

POLICE**DEPARTMENT****KERALA****No. D2/62998/2019/PHQ**

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Circular No.04/2021

Sub : Improving the Conviction rate in serious crimes – Role of Police officers during Prosecution of Criminal cases – Instructions issued - reg.

01.It is a matter of serious concern that many grave crime cases have been acquitted in recent times either due to flaws in the investigation or failure of the prosecution. Efficacy of the criminal justice system depends on the prompt completion of trials and higher conviction rates. Since all elements of the public justice system are inter-dependent, the investigation agency alone cannot achieve the desired results if it is not supported by judicial system by way of prompt disposals.

02.Normally, the court process in a charge sheeted criminal case involves the following steps:-

Pre- Trial phase

- ⇒ *Final Report filed.*
- ⇒ *Taking cognizance of the offences by the Court.*
- ⇒ *Supply of Police papers to Accused.*
- ⇒ *Securing the presence of Accused in the Court- Plead Guilty or opt for trial.*
- ⇒ *Fixing a date for charge argument.*
- ⇒ *Charge argument and Framing of Charges against the Accused.*

Trial phase

- ⇒ *Recording of Prosecution Evidence.*
- ⇒ *Recording 313 CrPC statement of Accused.*
- ⇒ *Recording of Defence Evidence.*

- ⇒ *Hearing Final Arguments from both sides.*
- ⇒ *Pronouncement of Judgement.*

03. BURDEN OF PROOF ON PROSECUTION.

Public Prosecutor has to play a crucial role in all the above stages of prosecution. It is for him to establish the guilt against the accused in the court beyond doubt by relying upon the Oral, Documentary, Circumstantial and Forensic Evidences framed by the investigating agency in the charge-sheet.

Some of the factors often hindering successful prosecution are as follows.

- ⇒ Lack of institutionalised interaction or coordination between investigation agency and prosecution agency.
- ⇒ Inordinate delay in the conduct of trial.
- ⇒ Prime witnesses turning hostile due to various reasons including absence of proper briefing.
- ⇒ Lack of interest by police officers resulting in non-production of witnesses.
- ⇒ Occasional absence of police officials in appearing before the courts for rendering evidence.
- ⇒ Accused engaging experienced and senior lawyers for his defence.

A multi disciplinary approach is required to bring in improvements in this situation which inter alia warrants more synergy between the Investigating Agency and the Prosecution Wing.

04. ROLE OF INVESTIGATING OFFICER.

There is a need for proper co-ordination and co-operation between the investigating officer and prosecutor during the entire trial period. Duty of investigation officer is not over by the mere filing of the charge-sheet before the court. In this regard, the following points are crucial.

- ⇒ In important cases, once the trial is commenced, as far as possible, Investigating Officer shall be present in the court on all posting dates in all

grave crime cases & in other sensational & important cases(which may not be grave crimes).

- ⇒ If the investigating officer is not available for attending the trial due to any emergent situation, he shall ensure the presence of any competent police personnel (preferably one of the members of the investigation team or the subordinate staff who assisted the Investigating Officer) for assisting the Public Prosecutor.
- ⇒ Investigating Officer should send the case diary file in advance to the Public Prosecutor and shall give necessary personal instructions.
- ⇒ Investigating Officer should assist the Public Prosecutor in briefing the witnesses, conducting prosecution, filing documents, marking exhibits and see that the prosecution case is presented in the best possible manner. Special attention is to be given to ensure that the witnesses are neither giving over-statement nor providing under-statement.
- ⇒ Investigating Officer shall make enquiries and furnish material to the prosecutor for the cross examination of defence witnesses.
- ⇒ If possible, briefing of all important witnesses in proper co-ordination with the Public Prosecutor is done at least two or three days before their scheduled dates of examination.
- ⇒ Accused may try to evade the trial by making themselves absent with a view to lag the framing of charge. Any such efforts from the part of accused shall be foreseen by the I/O and should tackle it judiciously.
- ⇒ Once the charge is framed the I/O should verify the court charge to ensure that all relevant facts and offences have been incorporated in it. If there is any mistake or omission in the charge, Investigating Officer shall bring it to the notice of the court through Public Prosecutor.
- ⇒ Investigating Officer can provide valid inputs and suggestions to the prosecutor, if any of the prosecution witnesses have been made to give any misleading statement during cross examination or that any point has been purposefully left obscure, in order to clear it in re-examination.
- ⇒ Before giving evidence in the court, I/O should study the case diaries, statements recorded U/s 161 CrPC, confessions, seizure reports, remand

diaries / reports, scientific reports and charge sheet thoroughly. To grope about the documents in the case diary is not a fair habit at the witness box.

- ⇒ Before being examined as witness, the I/O shall have consultation with the Public Prosecutor and shall have an understanding regarding the evidence already recorded, exhibits marked and material objects identified in the court.
- ⇒ If the Investigating Officer is thorough about the case, investigation and statements recorded by him, he can depose with all confidence and withstand cross-examination. He will be able to give a satisfactory explanation to the court, only if he is completely aware of the proceedings and what evidence were given by the witnesses in the court and what they answered during cross-examination. It is desirable for him to prepare a draft statement to be deposed in complicated cases and show it to the prosecutor and taken note of any suggestions made by him.
- ⇒ Investigating Officer should verify answers given to the questions put to the accused and additional statement given by him. I/O shall invite attention of the Public Prosecutor regarding falsity or contradictory nature of the explanation offered by the accused. If the court omits to put any of the incriminating circumstances which the prosecution proposes to rely on, the Investigation Officer shall bring it to the notice of the court through Public Prosecutor. I/O should be vigilant in verifying such omissions in the case of circumstantial evidences.
- ⇒ **I/O shall invite attention of the Public Prosecutor regarding the relevant portions of the evidence of a hostile witness which can still be made use of in appropriate situations, at least to corroborate the evidence of other independent witnesses in material particulars.**
- ⇒ **The Investigating Officer shall take steps to initiate action against the witnesses, whose 164 CrPC statements are recorded, but who turned hostile during the trial stage.**
- ⇒ Investigating Officer shall evaluate the defence witness schedule and shall ascertain whether the same was for vexation or protracting the trial. In such cases the I/O should properly instruct the Public Prosecutor to object to the examination of witnesses on such grounds.
- ⇒ There is a practice on the part of a few Public Prosecutors to give up certain crucial charge witnesses unilaterally without any discussion with the I/Os

concerned. There are instances in which such moves by the Public Prosecutors adversely affected the final outcome of the case. Hence, meeting of minds between the Investigating Officer and Public Prosecutor is necessary before taking any decision related to the giving up of witnesses from providing testimony before the court.

05.ROLE OF JURISDICTIONAL STATION HOUSE OFFICER.

Every Station House Officer has got a pertinent role in streamlining the prosecution process. Their contribution is of paramount importance on the following fields.

- ⇒ Spare the services of a competent police persons from the station for Aid Prosecution duty and see that he is discharging his role professionally and effectively.
- ⇒ Ensure that the Aid Prosecution duty personnel are closely observing the proceedings in the court and prepare the court CD for every date including the details of witnesses examined so far witnesses to be examined, attendance of officers, MOs marked, deposition of witnesses in favour, hostile witnesses etc. and submit the same to SHO. They must use Trial Management Platform also and key in data on a daily basis.
- ⇒ SHO after perusing the court CD, will take remedial measures in consultation with the I/O and Public Prosecutor of the case before the next date of posting and should see that the court CD is properly documented with the CD file.
- ⇒ Posting dates of all important cases shall be ascertained well in advance through the court duty personnel and it should be conveyed to the Investigating Officer on time.
- ⇒ Should make concerted and meaningful efforts to serve the summons to all prosecution / defence witnesses on time and to ensure that all of them turn up for the trial on the specified dates itself. Ensure process is served from Court in time.
- ⇒ Threat perception, if any, to crucial witnesses shall be ascertained in advance and appropriate preventive measures shall be initiated to avert any such attempt of intimidation / assault against such witnesses so as to refrain them from giving testimony before the court freely and fearlessly.

- ⇒ If necessary, adequate deployment of manpower shall be made in the premises of the court concerned during the dates of trial so as to instil a sense of security among the prosecution witnesses.
- ⇒ SHO should promptly attend to the grievances / complaints, if any, from prosecution witnesses against the accused or their associates. In appropriate cases, SHO should request the prosecuting officers to move the court for initiating action against the hostile witnesses, rowdy accused etc if necessary.

06.ROLE OF VICTIM LIAISON OFFICER (VLO).

Normally victims and most of the witnesses may be illiterate and vulnerable to the queries of defence during cross examination. Hence it is essential to equip them adequately to counter such situations. In this regard, Victim Liaison Officers (VLOs) are supposed to play the following crucial roles.

- ⇒ Victim Liaison Officer (VLO) should keep constant and close touch with the victim of the case and other crucial prosecution witnesses and shall instil sense of security to them.
- ⇒ VLO shall promptly update the progress of the case during the investigation stage as well as during the period of prosecution so as to make the victims and witnesses to prepare adequately for giving testimony before the court.
- ⇒ VLO should also brief the victim and other important witnesses appropriately and adequately so as to clear confusions, if any, and thereby to avoid any vulnerable situation adversely affecting the prosecution.
- ⇒ VLO should interact with the victim and important witnesses frequently to ascertain whether they are facing threat from any angle and shall take initiative to ensure the invoking of preventive measures for averting any such move by vested hands.
- ⇒ VLO shall follow all the guidelines as envisaged in PHQ Circular No. 25/2017 in its true letter and spirit.

07.ROLE OF SUB DIVISIONAL POLICE OFFICER.

Being the immediate supervisory officer, Sub Divisional Police Officer has got a pivotal role in ensuring successful prosecution in all serious cases invariably. In this regard, the SDPO is expected to perform the following tasks.

- ⇒ Take steps to designate competent police personnel as the Victim Liaison Officer (VLO) in all important cases.
- ⇒ Ensure that steps are taken from the part of SHO to communicate the posting dates of trial and all other developments related to the prosecution to the Investigating Officer and all other witnesses promptly and timely.
- ⇒ Ensure the proper documentation of court CDs by the Aid Prosecution duty personnel by carefully scrutinizing the court CDs and corrective action, if any, needed for improving the prosecution shall be initiated through appropriate means.
- ⇒ On commencement of trial proceedings, ensure that summons are procured well in advance from the court and they are served on the witnesses promptly and timely by the jurisdictional SHO.
- ⇒ Take steps to gather intelligence with regard to the threat perception, if any, to the victims and crucial witnesses and ensure the initiation of appropriate preventive measures to avert any untoward incidents.
- ⇒ Ensure the prevailing of an ambiance wherein the victim and crucial witnesses could feel a sense of security in making themselves available before the court on the scheduled dates of posting itself and to give testimony without any hesitation or fear.
- ⇒ Closely monitor all the developments with regard to the trial process and ensure the initiation of appropriate remedial measures in the event of any impediments with regard to the framing of charge and subsequent prosecution process.

08.ROLE OF DISTRICT POLICE CHIEF.

District Police Chiefs have go significant role and responsibility in ensuring the smooth conduct of prosecution and thereby achieving successful prosecution in all cases. Some of the tasks are as follows.

- ⇒ Prior to the commencement of the trial, a meeting of Public Prosecutor and Investigating Officer shall be arranged for reviewing the status of the case and to ensure initiation of apt measures for resolving shortcomings, if any, that could adversely affect the final outcome of the case. It would be better if the DPCs can have a meaningful discussion with the prosecutor concerned

before the commencement of trial of all murder cases and other sensational cases.

- ⇒ Functioning of Legal Cells in the District / Sub Divisional level as per the guidelines contained in PHQ Exe. Directive No. 02/2021 shall be made meaningful. Apart from exploring the feasibility of filing scope for appeal, judgements of all acquitted cases shall be meticulously scrutinized by the Legal Cells to ascertain the flaws, if any, in the prosecution and to take remedial measures for avoiding its recurrence.
- ⇒ Ensure that there is a permanent mechanism at the District and Sub Divisional level to closely monitor all the developments during the trial of a case. In this regard, services of Legal Cells at District / Sub Divisional level shall be utilized optimally.
- ⇒ Considering the importance of a case and legal complexities involved during investigation and other factors, take initiative for engaging a special Public Prosecutor for handling complex cases.
- ⇒ Evaluate the performance of Public Prosecutors and report the same to District Magistrates so as to enable them to initiate appropriate corrective measures.
- ⇒ Ensure that the Investigating Officers, SHOs, Victim Liaison Officers, Sub Divisional Police Officers and above all the Public Prosecutors are discharging their role in a committed, professional and effective manner and with proper co-ordination without any ambiguity so as to achieve successful prosecution.
- ⇒ As regards important cases ended in acquittal, personal attention of District Police Chiefs is required to explore the possibility of filing appeal in a time bound manner after due verification of legal opinion and all other relevant documents related to the case. In this regard, the guidelines as envisaged in Executive Directive 26/2020 shall be scrupulously followed.
- ⇒ DPCs should ensure that the petitions moved by the accused for getting anticipatory bail or normal bail in all important cases are properly defended by the Prosecution. In this regard, a specific mechanism should be available at District level to ensure timely submission of instructions to the public prosecutors by the Investigating Officers for defending such bail applications.

Services of legal cells in the Districts shall be optimally utilised in this regard.

⇒ Normally the accused under judicial custody in a case is entitled to the right of bail if charge sheet is not laid before the court within the mandatory time limit of 90 days. Hence, as part of ensuring custody trial in all important cases, close and constant monitoring by the District Police Chiefs is very crucial in ensuring the laying of charge sheets before the courts within the mandatory time limit.

In concise, as the four components of Criminal Justice System Viz. Investigating Agency, Judiciary, Prosecution Wing and Prison & Correctional Services are inter-dependent, a multi disciplinary approach from the part of all components in their own respective fields is crucial in upholding the criminal jurisprudence. Police Officers have to play crucial roles as mentioned above to bring in better results.

ln 2.2.2021
Loknath Behera IPS
 Director General of Police &
 State Police Chief, Kerala

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