashtra [2013 (9) SCC 276], which held that the requirement of disclosure is an intrinsic part of the right to fair trial under Article 21 of the Constitution, which dictum was subsequently reaffirmed in P. Gopalkrishnan v. State of Kerala and Another [2020 (9) SCC 161]. The Honourable Supreme Court also referred to the judgment in V.K.Sasikala v. State Rep. By Superintendent of Police [2012 (9) SCC 771], wherein the issue was with respect to an application made by the accused in respect of documents forwarded to the court under Section 173(5) Cr.P.C., but which were not relied upon by the prosecution. The Honourable Supreme Court held that, it is incumbent upon the trial court to



supply the copies of these documents, as a facet of just, fair and transparent investigation/trial and the same constituted an inalienable attribute of the process of fair trial, which Article 21 guarantees to every accused. Paragraph no.21 of V.K.Sasikala (supra) was extracted in Ponnusamy P. (supra), wherein it was held that what is material is not the stage of making the request and that, what is significant is the non-disclosure of certain documents forwarded to the court by the investigating agency for the reason that the same favours the accused. V.K.Sasikala (supra) held that a right in favour of the accused has to be conceded, enabling access to the said documents, if claimed.

11. Two things are important with respect to V.K.Sasikala (supra). V.K.Sasikala (supra) was rendered at a time when a provision similar to



Rule 19(4) was not there in the Statute. Secondly, the request in that case was in respect of certain documents which were forwarded to the Magistrate, though not relied upon by the prosecution. The scenario was different at the time when Ponnusamy P. (supra) was being considered, at which point of time, the Rules in tune with the directions of the Honourable Supreme Court in the *suo motu proceeding* has not been framed in the State of Tamil Nadu. The Supreme Court in paragraph no.13 of Ponnusamy P. (supra) held that, even in respect of documents not forwarded to the Magistrate as required under Section 173(5) Cr.P.C., the accused cannot be disentitled from accessing such material, which may have an exculpatory value. It is to fill up this lacuna that Rule 4 in the Draft Rules, 2021 was introduced with a requirement to provide a list of all the documents, material evidence etc., seized



during the course of examination, regardless of the question whether the prosecution relies on it or not. Now, the crucial findings in Ponnusamy P. (supra) comes at paragraph no.17, which is extracted herebelow:

"17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:

(a) It applies at the trial stage, after the charges are framed.

(b) The Court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.

(c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the



document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly - the trial court can decline to issue orders, if it feels that the attempt is to delay.

(d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.

12. In Ponnusamy P. (supra), what has been referred above is the majority judgment, to which Bela M. Trivedi, J. dissented, for the reason that, the Rules, as envisaged in the *suo motu proceeding*, have not come into force, insofar as the State of Tamilnadu is concerned.

13. Thus according to the learned Amicus, the right of the accused in this regard as envisaged by Rule 19(4) should be recognized, even if the



same is sought to be enforced at the trial stage, after the charges are framed, however, taking into account the caveat as contained in paragraph no.17(c) of Ponnusamy P. (supra) extracted above. Learned Amicus would also submit that in a situation where the right is sought to be enforced after the commencement of the trial, the same has to be decided on the basis of the principle enshrined in V.K.Sasikala (supra), which has been taken stock of and approved in Ponnusamy P. (supra).

14. Learned counsel for the petitioner would submit that the impugned order cannot be sustained in view of the expatiation of law in Ponnusamy P. (supra). Besides, a judgment of the learned Single Judge of this Court in Akhil Sabu v. State of Kerala [2024 (5) KHC 49] is also pressed into service, which directed the trial courts to afford



a specific posting for the compliance of Rule 19(4) before commencement of the trial. The judgment in Akhil Sabu (supra) was directed to be forwarded to all the Criminal Courts by the District Registry, which emphasise the significance of compliance of Rule 19(4). Learned counsel would submit that, the refusal of such an important relief, on the premise that Rule 19(4) was not in force at the time when final report was filed, would completely negate the seminal right of fair trial of the accused, under Article 21.

15. Learned Special Public Prosecutor would completely support and endorse the submissions made by the learned Amicus, as also, the learned counsel for the petitioner.

16. It appears that the issue should be presumed to have attained a quietus by virtue of the law



enunciated in Ponnusamy P. (supra). However, for the sake of completion, this Court will refer to the essential change which has been brought out by Rule 19(4). Section 173(2) speaks of the ingredients to be contained in a final report, to be submitted by the investigating officer upon conclusion of the investigation. As per Section 173(5), the police officer has to forward to the Magistrate along with the report, all documents, or relevant extracts thereof, on which the prosecution proposes to rely upon and all statements recorded under Section 161, again of the persons whom the prosecution proposes to examine as its witnesses. Out of the documents and the statements so liable to be furnished under Section 173(5), the police officer has got a liberty/discretion under Section 173(6) to suggest non supply of any part of the statement to the accused, if such statement is either not relevant;



or its disclosure is not essential in the interest of justice; or in a case where it is inexpedient to disclose the same in public interest. This Court will also look into the requirements under Rule 207 and 208 of the Code. While Section 173 speaks of the duty of the police officer, Section 207 carves out the rights of the accused as regards supply of the police report/final report and other documents. In cases which are triable by a Court of Session, Section 208 takes care of the situation. It is relevant to note that under Section 207, the accused is entitled to the police report/final report, the First Information Report and also the statements recorded under Section 161(3), of those persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part which is sought to be exempted under Section 173(6). The first proviso to Section 207 would clearly indicate that in respect of a



request made under Section 173(6), the discretion is ultimately left to the Magistrate, as to whether the copy of the document is to be furnished to the accused or not.

17. It is in addition to these requirements that Rule 19(4) seeks to operate. It is pertinent to note that Rule 19(4) speaks of statement of witnesses and a list of documents mentioned in Section 173, 207 and 208 of the Code. In addition, every accused is to be supplied with the list of material objects, which the Investigating Officer relies upon. Upto this part of Rule 19(4), the same is traceable to the requirements under Sections 173, 207 and 208 of the Code. The additional part comes in the last limb of Rule 19(4), which specifies that the list of documents to be supplied to the accused shall also specify those statements, documents and material objects,



which are not relied upon by the Investigating Officer. It is this part, which is ingrained into the Rules, pursuant to the directions made by the Honourable Supreme Court in the *suo motu proceeding*. This Court also notice that Rule 19(4) has been incorporated to Chapter-4 of the Criminal Rules of Practice, which speaks of presentation of pleadings, reports, documents and remands, which would obviously indicate that the time for compliance of Rule 19(4), is the time when the requirements under Sections 207/208 have to be complied with.

18. Learned counsel for the petitioner canvasses an argument to the effect that, in the Draft Rules forming part of the judgment in *suo motu proceeding*, the requirement to furnish the list of documents, statements and material objects which are not relied upon by the Investigating Officer



is brought in as an explanation to Rule 4 of the Draft Rules, Rule 4 mandating supply of statement of witnesses and list of documents, material objects and exhibits seized during investigation. Inasmuch as it has been introduced only as an explanation to the right under Rule 4, the amendment is only clarificatory in nature, wherefore, it is liable to be reckoned as retrospective in operation, is the counsel's submission.

19. This Court is not quite impressed with the above argument, for two reasons. Firstly, the Draft Rules, 2021 cannot be looked into for the present purpose, since Rule 19(4) has been engrafted to the Criminal Rules of Practice in Kerala, where the Rule is not introduced as an explanation, but as an independent provision. Secondly, this Court is of the opinion that the



applicability of Rule 19(4) shall not be adjudged in the touchstone of prospectivity or retrospectivity of the said rule. Instead, the endeavour should be to fructify and crystallize the rights conferred under Rule 19(4). The benefit of the rule has to be translated to action in all cases, where it is possible to do so. As pointed out by the learned Amicus, though Rule 19(4) appears to be procedural in nature, it constitutes a new right in the hands of the accused to have access to those documents, which are not relied upon by the prosecution. Thus conceived, Rule 19(4) cannot be categorised as merely procedural, but have shades of substantive rights as well. But that interpretation is fraught with the danger of an argument that an amendment touching substantive rights can only be prospective, which, if accepted, would result in complete negation of such important right even in cases, where such



rights can be given effect to. This Court is therefore of the opinion that the focus should not be on the prospectivity and restrospectivity, but on the purpose, for which Rule 19(4) was introduced; and any interpretation should be to uphold and operationalize such right conferred under Rule 19(4).

20. Now, the crucial question boils down to the correctness of the line of thought adopted in the impugned order that Rule 19(4) will apply and operate prospectively, that is to say, only to cases where the final reports are filed after 19.05.2022 - the date on which Rule 19(4) came into force - at the time when Sections 207 or 208, as the case may be, has to be complied with. This Court is afraid whether that interpretation will withstand the test of law. This Court will have to first address the purpose for which Rule 19(4) has



been introduced, as is elucidated in paragraph no.11 of the *suo motu proceeding*. The accused has a right for access to all materials, which are collected during the course of investigation, be it in the form of documents, statements or material objects, *dehors* and independent of the fact whether the prosecution seeks to rely upon the same. The very reason that the prosecution is not relying upon the same, may imply that it is not in favour of the prosecution and may perhaps be exculpatory in nature. As part of the right to fair trial, well recognised under Article 21 of the Constitution, the accused should have the right to access, peruse and even rely upon such material gathered during the course of investigation, since the ultimate purpose of a criminal trial is to unearth the truth.

21. If we bear in mind the above purpose of Rule



19(4), the point of time at which the right is sought to be enforced would pale into insignificance. If such a right is sought to be enforced before the commencement of the trial, thereby meaning the examination of the witnesses, there cannot be any reason, as to why the same should be denied or deprived to the accused. The legal position has been clarified in Ponnusamy P. (supra) in paragraph no.17(a), where it is held that it applies at trial stage, after the charges are framed. By virtue of paragraph no.17(b), the accused should be given an opportunity of disclosure at that stage, of course, subject to the caveat contained in clause (c) to paragraph no.17, to rule out the possibility of delaying tactics. In the above referred state of affairs, shorn off the niceties and technicalities as regards the point of time at which such an opportunity is to be given to the accused, it



should be the endeavour of every criminal court to add life and force to Rule 19(4), so as to safeguard an important right of the defense, enshrined in under Article 21 of the Constitution. Any interpretation otherwise would defeat the very purpose of introduction of the rule, and also, the purpose sought to be served by such introduction, as has been highlighted by the Supreme Court in *suo motu proceeding*. A situation may arise, where the right is sought to be enforced after the commencement of the trial. This scenario has not arisen in the given facts and this Court is not called upon to answer the issue. The same will be addressed in an appropriate case, wherein, the criminal courts may adequately and appropriately be guided by the principles laid down in V.K. Sasikala (supra) as approved in Ponnusamy P. (supra).



22. In the circumstances, the impugned order will stand set aside. The learned Special Judge will give an opportunity to the accused person in terms of Rule 19(4) by directing the Investigating Officer to produce a list specifying those statements, documents and material objects, that are not relied upon by the Investigating Officer. This Court also cautions the learned Special Court to take care of the caveat as contained in clause (c) of paragraph no.17 in Ponnusamy (supra), to ensure that exercise of the right under Rule 19(4) will not become a camouflage/ruse for delaying the trial. The petitioner is also directed to co-operate with the speedy and efficacious conduct of the trial. To ensure the above referred aspect, this Court grants a time of two weeks from the date of furnishing such list of documents for the petitioner to take further action, if any, based on such list and, at any rate, the matter can be



listed for trial within a period of two months from the date of receipt of a copy of this order.

23. This Court places on record its sincere and profound appreciation to Sri.Renjith B.Marar, the learned Amicus for the effective assistance rendered to this Court in resolving the issue.

Sd/-
C. JAYACHANDRAN
JUDGE



APPENDIX OF CRL.MC 6592/2024

PETITIONER'S ANNEXURES:

- ANNEXURE A1 A TRUE COPY OF THE FINAL REPORT FILED BY THE VIGILANCE AND ANTI-CORRUPTION BUREAU, KOTTAYAM IN FIR NO: VC 2/12/KTM.
- ANNEXURE A2 A CERTIFIED COPY OF THE PETITION FILED BY THE PETITIONER IN CRL.M.P NO.797/2024 IN C.C.03/2014 DATED 15.05.2024 BEFORE THE HONOURABLE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOTTAYAM.
- ANNEXURE A3 A CERTIFIED COPY OF THE ORDER PASSED BY THE HONOURABLE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOTTAYAM DATED 26.06.2024 IN CMP NO.797/2024 IN C.C.03/2014.