

IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING
INADEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS

(Suo Motu Writ (Crl.) No. 1 of 2017)

MARCH 30, 2017

[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

Criminal law – Criminal trial – Common inadequacies and deficiencies occurring in course of trial – Held: To bring about uniform best practices to be followed by Criminal Courts across the country, general consensus to be arrived at on the need to amend relevant rules of Practice/Criminal Manuals – Suggestions also invited on other areas of concern – Kerela Criminal Rules of Practice, 1982 – rr. 62, 132, 134 – Andhra Pradesh Criminal Rules of Practice and Circular Orders, 1990 – r. 66 – Code of Criminal Procedure, 1973 – ss. 164, 207, 228, 238, 244, 251, 354, 428 – Evidence Act, 1872 – ss. 27, 145, 157 – Constitution of India – Art. 142 – Supreme Court – Directions/Guidelines.

CRIMINAL ORIGINAL JURISDICTION: Suo Motu Writ (Crl.)
No. 1 of 2017.

Basant R., Sr. Adv., Raghenth Basant, Kartik Ashok, James Joseph, Mishal Johari, Senthil Jagadeesan, Ms. Bina Madhavan, Advs. for the Appellants.

Siddharth Luthra, Sr. Adv., Deepak Prakash, Anoopam N. Prasad, Ali Chaudhury, Swati Ghildiyal, Kunal Singh, Subhash Chandran, Ms. Usha Nandini, G. Prakash, Jishnu M. L., Mrs. Priyanka Prakash, Mrs. Beenu Prakash, Manu Srinath, Ms. Bina Madhavan, Ms. Usha Nandini V, Advs. for the Respondents.

The following Order of the Court was delivered

ORDER

1. During the course of hearing of Criminal Appeal No.400/2006 and connected matters, Mr. R. Basant, learned Senior Counsel appearing for the appellants-complainant, pointed out certain common inadequacies and deficiencies in the course of trial adopted by the trial court while disposing of criminal cases. In particular, it was pointed out that though there are beneficial provisions in the Rules of some of the High Courts

A which ensure that certain documents such as list of witnesses and the list of exhibits/material objects referred to, are annexed to the judgment and order itself of the trial court, these features do not exist in Rules of some other High Courts. Undoubtedly, the judgments and orders of the trial court which have such lists annexed, can be appreciated much better by the appellate courts.

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2. Certain other matters were also pointed out by Mr. Basant, learned Senior Counsel for the appellants- complainant, during the course of arguments. He made the following submissions :

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A. In the course of discussions at the Bar while considering this case, this Court had generally adverted to certain common inadequacies and imperfections that occur in the criminal trials in our country. I venture to suggest that in the interests of better administration of criminal justice and to usher in a certain amount of uniformity, and acceptance of best practices prevailing over various parts of India, this Court may consider issue of certain general guidelines to be followed across the board by all Criminal Courts in the country.

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B. The following areas may be considered specifically:

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1. The pernicious practice of the Trial Judge leaving the recording of deposition to the clerk concerned and recording of evidence going on in more than one case in the same Court room, at the same time, under the presence and general supervision of the presiding officer has to be disapproved strongly and discontinued forthwith. A visit to Delhi Trial Courts any day will reveal this sad state of affairs, I am given to understand.

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2. The depositions of witnesses must be recorded, in typed format, using computers, in Court, to the dictation of the presiding officers (in English wherever possible) so that readable true copies will be available straightaway and can be issued to both sides on the date of examination itself.

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3. The deposition of each witness must be recorded dividing it into separate paragraphs assigning para numbers to facilitate easy reference to specific portions later in the course of arguments and in Judgments.

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4. Witnesses/documents/material objects be assigned specific nomenclature and numbers like PWs/DWs/CWs (1 onwards); Ext. P/

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Ext. D/Ext. C (1 onwards); MOs (1 onwards) etc., so that reference later becomes easy and less time-consuming. Kindly see the Relevant Rules A

Kerala Criminal Rules of Practice 1982

“Rule 62 – Marking of exhibits.-

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(1) Exhibits admitted in evidence shall be marked as follows:

(i) If filed by the prosecution, with capital letter P followed by a numeral P1, P2, P3 etc

(ii) If filed by defence, with capital letter D followed by a numeral D1, D2, D3 etc

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(iii) If Court exhibits, with capital letter C followed by a numeral C1, C2, C3 etc.

(2) All exhibits marked by several accused shall be marked consecutively.

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(3) All material objects shall be marked in Arabic numbers in continuous series, whether exhibited for the prosecution or the defence or the Court as M.O.1, M.O.2, M.O.3, etc”

Andhra Pradesh Criminal rules of Practice and Circular Orders, 1990

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“Rule 66 – How witness shall be referred to

Witnesses shall be referred by their names or ranks as P.W.s., or D.Ws., and if the witnesses are not examined, but cited in the chargesheet, they should be referred by their names and not by numbers allotted to them in the charge-sheet.”

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5. Every judgment must mandatorily have a preface showing the name of the parties and an appendix showing the list of Prosecutions Witnesses, Prosecution Exhibits, Defence Witnesses, Defence Exhibits, Court witnesses, Court Exhibits and Material Objects. Kindly see inter alia the Relevant rules in the Kerala Criminal Rules of Practice, 1982.

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“Rule 132 – Judgment to contain certain particulars.- The Judgment in original decision shall, apart from the particulars prescribed by Section 354 of the Code also contain a statement in Tabular Form giving the following particulars, namely:-

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1.	Serial Number	
2.	Name of the Police Station and the Crime No. of the offence	
3.	Name	Description of the Accused
4.	Father's name	
5.	Occupation	
6.	Residence	
7.	Age	Date of
8.	Occurrence	
9.	Complaint	
10.	Apprehension	
11.	Release on bail	
12.	Commitment	
13.	Commencement of trial	
14.	Close of trial	
15.	Sentence or order	
16.	Service of copy of judgment or finding on accused	
17.	Explanation of delay	

Note.- (1) Date of complaint in column 9 shall be the date of the filing of the charge-sheet in respect of case instituted on police report and the date of filing of the complaint in respect of other case.

(2) Date of apprehension in column 10 shall be the date of arrest.

(3) Date of commencement of trial in column 13 shall be :

(a) In summons cases, the date on which the particulars of the offence are stated to the accused under section 251 of the Code.

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(b) In warrant cases instituted on police report, the date on which the documents under section 207 of the Code are furnished to the accused and the Magistrate satisfied himself of the same under section 238 of the Code. A

(c) In other warrant cases, when the recording of evidence is commenced under section 244 of the Code. B

(d) In Sessions trials, when the charge is read out and explained to the accused under section 228 of the Code.

“Rule 134 – List of witnesses etc. to be Appended to Judgement.

There shall be appended to every judgment a list of the witnesses examined by the prosecution and for the defence and by the Court and also a list of exhibits and material objects marked.” C

6. Once numbers are assigned to the accused, witnesses and exhibits, they be referred to, subsequently in the proceedings and in the judgments with the help of such numbers only. The practice of referring to the names of the accused/witnesses and documents descriptively in the proceedings paper and judgments creates a lot of confusion. Whenever there is need to refer to them by name their rank as Accused/Witness must be shown in brackets. D

7. Repetition of pleadings, evidence, and arguments in the judgments and orders of the Trial Court, Appellate and Revisional Courts be avoided. Repetition of facts, evidence, and contentions before lower Courts make the judgments cumbersome, and takes away the precious time of the Court unnecessarily. The Appellate/Revisional Court judgment/order is the continuation of the lower court judgment and must ideally start with “in this appeal/revision, the impugned judgment is assailed on the following grounds” or “the points that arise for consideration in this appeal/revision are”. This does not of course, take away the option/jurisdiction of the Appellate/Revisional Courts to re-narrate facts and contentions if they be inadequately or insufficiently narrated in the judgment. Mechanical re narration to be avoided at any rate. E F G

8. In every case file, a judgment folder to be maintained, and the first para in the appellate/revisional judgment to be numbered as the next paragraph after the last para in the impugned judgment. This would cater to a better culture of judgment writing saving precious court time. H

A 9. The healthy practice in some states of the Investigating Officer obtaining and producing (or the wound certificate/ post mortem certificate showing) the front and rear sketch of the human torso showing the injuries listed in the medical documents specifically, may be uniformly insisted. This would help the judges to have a clearer and surer understanding of the situs of the injuries.

B 10. Marking of contradictions – A healthy practice of marking the contradictions/Omissions properly does not appear to exist in several States. Ideally the relevant portions of case diary statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a Prosecution/Defence exhibit.

C 11. The practice of omnibus marking of S. 164 statement of witness deserves to be deprecated. The relevant portion of such prior statements of living persons used for contradiction or corroboration U/s. 145/157 of the Evidence Act deserves to be marked separately and specifically.

D 12. The practice of whole sale marking of confession statement of accused persons for introduction of the relevant statement admissible under S. 27 of Evidence Act deserves to be deprecated. Ideally the admissible portion and that portion alone, must be extracted in the recovery memos (Mahazar or Panch – different nomenclature used in different parts of the land) within inverted commas. Otherwise the relevant portion alone written separately must be proved by the Investigating Officer. Back door access to inadmissible evidence by marking the entire confession statement in the attempt to prove the admissible portion under S. 27 of Evidence Act should be strictly avoided.

E 13. The Trial Courts must be mandatorily obliged to specify in the Judgment the period of set off under Section 428 Cr.P.C specifying date and not leave it to be resolved later by jail authorities or successor presiding officers. The Judgements and the consequent warrant of committal must specify the period of set off clearly.

F 3. In the circumstances, we direct that notices be issued to the Registrars General of all the High Courts, and the Chief Secretaries/the Administrators and the Advocates-General/Senior Standing Counsel of all the States/Union Territories, so that general consensus can be arrived

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at on the need to amend the relevant Rules of Practice/ Criminal Manuals to bring about uniform best practices across the country. This Court may also consider issuance of directions under Article 142 of the Constitution. They can be given the option to give suggestions also on other areas of concern. A

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Divya Pandey

Directions issued.