

P. PONNUSAMY

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v.

THE STATE OF TAMIL NADU

(Criminal Appeal No. 1926 of 2022)

NOVEMBER 07, 2022

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**[UDAY UMESH LALIT CJI, S. RAVINDRA BHAT AND  
BELA M. TRIVEDI, JJ.]**

*Penal Code, 1860 – ss. 120B, 109, 341, 302 & 34 – Draft Rules of Criminal Practice, 2020 – Right of accused to demand documents – Appellant along with other eight accused were convicted and sentenced by Sessions Court for the offences punishable u/s 120B, 109, 341, 302 read with 34 of IPC – Some of them were sentenced to death penalty and some with life imprisonment – The Sessions Court had referred its judgment to the High Court for confirmation of the death penalty – Adjournments were sought several times by the parties – During the course of hearing before the High Court, appellant address a letter to Inspector, asking him to produce certain documents, which were required for fair adjudication of their case in the light of the Supreme Court's decision Manoj and others Vs. State of Madhya Pradesh – In the meanwhile, the appellant approached Supreme Court – Held: (Per Bela M. Trivedi, J.) The death Reference cases referred by the Sessions Courts to the High Court have to be given utmost priority and should be heard and completed by the High Court as expeditiously as possible and preferably within six months – 'Draft Rules of Criminal Practice 2020' were the draft guidelines were given by Supreme Court to all the High Courts and the State Governments and Union of India – However, neither the High Courts nor the State Governments appear to have taken any steps pursuant to the said directions – As a result thereof, the said Draft Rules have neither been adopted by the respective High Courts/State Governments nor have come into force – Unless they have been adopted, the same could not have been pressed into service by any party to a criminal proceeding – The attempt made on behalf of the appellant- accused and the other accused to delay the hearing, under the guise that they had demanded certain documents from the Investigating Officer was absolutely reprehensible – (Per*

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- A S.Ravindra Bhat J. (for Uday Umesh Lalit, CJI and himself) : *The Draft Rules framed, therefore, were a product of a thorough consultative exercise undertaken to remedy asymmetries caused by the lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage – Some High Courts or governments of the States/ Union Territories have failed to comply with Supreme Court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused to receive the list of the statements – To say that the judgment in Manoj in relation to this, and the right of the accused to receive the list of documents, material, etc. would only apply after the Draft Rules are adopted would lead to an anomalous situation where the right of the accused in one State, prejudicially differs from that afforded to an accused, in another.*
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#### **Dismissing the appeal, the Court**

- D **HELD: 1. Per Bela M. Trivedi, J.:** Despite such assurance having been given by the senior advocate and all other advocates including other senior advocates appearing for the other appellants-accused to the High Court to proceed with the hearing of the Reference case and the appeals, the appellant rushed to this Court to hamper the hearing fixed before the High Court on 17.10.2022. Such a dilatory tactics adopted by the parties and their advocates and thereby deflecting the course of justice in the cases like the present one, where some of the appellant-accused are facing the death penalty and some sentence of life imprisonment are strongly deprecated. It is needless to say that the death Reference cases referred by the Sessions Courts to the High Court have to be given utmost priority and should be heard and completed by the High Court as expeditiously as possible and preferably within six months. However, as transpiring from the observations made by the High Court in the impugned order, which have remained unchallenged before us, it was only because of the non-cooperation on behalf of the counsels appearing for the appellant-accused, the High Court was not able to hear the Reference case. The court may not have to remind the senior advocates of their duties to assist the courts for the
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cause of justice, and not to indulge into dilatory tactics and hamper A  
the cause of justice. [Para 6][274-A-E]

2. It clearly emerges that this Court in the *suo moto* proceedings had directed all the High Courts to take expeditious steps to incorporate the said Draft Rules as part of the Rules governing criminal trials and to ensure that the existing rules, notifications, orders and practice are suitably modified and promulgated, wherever necessary through the official gazette within six months from the date of the said order. The court had also directed the State Governments as well as the Union of India to carry out consequential amendments to the police and other manuals. However, neither the High Courts nor the State Governments appear to have taken any steps pursuant to the said directions. As a result thereof, the said Draft Rules have neither been adopted by the respective High Courts/State Governments nor have come into force. Unless and until the Draft Rules as suggested by the court in the *suo moto* proceedings are incorporated by the High Courts in the Rules governing criminal trials and unless the consequential amendments are made by the State Governments and the Union of India in the Police and other Manuals, the same could not have been pressed into service by any party to a criminal proceeding. The observations made in para 179 of the judgement in case of *Manoj and others Vs. State of Madhya Pradesh* were in the context of the said directions given by the court in the *suo moto* proceedings and therefore were required to be read in conjunction with the earlier paras 177 and 178 of the said judgement. Meaning thereby, the prosecution is expected to comply with the Draft Rule no. 4 pertaining to the supply of documents, as and when the said set of Draft Rules are adopted by the High Courts and State Governments, giving them a statutory force. May it be noted that in any case, the Draft Rule no. 4 with regard to the supply of documents under Sections 173, 207 and 208 Cr.P.C. is part of the Chapter I of the said Draft Rules, to be followed during the course of investigation and before the commencement of the trial. The said Draft Rule no.4 as and when brought into force after following the due process of law could be pressed into service by the accused only during the course of investigation and during the course of trial, and not at H

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- A the appellate stage before the High Court or the Supreme Court. In the aforesaid premises, the attempt made on behalf of the appellant- accused and the other accused to delay the hearing of the appeals and the death Reference case pending before the High Court, under the guise that they had demanded certain documents from the Investigating Officer was absolutely reprehensible. [Paras 10-12][277-D-H; 278-A-E]
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*Manoj & Ors. v. State of Madhya Pradesh, Judgment dated 20.05.2022 in Criminal Appeal Nos. 248-250 of 2015; 2022 SCC OnLine SC 677; In re. v. State of Andhra Pradesh and Ors., (2021) 10 SCC 598 – relied on.*

#### Case Law Reference

	(2021) 10 SCC 598	relied on	Para 9
D	<u>Per S. Ravindra Bhat, J. [for U. U. Lalit, CJI and himself]</u>		
D	1. The Draft Rules framed, therefore, were a product of a <u>thorough consultative exercise</u> undertaken to remedy asymmetries caused by the lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage. Recognition		
E	of the need to streamline trials or mitigate delays, however, cannot come at the cost of the accused's right to fair trial. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can		
F	seek appropriate orders under Section 91 of the CrPC, wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the		
G	right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case. [Paras 10 & 14][282-A-B; 284-D-F]		

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2. That some High Courts or governments of the States/ Union Territories have failed to comply with this court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused (to receive this list of the statements, documents, material, etc. in the possession of the prosecution), which has unequivocally been recognized by this court in its final order of the suo-moto proceedings (paragraph 11, extracted above), itself. Further, to say that the judgment in *Manoj* in relation to this, and the right of the accused to receive the said list of documents, material, etc. would *only apply after the draft rules are adopted* – would lead to an anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to an accused, in another. In these circumstances, the proper and suitable interpretation of the disclosure requirement in *Manoj* would be that:

- (a) It applies at the trial stage, after the charges are framed. D
- (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. E F
- (d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC. G

That the accused, *has* a right to fair trial, was not in doubt; but what is reiterated is that this right is manifested in the fair disclosure requirement elaborated above. While the concern of delay in conclusion of trial undoubtedly weighs heavily in the mind H

- A of the judge, it cannot entail compromise of the right of the accused to fair investigation and trial. [Paras 16-18][285-B-G; 286-A-C]

B *Manoj & Ors. v. State of Madhya Pradesh, Judgment dated 20.05.2022 in Criminal Appeal Nos. 248-250 of 2015; 2022 SCC OnLine SC 677; In re. v. State of Andhra Pradesh and Ors., (2021) 10 SCC 598 – relied on.*

C *Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi (2010) 6 SCC 1 : [2010] 4 SCR 103; Manjeet Singh Khera v. State of Maharashtra, (2013) 9 SCC 276 : [2013] 8 SCR 511; P. Gopalkrishnan v. State of Kerala (2020) 9 SCC 161 : [2019] 17 SCR 422; V.K. Sasikala v. State (2012) 9 SCC 771 : [2012] 10 SCR 641 – referred to.*

<u>Case Law Reference</u>		
D	[2010] 4 SCR 103	referred to
	[2013] 8 SCR 511	referred to
	[2019] 17 SCR 422	referred to
E	[2012] 10 SCR 641	referred to

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1926 of 2022.

F From the Judgment and Order dated 14.09.2022 of the High Court of Judicature at Madras in R.T. No.2 of 2021.

G Gopal Sankaranarayanan, Sr. Adv., Yug Mohit Chaudhury, Prabu Ramasubramanian, Raghunatha Sethupathy B, Karupusamy Pandian, Bharathimohan M., Ms. Priya R., Alagu Raja Bharathi B., Avinash, Ms. Vartika, Shriram, Siddharth Sharma, Advs. for the Appellant.

H V. Giri, N. R. Elango, Sr. Advs., Dr. Joseph Aristotle S., Ms. Nupur Sharma, Shobhit Dwivedi, Sanjeev Kr. Mahara, Ms. Vaidehi Rastogi, Ms. Ankita Gupta, Vivek Singh, S. Agilesh Kumar, Antariksh Singh, Purnendu Bajpai, Eish Sharan, Anupam Mishra, Advs. for the Respondent.

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The Judgments\* of the Court were delivered by

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**BELA M. TRIVEDI, J.**

1) Leave granted.

2) The appellant (original accused no. 1) has filed the present appeal being aggrieved by the impugned order dated 14.09.2022 passed by the High Court of Judicature at Madrasin RT No. 02 of 2021, whereby the High Court had directed the learned Counsels appearing for the parties to proceed with the hearing of the matter on 17.10.2022. The relevant part of the impugned order reads as under: -

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“17. In our opinion, this communication is not at all appreciable and we strongly record our disapproval on such tactics adopted by the learned counsel on record. All the papers relied upon by the prosecution were placed by the Investigating Officer before the trial court and copies were furnished to the accused under Section 207 Cr.P.C. The same have got translated as legal evidence during trial and the case of the accused should have to stand or fall based on that unless additional evidence is sought to be taken.

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18. Mrs. Anjana Prakash, learned Senior Counsel requested fervently that she has discussed with all the counsel including the Senior Counsel, who have been engaged by various counsel on record and sought final adjournment to 17.10.2022, on which date, all the counsel assured that they would not seek any adjournment.

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19. This Court explain to the learned counsel that the case of the persons, who have been sentenced to death, has to be completed within six months, whereas, in this case, for the last one year, there has not been any progress on account of non-cooperation of the accused. Under Section 386 Cr.P.C., if the counsel for the appellant or the Public Prosecutor does not appear, it is open to this Court to peruse the records and proceed with the case. When we explained to Mrs. Anjana Prakash that the Public Prosecutor may be permitted to begin the case at least and that she may reply to his submissions later, she requested us not to do that, as it would be easier if both sides’ submissions are heard continuously. She repeatedly assured us that no one would seek adjournment on 17.10.2022. Hence, more out of courtesy and respect for Mrs.

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\*Ed. Note : There were two judgments in the matter- one judgment rendered by Hon'ble Ms. Justice Bela M. Trivedi; and the other judgment rendered by Hon'ble Mr. Justice S. Ravindra Bhat for himself and on behalf of Shri Uday Umesh Lalit, Hon'ble Chief Justice of India.

- A Anjana Prakash, Senior Advocate, the case is adjourned to 17.10.2022.”
- 3) The appellant instead of appearing before the High Court on 17.10.2022, rushed to this Court challenging the said order. This Court on 17.10.2022 passed the following order:-
- B “Mr. Gopal Sankaranarayanan, learned Senior Advocate submits that:
- a) This Court in its decision dated 22.05.2022 passed in Manoj & Others v. State of Madhya Pradesh, reported in 2022 (9) SCALE 67, dealt with certain issues from paragraph 170 of the decision whereafter conclusions were drawn in paragraph 179.
- b) Relying on these observations, a letter was written on behalf of the accused on 05.09.2022 seeking documents which were in the possession of the investigating machinery.
- D c) Without deciding the issues raised in said letter, the High Court has proceeded to fix the matter for hearing in death confirmation case.
- E We issue notice on this petition, returnable on 20.10.2022 and direct that the matter be placed before the same Bench which dealt with and rendered the decision in Manoj & Others (*supra*).
- F Liberty is granted to serve the learned Standing Counsel for the State.
- G Since the matter is posted before the High Court for final disposal, at this stage, we do not deem it appropriate to pass any interim directions except to request the High Court not to pronounce the final order in case the matter is taken up for final disposal.”
- H 4) In the present Appeal, we need not go deep into the merits of the Appeals or the Reference case, which are pending before the High Court. Suffice it to say that the appellant along with other eight accused were convicted and sentenced by the City Civil and Sessions Court, Chennai in Sessions Case No. 348/2015 for the offences punishable under Section 120-B, 109, 341, 302 read with section 34 of IPC. Some

of the accused were sentenced to death penalty and some with life imprisonment and other sentences. The Sessions Court had referred its judgement and order to the High Court for confirmation of the death penalty awarded to some of the accused under Section 366 Cr.P.C., which was registered as RT No. 02 of 2021. The accused also had filed separate nine appeals before the High Court challenging the judgement and order passed by the Sessions Court in the said sessions case. All the said appeals were directed to be tagged with RT No. 02 of 2021 by the High Court.

5) As transpiring from the impugned order, the High Court after ascertaining the convenience of all the advocates appearing for the parties had fixed the date for final hearing on 15.06.2022 vide the order dated 27.04.2022. Thereafter, the roster was changed and the matters were listed on 06.09.2022 on which date the hearing was adjourned at the request made by the learned counsel for the appellant-accused and therefore, it was again adjourned to 14.09.2022 for final disposal. On 14.09.2022, though the State Public Prosecutor was ready to argue, one of the learned senior advocates from Delhi appeared before the High Court and requested the High Court to adjourn the hearing. At that time, the State Public Prosecutor drew the attention of the High Court to a letter dated 05.09.2022 sent by Mr. G. Sriram, learned counsel appearing for the present appellant (accused no. 1) P. Ponnusamy, the accused no. 02 Mary Pushpam and the accused no. 03 Basil, addressed to the Inspector (Law and Order) E-4 Abirampuram Police Station, Chennai, asking him to produce certain documents, stating therein *inter-alia* that the said documents were required for fair adjudication of their case, in the light of the Supreme Court's decision (in case of *Manoj and others Vs. State of Madhya Pradesh*, Criminal Appeal No. 248-250 of 2015 decided on 20<sup>th</sup> May, 2022). The said letter was placed on record by the State Public Prosecutor. On the said date i.e., 14.09.2022, the learned senior advocate who had come from Delhi assured the court that she had discussed with all the counsels who were appearing for the appellants and that all had assured her that they would proceed with the hearing on 17.10.2022. The High Court appraised her that the case pertained to the sentence of death penalty, which had to be completed within six months and that for the last one year there was no progress in the case on account of non-cooperation of the accused. However, she repeatedly assured the court that no one would seek adjournment on 17.10.2022,

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- A and therefore the High Court out of sheer courtesy and respect for the senior advocate adjourned the case to 17.10.2022.
- 6) Despite such assurance having been given by the senior advocate and all other advocates including other senior advocates appearing for the other appellants-accused to the High Court to proceed
- B with the hearing of the Reference case and the appeals, the appellant rushed to this Court to hamper the hearing fixed before the High Court on 17.10.2022. Such a dilatory tactics adopted by the parties and their advocates and thereby deflecting the course of justice in the cases like the present one, where some of the appellant-accused are facing the
- C death penalty and some sentence of life imprisonment are strongly deprecated. It is needless to say that the death Reference cases referred by the Sessions Courts to the High Court have to be given utmost priority and should be heard and completed by the High Court as expeditiously as possible and preferably within six months. However, as transpiring from the observations made by the High Court in the impugned order,
- D which have remained unchallenged before us, it was only because of thenon-cooperation on behalf of the counsels appearing for the appellant-accused, the High Court was not able to hear the Reference case. The court may not have to remind the senior advocates of their duties to assist the courts for the cause of justice, and not to indulge into dilatory tactics and hamper the cause of justice.
- 7) Having said that, let us examine the merits of the submissions made before us. Placing heavy reliance on the observations made by this court in case of *Manoj and others Vs. State of Madhya Pradesh* (supra), the learned senior counsel for the appellant submitted that the
- F appellant along with the other two accused on 05.09.2022 had sent a letter addressed to the Inspector (Law and Order) E-4 Abirampuram Police Station, Chennai requesting him to produce certain documents as mentioned in the letter, which were required for fair adjudication in the case. He further submitted that till the copies of the documents demanded by the accused as mentioned in the said letter were furnished to them, it
- G was not possible for them to proceed with the hearing of the appeals or the Reference case pending before the High Court. According to them, the observations made by this Court in para 177 to 179 in case of *Manoj and others Vs. State of Madhya Pradesh* (supra) were very much significant for safeguarding the rights of the accused to a fair investigation
- H carried out by the mighty State's police machinery; and that the interest

of the justice warranted that the further hearing of RT No. 02 of 2021 A pending before the High Court be stayed till the appellants and other accused were provided with the documents demanded by them.

8) The said submissions made by the learned senior advocates appearing for the appellant deserve to be out rightly rejected, having been advanced out of sheer misconception of the law and misinterpretation of the observations made by this Court in case of *Manoj and others Vs. State of Madhya Pradesh* (supra). The precise observations made by this Court in para 177, 178 and 179 of the judgement in the said case of *Manoj and others* may be reproduced here 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.”

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- A 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.”
- B 9) It may be noted that the draft guidelines were given by this Court to all the High Courts and the State Governments and Union of India in the suo-moto proceedings initiated by this Court under Article
- C 32, during the course of hearing of a criminal appeal, whereby the court had noticed certain common deficiencies occurring during the course of criminal trials and certain practices adopted by the trial courts in the criminal proceedings. The said suo-moto proceedings were registered as “*Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, in Re Vs. State of Andhra Pradesh and others*<sup>1</sup>. ” The
- D said case related, amongst others to deficiencies/lapses with regard to the manner in which the documents (list of witnesses, list of exhibits, list of material objects) referred to and presented and exhibited in the judgements, and lack of uniform practices in regard to preparation of injury reports, deposition of witnesses, translation of statements,
- E numbering and nomenclature of witnesses, labeling of material objects etc. which often led to asymmetries and hamper appreciation of evidence, which in turn had a tendency prolonging the proceeding especially at the appellate stage. The court in the said case had noticed that on these aspects, some High Courts had framed the rules, however some had not, which had led to a lack of clarity and uniformity in regard
- F to the presentation of trial court proceedings and records, for the purpose of appreciation at the High Court and Supreme Court level. The court in the said case, after considering the suggestions/submissions of the Amici Curie and of the counsels appearing for the High Courts, States and the Union Territories, on “the Draft Rules of Criminal Practice 2020” prepared
- G by the Amici Curie, had given the following directions vide the order dated 20.04.2021:-

“19. The Court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalised in terms of the

H <sup>1</sup>(2021) 10 SCC 598

above discussion. The following directions are hereby issued:

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19.1. All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the State Government's co-operation is necessary in this regard, the approval of the department or departments concerned, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

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19.2. The State Governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today.”

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10) From the above, it clearly emerges that this Court in the aforesaid suo moto proceedings had directed all the High Courts to take expeditious steps to incorporate the said Draft Rules as part of the Rules governing criminal trials and to ensure that the existing rules, notifications, orders and practice are suitably modified and promulgated, wherever necessary through the official gazette within six months from the date of the said order. The court had also directed the State Governments as well as the Union of India to carry out consequential amendments to the police and other manuals. However, neither the High Courts nor the State Governments appear to have taken any steps pursuant to the said directions. As a result thereof, the said Draft Rules have neither been adopted by the respective High Courts/State Governments nor have come into force. Unless and until the Draft Rules as suggested by the court in the suo moto proceedings are incorporated by the High Courts in the Rules governing criminal trials and unless the consequential amendments are made by the State Governments and the Union of India in the Police and other Manuals, the same could not have been pressed into service by any party to a criminal proceeding. The observations made in para 179 of the judgement in case of ***Manoj and others Vs. State of Madhya Pradesh*** (Supra) were in the context of the said directions given by the

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- A court in the suo moto proceedings and therefore were required to be read in conjunction with the earlier paras 177 and 178 of the said judgement. Meaning thereby, the prosecution is expected to comply with the Draft Rule no. 4 pertaining to the supply of documents, as and when the said set of Draft Rules are adopted by the High Courts and State Governments, giving them a statutory force.
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  - 11) May it be noted that in any case, the Draft Rule no. 4 with regard to the supply of documents under Sections 173, 207 and 208 Cr.P.C. is part of the Chapter I of the said Draft Rules, to be followed during the course of investigation and before the commencement of the trial.
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  - The said Draft Rule no.4 as and when brought into force after following the due process of law could be pressed into service by the accused only during the course of investigation and during the course of trial, and not at the appellate stage before the High Court or the Supreme Court.
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  - 12) In the aforesaid premises, the attempt made on behalf of the appellant-accused and the other accused to delay the hearing of the appeals and the death Reference case pending before the High Court, under the guise that they had demanded certain documents from the Investigating Officer was absolutely reprehensible. As observed by the High Court in the impugned order, “all the papers relied upon by the prosecution were placed by the Investigating Officer before the trial court and copies were furnished to the accused under Section 207 Cr.P.C. The same have got translated as legal evidence during trial and the case of the accused should have to stand or fall based on that unless additional evidence is sought to be taken.”
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    - 13) This Court does not express any opinion on the merits of the case, and dismisses the present appeal being devoid of merits.
    - 14) The registry is directed to circulate a copy of this order to all the High Courts, who in turn shall circulate the same to their respective subordinate courts.
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  - S. RAVINDRA BHAT, J.**
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  - 1. Leave granted. This appeal arises out of an order dated 14.09.2022 in RT No. 2/2021, by the High Court of Judicature at Madras. In those proceedings, the High Court had by order dated 27.04.2022 fixed the hearing of the main proceeding – which is a death reference.

2. The appellant and some others were convicted under Section 302 of the IPC along with other provisions and Section 120B. The appellant (A1); A3; A4; A5; A7; A8 and A9 were sentenced to death. Consequently, reference was made to the High Court which was seized of all the proceedings and heard it from time to time. On 27.04.2022 after ascertaining convenience of all the counsels the appeals were listed for final hearing on 15.06.2022. The judgment of Bela Trivedi J., has recounted all these facts in detail. The further proceedings which took place before the High Court, the hearing and the order made on 14.09.2022, declining to direct State to produce documents enlisted in letter written to the public prosecutor on behalf of the appellant on 05.09.2022, is impugned here.

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3. The final order proposed by Bela Trivedi J., of rejecting an appeal is in our opinion justified in the circumstances of the case. However, we are unable to agree with the observations made during the course of her order as to the nature of the directions made in Suo Motu W.P. (Crl.) No. 1 of 2017, concerning the right of the accused to be supplied with documents or material, seized or collected during the investigation, but not relied upon.

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4. While hearing a criminal appeal<sup>1</sup> and connected matters, concern was raised regarding common deficiencies and practices adopted by trial courts in the course of criminal trial and disposal of cases, in the absence of uniform guidelines. This resulted in Suo Motu WP (Crl.) No. 1 of 2017, wherein this court appointed amici curiae, and issued notice to all High Courts and governments of all States and Union Territories, so general consensus could be arrived at regarding the need to amend rules of practice/criminal manuals to bring about uniform best practices across the country.<sup>2</sup> The court noted salient aspects and inconsistencies in the practices and rules of the High Courts.

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5. A wide consultative process was undertaken. Firstly, High Courts and governments of States/Union Territories, filed their responses. Taking note of these, the amici curiae prepared a consultation paper and invited written responses from stakeholders. Next, a colloquium was convened on 30.03.2019 to discuss this paper, wherein High Courts, governments of States/Union Territories and police departments

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<sup>1</sup>Criminal Appeal No. 400/2006

<sup>2</sup>Order dated 30.03.2017 in Suo Motu WP (Crl) No. 1/2017.

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- A participated. Based on the feedback, the amici curiae prepared a report containing the ‘Draft Rules of Criminal Practice, 2020’ which was taken on record on 05.03.2020 and made available<sup>3</sup> publicly through the Supreme Court website.
- B 6. Before passing directions on the same, this court thought it appropriate to hear the High Courts again, on these draft rules.<sup>4</sup> Once responses were received from all High Courts, the matter was heard; in the final order dated 20.04.2021<sup>5</sup> it was noted that most of the suggestions had been agreed upon, except in regard to few aspects – the divergence, or additional points of view, were taken note of<sup>6</sup>.
- C 7. The amici curiae had pointed out that before the commencement of the trial, the accused only receives a list of documents and statements *relied* upon by the prosecution but is kept in the dark on other material in the possession of the prosecution, even if it has *exculpatory* value. On this, the court unequivocally held:
- D “11. ... This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/ 208 CrPC, 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 CrPC<sup>7</sup> for their production
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- F <sup>3</sup><[https://main.sci.gov.in/pdf/LU/06032020\\_103012.pdf](https://main.sci.gov.in/pdf/LU/06032020_103012.pdf)> (accessed on 31.10.2022, 18:28 pm).
- G <sup>4</sup> See order dated 27.10.2020, and again on 19.01.2021 in Suo Motu WP (Crl) No. 1/ 2017.
- H <sup>5</sup> Reported as *Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re. v. State of Andhra Pradesh and Ors.*, (2021) 10 SCC 598.
- I <sup>6</sup>*Ibid*, para 9.
- J <sup>7</sup>**“91. Summons to produce document or other thing.”**—(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.(3) Nothing in this

during the trial, in the interests of justice. It is directed accordingly; A  
the Draft Rules have been accordingly modified. [Rule 4(i)]”  
(emphasis supplied)

8. Rule 4 of Draft Rules of Criminal Practice 2021, which was appended to, and considered part and parcel of this court's order, reads as follows:

“**4.** Supply of documents under Sections 173, 207 and 208 CrPC.—  
(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with Sections 207 and 208 CrPC.

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.”

9. The matter was disposed of with the following directions:

“**19.** The Court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalised in terms of the above discussion. The following directions are hereby issued:

19.1. All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the State Government's co-operation is necessary in this regard, the approval of the department or departments concerned, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

19.2. The State Governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be

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section shall be deemed—(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

- A       brought into force, and all agencies instructed accordingly, within six months from today.”
- B       10. The Draft Rules framed, therefore, were a product of a thorough consultative exercise undertaken to remedy asymmetries caused by the lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage. Recognition of the need to streamline trials or mitigate delays, however, cannot come at the cost of the accused’s right to fair trial.
- C       11. Taking note of the case law in *Siddharth Vasisht @ Manu Sharma v. State of NCT Delhi*<sup>8</sup>, this court in *Manoj &Ors. v. State of Madhya Pradesh*<sup>9</sup>, highlighted the dual role played by the public prosecutor and the court in safeguarding the accused’s right to fair investigation and trial, by scrutinizing the material and ensuring fair disclosure. In light of this, and the aforementioned draft Rule 4, this court went on to hold in *Manoj* that:
- D       “...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.”
- E       12. In addition to the decision in *Manu Sharma*(as noticed in *Manoj*), there is another decision –*Manjeet Singh Khera v. State of Maharashtra*<sup>10</sup> - which had highlighted how the requirement of disclosure, is an intrinsic part of the right to fair trial under Article 21 of the Constitution.<sup>11</sup> Relying upon its previous decision in *V.K. Sasikala v. State*<sup>12</sup>, this court noted in *Manjeet Singh Khera*:
- F       “...In that case, the documents were forwarded to the court under Section 173(5) CrPC but were not relied upon by the prosecution
- G       <sup>8</sup>(2010) 6 SCC 1 (referred to as ‘*Manu Sharma*’). See paragraphs 187, 199, 201, 202, 218-222 (relied on in *Manoj &Ors. v. State of Madhya Pradesh*).
- H       <sup>9</sup>Judgment dated 20.05.2022 in Criminal Appeal Nos. 248-250 of 2015; 2022 SCC OnLine SC 677.
- I       <sup>10</sup>(2013) 9 SCC 276
- J       <sup>11</sup>This was also reaffirmed in *P. Gopalkrishnan v. State of Kerala* (2020) 9 SCC 161 where it was held that “furnishing of documents to the accused under Section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution”.
- K       <sup>12</sup> (2012) 9 SCC 771

and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect: (V.K. Sasikala case [V.K. Sasikala v. State, (2012) 9 SCC 771 : (2013) 1 SCC (Cri) 1010], SCC p. 788, para 21)

“21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 CrPC and would travel beyond the confines of the strict language of the provisions of CrPC and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view [V.K. Sasikala v. State, 2012 SCC OnLine Kar 9209] taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.”

(emphasis supplied)

13. It is true that this court in *V.K. Sasikala* (supra) was dealing with material/documents that were forwarded to the Magistrate under Section 173 CrPC, but were not being relied upon by the prosecution.

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- A However, it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which *favours* the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically subsection (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have
- B exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in
- C the possession of the prosecution, regardless of whether the prosecution plans to rely on it. The facts in *Manoj*, having reflected such a situation (of suppression of evidence that *favoured* the accused) similarly, necessitated elaboration of this right.
- D 14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391<sup>13</sup> of the CrPC, the appellate court, if it deems necessary, may take further evidence (or
- E direct it be taken by a magistrate or court of sessions) upon recording reasoning. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.
- F 15. By way of Miscellaneous Application No. 505/2022 in SMW(Crl) No. 1 of 2017, this court was apprised of the fact that some
- G <sup>13</sup>**391. Appellate Court may take further evidence or direct it to be taken.**—(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.
- H (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.
- I (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
- J (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

states had complied, and other had not complied with the directions in final order dated 20.04.2021<sup>14</sup> regarding adoption of the Draft Rules and amending police manuals, etc. in a time-bound manner (6 months); the states were directed<sup>15</sup> to comply within 8 weeks and the matter is still pending.

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16. That some High Courts or governments of the States/ Union Territories have failed to comply with this court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused (to receive this list of the statements, documents, material, etc. in the possession of the prosecution), which has unequivocally been recognized by this court in its final order<sup>16</sup> of the suo-moto proceedings (paragraph 11, extracted above), itself. Further, to say that the judgment in *Manoj* in relation to this, and the right of the accused to receive the said list of documents, material, etc. would *only apply after the draft rules are adopted*— would lead to an anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to an accused, in another.

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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:

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- (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

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<sup>14</sup> Suo Motu WP (Crl) No. 1/2017

<sup>15</sup> By order dated 28.04.2022 in Miscellaneous Application No. 505/2022 in SMW(Crl) No. 1/2017.

<sup>16</sup> Order dated 20.04.2021 in Suo Motu WP (Crl) No. 1/2017, reported as *Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re. v. State of Andhra Pradesh and Ors.*, (2021) 10 SCC 598.

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- A 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.
- B (d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.
18. That the accused, *has* a right to fair trial, was not in doubt; but what is reiterated is that this right is manifested in the fair disclosure requirement elaborated above. While the concern of delay in conclusion of trial undoubtedly weighs heavily in the mind of the judge, it cannot entail compromise of the right of the accused to fair investigation and trial.
19. Having regard to the above discussion we are of the opinion that the circumstances in which the request was made – through the letter after appeal was set down for hearing despite repeated opportunities, was not justified. The appellant could have sought recourse by filing an appropriate application, in accordance with the procedures set out above, well in time. We therefore agree that the appeal made at this late stage, appears to be to prolong the hearing. In these circumstances, the Court declines to interfere. The appeal is accordingly
- C dismissed.
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Ankit Gyan  
(Assisted by : Rahul Rathi, LCRA)

Appeal dismissed.