**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**&**

**THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN**

**Thursday, the 11th day of May 2023 / 21st Vaisakha, 1945**

**CRL.M.APPL.NO.1/2023 IN DEATH SENTENCE REF. NO. 2 OF 2016**

**CRIME NO.491/2014 OF Attingal Police Station, Thiruvananthapuram**

**SC NO 1480/2014 OF THE COURT OF THE SESSIONS JUDGE, THIRUVANANTHAPURAM**

**PETITIONER:**

**STATE OF KERALA**

**BY PUBLIC PROSECUTOR**

**RESPONDENT:**

**NINO MATHEW S/O.T.J.MATHEW,**

**MAGI GARDEN, THENGUMMOODU,**

**BACK OF MGM SCHOOL, KARIMANAL,**

**ATTIPRA VILLAGE.**



**This Death Sentence Reference having come up for orders on 11.05.2023, upon perusing the Death Sentence Reference and upon hearing the arguments of the SRI. T.B. HOOD,PUBLIC PROSECUTOR for the petitioner, Sri. SASTHAMANGALAM S.AJITHKUMAR, advocate for the appellant in connected Crl.A.683/2016 who is the respondent herein and Smt.MITHA SUDHINDRAN and Smt.SAI POOJA , the learned Amici Curiae(By Order), the court on the same day passed the following:**

**(CR)**

**ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.**

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**Crl.M.A.No. 1 of 2023 in Death Sentence Reference No.2 of 2016**

*(arising out of the impugned judgment dated 18.04.2016 in SC No.1480/2014 on the file of the Sessions Court, Thiruvananthapuram)*

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**Crl.M.A.No. 1 of 2023 in Death Sentence Reference No.2 of 2018**

*(arising out of the impugned judgment dated 12.10.2017 in SC No.662/2016 on the file of the Court of Sessions & Special Judge for SC/ST (POA) Act cases, Ernakulam Division)*

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Dated this the 11th day of May, 2023

**COMMON ORDER**

**ALEXANDER THOMAS, J.**

The pleas in the afore interim reports dated 27.1.2023 & 31.1.2023 filed by the Amici Curiae in the afore captioned Death Sentence References have come up for consideration. The former reference case arose out of the impugned judgment dated 18.04.2016 in SC No.1480/2014 on the file of the Sessions Court, Thiruvananthapuram. The latter reference arose out of the impugned judgment dated 12.12.2017 in SC No. 662/2016 on the file of Court of Sessions and Special Judge for SC/ST (POA) Act cases, Ernakulam.

2. As per the afore impugned judgments of the Courts concerned, the respondent/accused concerned in these references have been convicted for the offences as per Sec.302 of the IPC and have been imposed death sentence. The afore references have been initiated in compliance of the

mandate in Sec.366(1), contained in Chapter XXVIII of the CrPC., which stipulates that, when the Sessions Court passes a death sentence, the proceedings shall be submitted to the High Court concerned and the sentence shall not be executed unless it is confirmed by the High Court concerned. The Death Sentence Reference will be hereinafter referred for convenience as DSR. The first case will be referred for convenience either as DSR 2/2016 or as the former case, whereas, the latter reference will be referred for convenience as DSR 2/2018 or as the latter case.

3. Two persons were arrayed as the accused in SC No.1480/2014 on the file of the Sessions Court, Thiruvananthapuram, which has now led to DSR No.2/2016 and by the impugned judgment, the Sessions Court has inter alia convicted both A-1 & A-2 for the offence as per Sec.302 of the IPC. A1 has been awarded Death Sentence and A2, who is a lady, has been awarded life sentence. Whereas, there is only a sole accused in SC No.662/2016 on the file of the latter Sessions Court and by the afore impugned judgment of the Sessions Court in the latter case, the sole accused has been *inter alia* convicted for the offence as per Sec.302 of the IPC and has been awarded Death Sentence. In the former case, A1 has filed separate Criminal Appeal as Criminal Appeal 639/2016 before this Court to challenge his conviction and death sentence. Whereas, A-2 in the former

Sessions Case has filed a separate Criminal Appeal No. 683/2016 to challenge her conviction and the life sentence. In the latter case, the sole accused has filed Criminal Appeal No.113/2018 before this Court to challenge his conviction and death sentence.

4. When these cases have come up for consideration on 15.12.2022, the learned counsel appearing for the respective respondent accused in these DSRs, had submitted that, in view of the various later rulings of the Apex Court, the process of mitigative investigation may have to be conducted by this Court, to assess and evaluate the mitigating circumstances, so as to weigh the aggravating circumstances of the crime and the mitigating circumstances in respect of the criminal to finally determine the issues in the DSR, etc. This submission was so made by the respondent accused on the premise that, if conviction is confirmed in these cases by this Court, then the process of mitigation study should not be prolonged and for that purpose, it may be better, in the interest of justice, to commence the mitigation investigation now, as has been ordered by the Apex Court recently in various cases.

5. In view of the above submission, this Court was of the view that the assistance of an Amicus Curiae may be called for to deal with the issues of mitigation investigation in this case. Accordingly, with the consent of all the parties concerned, it was ordered that Ms.Mitha Sudheendran,

learned Advocate of this Court and Ms.Sai Pooja, learned Advocate of this Court be appointed as Amici Curiae to assist this Court in regard to the various aspects relating to mitigation investigation that may be involved in these cases.

6. Later, this Court had passed separate orders on 22.12.2022 in these two cases, taking note of the submissions of the Amici Curiae that the matter of mitigation investigation in Death Sentencing Process is a newly developing area, which is in its infancy stage in India and that Project 39A, attached to the National Law University Delhi, is a pioneering expert agency in the area of mitigation investigation, as the said agency is concerned with various aspects of Death Penalty laws etc. Further, the Amici Curiae submitted that this Court may ascertain whether the services of the said expert agency could be availed in these DSR's for the effective conduct of mitigation investigation. In view of the said submissions, the Amici Curiae were requested by this Court, as per separate orders rendered on 22.12.2022, to ascertain from Project 39A, National Law University, Delhi, whether the said agency could extend their services in the effective conduct of mitigation investigation in these cases. This Court also then observed that, after ascertaining those details, the learned Amici Curiae may apprise this Court about the feasibility of conducting mitigation investigation in this case through Project 39A, National Law University and

if necessary, a statement or report may be filed. Further this Court also observed that the learned Advocates appearing for the party, the learned Prosecutor and the learned Amici Curiae may examine the legal position as to the stage at which mitigation investigation will have to be commenced and completed, especially as to whether it has to be conducted now or only after the appeal has been heard on merits and the conviction is sustained. Both sides were also requested to enlighten the case laws on those aspects of the matter.

7. It is later that the Amici Curiae have submitted interim report dated 27.01.2023 (numbered as Crl.M.A.No. 1/2023) in the former case and the interim report dated 31.01.2023 (numbered as Crl.M.A.No. 1/2023) in the latter case. In those interim reports, the Amici Curiae have submitted that, in pursuance to the order dated 22.12.2022 of this Court in these matters, they have ascertained from the pioneering expert agency concerned, viz, Project 39A, National Law University, Delhi, as to whether they could extend their services in the effective conduct of mitigation investigation in these cases. That, in pursuance thereof, the Director of the said agency, who is a Professor of Law in the National Law University, Delhi, has given letter dated January, 2023, addressed to the Registrar General of this Court, expressing the said Agency's willingness to carry out mitigation investigation in the cases on hand and that the letter of the Agency in the former case has been produced in the interim report in

that case and that the letter of the Agency in the latter case has been furnished in the interim report of the Amici Curiae in that case. The name of the separate mitigation investigators are also mentioned therein. Accordingly, the Amici Curiae had submitted that, after hearing all the parties concerned, this Court may decide as to whether this Court may pass orders in the matter, if appointment of mitigation investigation through the Agency is found fit and appropriate. Thereafter, this Court has heard the learned Advocates appearing for the respective accused persons as well as the learned Public Prosecutor and the learned Amici Curiae. The Special Public Prosecutor appearing in the latter case and the learned Prosecutor appearing in the former case had initially made submissions, and doubted as to whether this Court can commence the mitigation investigation process at this stage. It was pointed out by them that in the trial process, the mitigating examination can be done only after the conviction is ordered and when a separate hearing process, in terms of Sec.235(2) of the CrPC, is conducted and not any time before and therefore, since the appeal is a continuation of the trial process, pertinently, the mitigation examination may be commenced only after this Court finally hears the matter and takes a decision as to whether the conviction is sustained or set aside, and only where the conviction is sustained and affirmed that the aspects relating to the second stage of

punishment, as to whether Death Sentence is to be confirmed or whether the alternative life sentence is to be awarded that mitigation examination may be ordered etc. The matter has been heard for quite a few days and this Court initially itself had observed that, in view of the public importance of the question, the learned Advocate General may appear for making submissions on the said issue as to whether the mitigation investigation can be commenced in these cases now, before taking a decision on the issue of affirmation of conviction or whether it can be ordered only in a case where conviction is affirmed etc. We have now heard the learned Advocate General also appearing on behalf of the respondent State.

8. Sec.235 of the CrPC provides as follows:

> *"Sec.235. Judgment of acquittal or conviction.- (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.*
>
> *(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."*

Sec.354(3) of the CrPC reads as follows:

> *"Sec.354. Language and contents of judgment.- (1).....*
>
> *xxx xxx xxx*
>
> *(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."*

9. The Two Judge Bench of the Apex Court in the case in ***Santa Singh v. State of Punjab*** *[(1976) 4 SCC 190]*, has held that, in view of

the mandate contained in Sec.235(2) of the Cr.P.C., there is a requirement of having separate sentencing hearing and held that the sentencing stage is as important as the stage in the process of administering criminal justice as the finding of conviction after adjudication of guilt. The Apex Court in ***Santa Singh v. State of Punjab*** *[(1976) 4 SCC 190]* has emphasized that the hearing on the question of sentence should not lead to unduly protracting the proceedings and that, the claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of the proceeding.

10. The Constitution Bench verdict of the Apex Court by majority has held in the celebrated case of ***Bachan Singh v. State of Punjab*** *[(1980) 2 SCC 684]* that though death sentence cannot be declared as unconstitutional, such an extreme punishment of death sentence for the prescribed offences can be only in the rarest of rare cases and where the alternate punishment of life sentence is unquestionably foreclosed.

11. The Constitution Bench has held, in para 151 of ***Bachan Singh's*** case supra *[(1980) 2 SCC 684]* that, Sec.354(3) of the Cr.P.C. marks a substantial shift in the legislative policy, underlying the earlier Code (Code of Criminal Procedure, 1898) as per which, both the alternative sentences of death or life imprisonment, provided for murder and for certain other capital punishment under the IPC, were normal sentences.

But that, according to the changed legislative policy, made effective from 1.4.1974 with the coming into force of the Code of Criminal Procedure, 1973, as per Sec.354(3), the normal punishment for murder and six other capital offences under the IPC is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception. Further, it was also held, in para 152 of ***Bachan Singh's*** case supra, that, Sec.235(2) of the Code of Criminal Procedure, 1973, makes it explicit and bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage. It was thus held, in para 163 thereof, that, Sec.235(2) Cr.P.C. provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Sec.354(3), a bearing on the choice of sentence. It was thus held therein that the present legislative policy, discernible from Sec.235(2) read with Sec.354(3), is that, in fixing the degree of punishment or making the choice of sentence for various offences, including one under Sec.302 of the IPC, the Court should not confine its consideration principally or merely to the ***circumstances connected with the particular crime***, but also give due consideration to ***the circumstances of the criminal.*** *(emphasis supplied)*

12. These aspects of the matter have been elaborately dealt with by a recent Three Judge Bench verdict of the Apex Court in the case ***Sundar @ Sundarrajan v. State by Inspector of Police*** (decided on 21.3.2023 on Review Petition (Crl.) Nos.159-160 of 2013 and connected cases, reported in *2023 SSC OnLine SC 310,* wherein paras 65 -67 thereof deals with relevant case laws on the subject. Reference in this connection could be profitably made to the decisions in ***Muniappan v. State of Tamil Nadu*** *[(1981) 3 SCC 11],* ***Allauddin Mian v. State of Bihar*** *[(1989) 3 SCC 5, para 10]*, ***Anguswamy v. State of Tamil Nadu*** *[(1989) 3 SCC 33]*, ***Dattaraya v. State of Maharashtra*** *[(2020)14 SCC 290].* In para 10 of ***Allauddin Mian's*** case supra, their Lordships of the Apex Court have held that Sec.235(2) of the Cr.P.C. satisfies a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. That, the said provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence, there can be no doubt that the provision is salutary and must be strictly followed and it is clearly mandatory and should not be treated as a mere formality. It was further emphasized therein that a sentencing decision has far more serious consequences on the offender and his family members

than in the case of a purely administrative decision and therefore, the principle of fair play must be applied with greater vigour in the case of the former than the latter and that, therefore, a sentencing decision taken without following the mandatory requirements under Sec.235(2) of the Cr.P.C. in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances, bearing on the question of sentence, are brought on record. Further, their Lordships of the Apex Court have held therein that as a general rule, the trial courts should, after recording the conviction, adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material, bearing on the question of sentence, before it and thereafter pronounce the sentence to be imposed on the offender.

13. There are quite a few lines of decisions of the Apex Court in cases as in ***Dagdu v. State of Maharashtra*** *[(1977) 3 SCC 68]*, ***Tarlok Singh v. State of Punjab*** *[(1977) 3 SCC 218]*, ***Ramdeo Chauhan v. State of Assam*** *[(2001) 5 SCC 714]*, wherein a view was taken that, while the court may adjourn for a separate hearing on the question of sentence, same-day sentencing does not violate the provisions of Sec.235(2) Cr.P.C. and does not by itself vitiate the impugned sentence. This aspect of the

matter has been referred to in para 69 of ***Sundar @ Sundarrajan's*** case supra *[2023 SCC Online 310]*.

14. In the light of these apparently diverging views, a three Judge Bench of the Apex Court, by order rendered on 19.9.2022 in Suo Motu Writ Petition (Crl.) No. 1/2022 in the case *"In re: Framing Guidelines Regarding Potential Litigating Circumstances to be Considered While Imposing Death Sentences"* (reported in *2022 SCC Online SC 1246*) has taken note of the afore difference in approach in the interpretation of Sec.235(2) of the Cr.P.C. and referred the question for determination by the Three-Judge Bench and in the above Suo Motu proceedings order rendered on 19.9.2022, has taken note of the divergences on what amounted to "sufficient time" at the trial court stage to allow for a separate and effective sentencing hearing. It was also noted, in para 27 thereof, that, all the decisions had the following common grounds:

> *"27. The common thread that runs through all these decisions is the express acknowledgment that meaningful, read and effective hearing must be afforded to the accused, with the opportunity to adduce material relevant for the question of sentencing." (See para 27 of the 2022 SCC OnLine SC 1246)*

15. The Constitution Bench in the case ***Mohd. Arif @ Ashfaq v. Registrar, Supreme Court of India & Ors.*** *[(2014) 9 SCC 737]* has held that review petitions filed before the Apex Court arising from conviction and the imposing of death sentence must be heard in open court and also took note of the irreversible nature of death penalty and of the

possibility of two judicial minds reaching differing conclusions on the question of a case being appropriate for the award of death penalty. The Constitution Bench in ***Mohd. Arif's*** case supra, by majority, allowed the right to oral hearing in review for cases involving death penalty. It has been *inter alia* held, in para 29 thereof, that, it is well known that the basic principle behind returning the verdict of death sentence is that it has to be awarded only in the rarest of rare cases and there may be aggravating or mitigating circumstances, which are to be examined by the Court and it is not possible to lay down the principles to determine as to which case would fall in the category of rarest of rare cases, justifying the death sentence. Further that, it is not even easy to mention precisely the parameters or aggravating/mitigating circumstances which should be kept in mind while arriving at such a question and that, the attempts made in various case laws to deal with such circumstances remain illustrative only. It was further held, in para 30 thereof, that a sentence is a compound of many factors, including the nature of offence as well as the circumstances extenuating or aggravating the offence. That, a large number of aggravating circumstances and mitigating circumstances have been pointed out in paras 202 & 206 of ***Bachan Singh's*** case supra *[(1980) 2 SCC 684]* (See pages 749 & 750 of the afore SCC Report) . That, such lists are only illustrative and as clarified in ***Bachan Singh's*** case itself, different

judicially trained minds can apply different aggravating and mitigating circumstances to ultimately arrive at a conclusion, on considering all relevant factors that the death penalty may or may not be awarded in any given case. The experiences based on judicial decisions amply demonstrates such a divergent approach being taken, etc. Thus, it has been held, in para 39 of ***Mohd. Arif's*** case supra *[(2014) 9 SCC 737],* that, henceforth, in all cases in which death sentence has been awarded by the High Court in appeals pending before the Supreme Court, only a bench of Three Judges of the Apex Court will hear the same and this is for the reason that at least three judicially trained minds need to apply their minds at the final stage of the journey of a convict on death row, given the vagaries of sentencing procedure outlined therein. The plea that minimum judge strength should be atleast 5 Judges of the Apex Court to hear all death sentence case was turned down.

16. A Three Judge Bench of the Apex Court in the case ***Mofil Khan & Anr. v. State of Jharkhand*** *[2021 SCC Online SC 1136]* has *inter alia* held, in para 9 thereof, that, it was the duty of the Court to look into possible mitigating circumstances even if the accused was silent and that, in view of the dictum laid down in earlier decisions as in ***Mohd. Mannan v. State of Bihar*** *[(2019) 16 SCC 584]*, before imposing the extreme penalty of death sentence, the Court should satisfy itself that death

sentence is imperative, as otherwise the convict would be a threat to the society and there is no possibility of reform or rehabilitation of the convict and this has to be done after giving the convict an effective, meaningful and real opportunity of hearing on the question of sentence, by producing material. The hearing of sentence, thus, should be effective and even if the accused remain silent, the Courts would be obliged and duty-bound to elicit relevant factors. It was further held, in para 10 of ***Mofil Khan's*** case supra, that issues of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death and a bounden duty is cast on the Court to elicit information of all relevant facts and consider those regarding the possibility of reformation, even if the accused remains silent. Further, it was also observed, in para 10 thereof, that, the scrutiny of judgments of the trial court, the High Court and the Apex Court therein would indicate that death sentence is imposed by taking into account the brutality of the crime and there is no reference to the possibility of reformation of the petitioners therein and nor has the State could procure any evidence to prove that there is no such possibility with respect to the petitioners therein.

17. A Three Judge bench of the Apex Court in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra*** *[(2019) 12 SCC 460]*

has taken note of various case laws which highlight the importance of considering the probability of reform and rehabilitation of the convicted accused before sentencing him to death. It was held, in para 43 thereof, that, in view of the dictum in ***Bachan Singh's*** case supra, what is required is to consider the probability of reform and rehabilitation and not its possibility or its impossibility. In para 45 thereof, it was held therein that the law laid down in various decisions of the Apex Court, categorically mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates for the "special reasons" requirement of Sec.354(3) Cr.P.C. and ought not to be taken lightly since it involves snuffing out the life of a person. It was further held therein, that, to effectuate the said mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated and this can be achieved by bringing on record, *inter alia,* material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

18. In para 47 thereof, it was held that, until the rendering of the

Constitution Bench verdict in ***Bachan Singh's*** case supra, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. But, Bachan Singh placed the sentencing process into perspective and introduced the necessity by considering the reformation or rehabilitation of the convict. It was further observed, in para 47 of ***Rajendra Pralhadrao Wasnik's*** case supra, that, still after Bachan Singh's case, some of the case laws cited therein would show that there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner and that, in the sentencing process, both the crime and the criminal are equally important and that, very crucially, it has been noted therein that, therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity, notwithstanding his crime. (emphasis supplied) That, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated and to obtain and analyse this information is certainly not an easy task, but must nevertheless be undertaken. It was further observed, in para 47 thereof, that, the process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society and notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration

of the convict may not be possible and if that should happen, the option of a long duration of imprisonment is permissible.

19. The Three Judge Bench of the Apex Court in the recent verdict rendered on 21.3.2023 in ***Sundar @ Sundarrajan's*** case supra *[2023 SCC OnLine 310]* had held therein (See para 79 of SCC Online report) that, the law laid down by the Constitution Bench in ***Bachan Singh's*** case supra requires meeting the standard of "rarest of rare" for award of the death penalty, which requires the Courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. The Three Judge Bench in ***Sundar @ Sundarrajan's*** case supra, in para 79 thereof, has noted the decision in ***Santosh Kumar Satishbushan Bariyar v. State of Maharashtra*** *[(2009) 6 SCC 498]*, which requires looking beyond the crime and the criminal as well.

20. In that regard, it may be pertinent to refer to para 66 of ***Santosh Kumar Satishbushan Bariyar's*** case supra *[(2009) 6 SCC 498],* wherein, it has been held that the "rarest of rare" dictum would lead to the position that life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable and that, therefore, for satisfying the second exception to the rarest of rare doctrine, the court should have clear evidence as to why the convict is not fit for any kind of reformatory or rehabilitation scheme and

this analysis can only be done with rigour when the court focuses on circumstances relating to the criminal, along with other circumstances and that, this is not an easy conclusion to be deciphered, but that, the dictum laid down by the Constitution Bench in ***Bachan Singh's*** case supra sets the bar very high by introduction of the rarest of rare doctrine.

21. While dealing with ***Bachan Singh's*** "rarest of rare" doctrine, it was held, in para 33 of the decision in ***Anil v. State of Maharashtra*** *[(2014) 4 SCC 69]*, that, the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society, is a relevant circumstance and that must be given great weight in the determination of sentence. Further that, many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation. While it is the duty of the Court to ascertain those facts and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused, etc., the facts which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which calls for additional materials. Hence, the Apex Court ordered, in para 33 of ***Anil's*** case supra *[(2009) 6 SCC 498]* that, the criminal courts, while dealing with the offences, like Sec.302 of the IPC, after conviction, may, in appropriate

cases, call for a report to determine whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.

22. The Three-Judge Bench in the recent verdict in ***Sundar @ Sundarrajan's*** case supra *[2023 SCC Online SC 310]* has observed, in para 81 thereof that no such enquiry was conducted for enabling a consideration of the factors mentioned above in case of the petitioner therein and that, neither the trial court nor the appellate courts have looked into any factors to conclusively state that the petitioner therein cannot be reformed or rehabilitated. Whereas, the courts reiterated the gruesome nature of crime in that case to award the death penalty and it was merely noted that the counsel for the petitioner could not point out mitigating circumstances and upheld the impugned death penalty therein. It was observed that the State must equally place all material and circumstances on record bearing on the probability of reform. That, many such materials and aspects are within the knowledge of the State which has had custody of the accused both before and after the conviction and that, the Courts cannot be an indifferent by-stander in the process. The process and powers of the court will have to be utilized to ensure that such material is made available to it to form a just sentencing decision bearing on the probability of reform. Further, in ***Sundar @ Sundarrajan's*** case supra,

the Apex Court considered various aggravating factors and mitigating circumstances and also, that the accused was only 24 years old when the impugned judgment of the trial court was rendered on 30.10.2010 and he was imprisoned since 2009 for 13 years and he has no prior antecedents, etc., and finally ordered that the impugned death sentence in that case will be commuted to life imprisonment for not less than 20 years without reprieve or remission.

23. An illustrative list of mitigating circumstances has been noted in para 206 of ***Bachan Singh's*** case supra *[(1980) 2 SCC 684]* as follows:

> *"206. ....Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:*
>
> *(1) That the offence was committed under the influence of extreme mental or emotional disturbance.*
>
> *(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.*
>
> *(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*
>
> *(4) The probability that the accused can be reformed and rehabilitated.*
>
> *The State shall by evidence prove that the accused does not satisfy Conditions (3) and (4) above.*
>
> *(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.*
>
> *(6) That the accused acted under the duress or domination of another person.*
>
> *(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."*

24. It has been subsequently held in various decisions, including ***Manoj's*** case supra[2023 (2) SCC 353, para 237], that the above illustrative circumstances are not exhaustive and that in various subsequent decisions, the Apex Court has recognized various other factors,

like young age (*MD Shinde's case-(2014) 4 SCC 292, Gurvail Singh's case-(2013) 2 SCC 713*), socio-economic conditions (*Mulla's case-(2010) 3 SCC 508, K.Paswan's case-(2011) 11 SCC 564, Sunil Gaikwad's case-(2014) 1 SCC 129*), mental illness (*S.Chouhan's case-(2014) 3 SCC 1*), criminal antecedents (*D.P.Tiwari's case-(2010) 1 SCC 775*), as relevant indicators on the said issue of sentence. Further that, many of those factors reflect demonstrable ability or merely the possibility, even of the accused to reform (items (3) & (4) of supra list of ***Bachan Singh***) which make them important factors on sentencing. Further, the Apex Court, in para 240 of ***Manoj's*** case supra, has held that, in the absence of the individual's capacity to bring forth mitigating factors, ***Bachan Singh*** has placed the burden of eliciting mitigating circumstances on the Court, which has to consider them liberally and expansively. But whereas, the responsibility of providing material to show that the accused is beyond the scope of reform or rehabilitation, thereby unquestionably, foreclosing the option of life imprisonment and making it a fit case for imposition of death penalty is one which falls squarely on the State. This has been reiterated and laid down in decisions as in ***Santhosh Kumar Bariyar's*** case *[(2009) 6 SCC 498, para 112]*, ***Rajesh Kumar's*** case *[(2011) 13 SCC 706, para 74]*, ***Chhannu Lal Verma's*** case *[(2019) 12 SCC 438]*, ***Muniappan's*** case *[(1981) 3 SCC 11]*, ***Anil's*** case *[(2014) 4 SCC 69]*. So, even in the absence of

the capacity of the accused to bring forth mitigating factors, the burden of eliciting such mitigating circumstances is on the Court. Whereas, the responsibility to provide materials to convince the Court that the accused is beyond the scope of reform or rehabilitation or that, it is a fit case to award death sentence and one which would unquestionably foreclose the alternative option of life sentence, is fully on the State. Further, in para 56 of ***Santhosh Kumar Bariyar's*** case supra *[(2009) 6 SCC 498],* it has been *inter alia* held that the Court has a duty to play a pro-active role to record all such relevant inputs to decide on the sentencing issue and this has been reiterated in para 241 of ***Manoj's*** case supra. The contents of the 262nd Report of the Law Commission of India, dealing with the penological perspectives of death penalty, has been relied on in paras 234 to 236 of ***Manoj's*** case supra and thereafter, it has been held in para 242 thereof that the duty of the State is heightened in importance more so in the Indian context, where majority of the accused have poor or rudimentary level of legal representation. In para 245 of ***Manoj's*** case supra, the Apex Court has reiterated, after placing reliance on decisions as in ***Chhannu Lal Verma's*** case supra *[(2019) 12 SCC 438]*, ***Bachan Singh's*** case supra *[(1980) 2 SCC 684]* that it is the duty of the State to prove by evidence that the convict cannot be reformed or rehabilitated. Further, in para 15 of ***Chhannu Lal Verma's*** case supra, it has been held that, such

information, not having been furnished by the State at the relevant time, the information later furnished by the State becomes all the more relevant. The aforesaid decisions lay down the duty of the Court and the State to collect the relevant materials on the pertinent parameters mentioned above.

25. It is also pertinent to note the stipulation contained in the third proviso engrafted to Sub-section (2) of Sec. 309 of the Cr.P.C. Sec.309 deals with the power to postpone or adjourn proceedings. The third proviso to Sec.309(2) provides that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him. This stipulation in the third proviso to Sec.309(2) was considered by the Apex Court in ***Ramdeo Chauhan v. State of Assam*** *[(2001) 5 SCC 714]*, wherein, in para 28 thereof, it has been *inter alia* held that, in a case of an offence punishable with death or imprisonment for life, there is no difficulty for the court where the sentence proposed to be imposed is an alternative sentence of life imprisonment but if it proposes to award death sentence, it has discretion to adjourn the case in the interests of justice, as held in ***State of Maharashtra v. Sukhdev Singh*** *[(1992) 3 SCC 700]*. Further, it was held in para 28 of ***Ramdeo Chauhan's*** case supra that despite the bar of third proviso to sub-section (2) of Sec.309, the court, in appropriate cases,

can grant adjournment for enabling the accused persons to show cause against the sentence proposed on them particularly, if such proposed sentence is a sentence of death. Various factual scenarios on the above aspects have been referred to in para 33 of ***Ramdeo Chauhan's*** case supra. Para 33 of ***Ramdeo Chauhan's*** case supra *[(2001) 5 SCC 714, p.743]* reads as follows:

> ***"33.*** *It must be remembered that two alternative sentences alone are permitted for imposition as for the offence under Section 302 IPC — imprisonment for life or death. Thus no court is permitted to award a sentence less than imprisonment for life as for the offence of murder. The normal punishment for the offence is life imprisonment and death penalty is now permitted to be awarded only "in the rarest of the rare cases when the lesser alternative is unquestionably foreclosed". (Vide Bachan Singh v. State of Punjab [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] .) The requirement contained in Section 235(2) of the Code (the obligation of the Judge to hear the accused on the question of sentence) is intended to achieve a purpose. The said legislative provision is meant for affording benefit to the convicted person in the matter of sentence. But when the Sessions Judge does not propose to award death penalty to a person convicted of the offence under Section 302 IPC what is the benefit to be secured by hearing the accused on the question of sentence? However much it is argued the Sessions Judge cannot award a sentence less than imprisonment for life for the said offence. If a Sessions Judge who convicts the accused under Section 302 IPC (with or without the aid of other sections) does not propose to award death penalty, we feel that the Court need not waste time on hearing the accused on the question of sentence. We, therefore, choose to use this occasion for reiterating the legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence.*
>
> *(1) When the conviction is under Section 302 IPC (with or without the aid of Section 34 or 149 or 120-B IPC) if the Sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. Section 235(2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence.*
>
> *(2) In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.*
>
> *(3) The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.*

> *(4) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge proposes to impose death penalty) the proviso to Section 309(2) is not a bar for affording such time.*
>
> *(5) For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict on the sentence is pronounced. Further detention will depend upon the process of law."*

26. The fourth category of scenarios, envisaged in para 33 of ***Ramdeo Chauhan's*** case supra, is that, in cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge proposes to impose death penalty), the proviso to Sec.309(2) is not a bar for affording such time. After dealing with the earlier case laws on the subject, it has been held, in para 56 of ***Sukhdev Singh's*** case supra *[(1992) 3 SCC 700]*, that the third proviso to Sec.309(2) Cr.P.C. must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section and that the underlying object is to discourage frequent adjournments. But, that does not mean that the third proviso to Sec.309(2) Cr.P.C. precludes the Court from adjourning the matter even where the interest of justice so demands and that, the said proviso does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice, as enshrined in Sec.235(2) of Cr.P.C., etc.

27. In pursuance of the further directions issued by this Court as per order dated 17.2.2023 in these cases, the learned Amici Curiae have

jointly submitted detailed report dated 16.3.2023 in these cases. The afore report contains 35 pages apart from various Annexures therein. The concept of mitigation investigation, statutory procedure in death sentence cases, evolution of mitigation investigation through precedents, overview of the proceedings before the Apex Court, prevailing practice of mitigation investigation in India, mitigation investigation in foreign jurisdictions like USA, etc., procedure of mitigation investigation have been dealt with in detail in the report dated 16.3.2023. Copies of the said report have been served to both sides.

28. The State has raised an apprehension that since mitigation investigation comes into play in the trial stage only after the conviction stage and as the appeal is a continuation of trial process, the mitigation investigation may have to be conducted only in case the appellate court affirms the conviction and not before that. It is pointed out that if the mitigation investigation is conducted by the High Court at the appellate stage, even before the hearing of the main matter and also, the findings of the Court as to whether the conviction is sustained or set aside, etc., then, ultimately, if the conviction is set aside, then the process of mitigation investigation may turn out to be an unnecessary and futile exercise.

29. The learned Amici Curiae, in their report dated 16.03.2023,

have submitted the following aspects in the concluding part of the report, given on pages 34 & 35 thereof, which reads as follows:-

> *I. It can be inferred from the statutory provisions, as elucidated through the precedent cited, that the ideal time for commencement of mitigative studies is the trial stage.*
>
> *II. However, it is not uncommon for the absence or inadequacy of mitigation studies at the trial stage to be remedied or supplemented through mitigation investigation undertaken at the appellate stage. As evident from the various orders produced as Annexure E, the Supreme Court has routinely been calling for inter-disciplinary reports in pursuit of mitigating circumstances, in matters pending before it.*
>
> *III. There is no legal bar against this Honourable Court taking substantive steps towards mitigation investigation in this matter. Furthermore, the procedure outlined in **Manoj & Ors. v. State of Madhya Pradesh** 2022 SCC Online SC 677, as seen to be followed by the Hon'ble Supreme Court, is to take a pro-active step towards eliciting the mitigating circumstances relating to an accused, at the appellate stage.*
>
> *IV. To ensure an efficient enquiry, which can be concluded within the usual period of pendency of the case, it would be ideal that the mitigation commences at the stage of admission of a death-sentence reference, so that the matter is not protracted for the sake of bifurcated hearing on sentence.*
>
> *V. However, it would be prudent to keep the Mitigation Investigation Report away from judicial scrutiny, until confirmation of the offence has been made, upon appreciation of the relevant facts, evidence and legal grounds, to avoid the possibility of any possible prejudice ensuing against the accused person."*

30. We have also heard Sri.Renjith B. Marar, learned Advocate,

who incidentally has appeared before the Apex Court in the matter, which led to the verdict in ***Sundar's*** case supra *[(2023) SCC Online SC 310]*, as well as the learned counsel appearing for the respondent/accused, who are facing the penalty in these cases.

31. The said learned Advocates have broadly supported the submissions of the learned amici curiae and have submitted that, at the appellate stage, there is no legal bar in this Court undertaking mitigation studies after the admission of the matter and before the final hearing, so that, in case the conviction is sustained, then the time taken for the mitigation studies till then could be saved and only a minimum further time may be required for any other aspects of the mitigation studies and for hearing the convicts, as to whether the case would fall within the rarest of rare category, so as to warrant death penalty or whether the alternative life sentence would commensurate to be just or whether life sentence is to be imposed, etc.

32. We also noticed a decision of the Apex Court, rendered on 24.06.2022, in the case in ***Manoj Pratap Singh v. State of Rajasthan*** [(2022) 9 SCC 81], wherein a view that is divergent from the one in ***Manoj & Ors v. State of M.P.*** (rendered on 20.05.2022), *[(2023) 2 SCC 353],* has been taken. In ***Manoj Pratap's*** case supra, *[(2022) 9 SCC 81]*, it has been *inter alia* observed that the pursuit in

collecting mitigating circumstances could also not be taken up with any notion or idea that somehow, some factor be found; or if not found, we deduced anyhow so that the sentence of death be forsaken and that such an approach could be unrealistic and unwarranted and rather not upholding the rule of law (para 117 thereof). We also noticed the decision of the Apex Court in ***Mohd Mannan v. State of Bihar*** *[(2019) 16 SCC 584 (paras 37 & 38)]*, wherein the Apex Court has noted that the accused was not given the benefit of being accompanied by a Social Worker for an effective sentencing exercise in the courts below. Further, it was also observed that legal aid provided to the accused before the trial court was inadequate and the lawyer representing him did not seek an opportunity to draw the attention of the court to the mitigating circumstances. Further, in ***Dattatraya Data Ambo Rokade v. State of Maharashtra*** *[(2020) 14 SCC 290]*, the Apex Court noted that the legal assistance availed by the appellant therein at the sentencing stage before the trial court was patently not satisfactory and that he was not accompanied by a social worker, etc. In ***Manoj & Ors. v. State of M.P***. *[(2023) 2 SCC 353]*, the Apex Court has raised its apprehension regarding the absence of favour for mitigation investigation in India, and after hearing the parties on the question of conviction in that case, the Court adjourned the matter for submissions of sentencing or its directions eliciting reports from the Probation Officer, Jail

authorities, a trained Psychiatrist, a Psychologist, etc., to assess the accused in presenting mitigating circumstances. In ***Manoj's*** case supra *[(2023) 2 SCC 353]*, the Apex Court has recorded its observations and outlined provisional guidelines, as can be seen from a reading of paras 190 to 230 thereof. The guidelines for the mitigation investigation are contained in paras 248 to 252 of ***Manoj's*** case supra *[(2023) 2 SCC 353]*. Paras 248 to 252 of ***Manoj's*** case supra read as follows:-

> ***"248.*** *There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.*
>
> ***249.*** *To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] . Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.*
>
> ***250.*** *Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:*
>
> *(a) Age*
>
> *(b) Early family background (siblings, protection of parents, any history of violence or neglect)*
>
> *(c) Present family background (surviving family members, whether married, has children, etc.)*
>
> *(d) Type and level of education*
>
> *(e) Socio-economic background (including conditions of poverty or deprivation, if any)*
>
> *(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)*
>
> *(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);*

*(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.*

***251.*** *Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.*

***252.*** *It is pertinent to point out that this Court in Anil v. State of Maharashtra [Anil v. State of Maharashtra, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] has in fact directed criminal courts to call for additional material : (SCC p. 86, para 33)*

> *"33. ... Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."*
>
> *(emphasis supplied)*

*We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."*

33. In ***Accused X vs. State of Maharashtra*** *[(2019) 7 SCC 1, para 49]*, the Apex Court has held that the sentencing enquiry is a social legal process, based on factual circumstances and equities. It has been, inter-alia, held in para 40.4 thereof that non-compliance of hearing on the

question of sentence by the trial courts can be rectified at the appellate stage as well, by providing meaningful opportunity. In para 40.7 thereof it has been held that, in view of the harsh realities, such as long protracted delays or jail appeals through legal aid, etc., the appellate court, in appropriate cases, may take recourse to independent enquiries on relevant facts ordered by the court itself. It is also observed, in para 40.8 thereof, that, if no such grounds are brought by the accused before the appellate courts, then it is not obligated to take recourse under Sec.235(2) Cr.P.C. In that regard it is also relevant to note that, the recent three-Judge Bench verdict of the Apex Court rendered on 21.03.2023 in ***Sundar's*** case supra *[2023 SCC online SC 310]*, in para 82 thereof has placed reliance on the legal principles enunciated in Mofil Khan's case supra [2021 SCC online SC 1136 (paras 9 & 10)], wherein it has been held that even if the accused remains silent, the court would be obliged and duty bound to elicit relevant factors. This was so done by placing reliance on the dictum earlier laid down in ***Mohammed Mannan v. State of Bihar*** *[(2019) 16 SCC 584]*. Thus, in para 82 of ***Sundar's case supra***, the Apex Court has reiterated that it is a court's duty to look into possible mitigating circumstances, even if the accused was silent, etc.

34. Recently, on 21.4.2023, a Two Judge Bench of the Apex Court has rendered a verdict in the case ***Vikas Chaudhary v. State of Delhi***

(Crl.A. Nos. 2276-2277/2022) (reported in *2023 SCC Online SC 472*). In paras 13 & 14 thereof, the Apex Court has discussed the legal principles adumbrated in ***Bachan Singh's*** case supra *[(1980) 2 SCC 684]*, ***Machhi Singh v. State of Punjab*** *[(1983) 3 SCC 470]*, ***Santhosh Kumar Bariyar's*** case supra *[(2009) 6 SCC 498].* Further, very crucially, in para 22 of ***Vikas Chaudhary's*** case supra, it has been held, after placing reliance on the legal principles laid down in ***Manoj's*** case supra *[(2023) 2 SCC 353]*, that, wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, then it should carry out the exercise of placing the materials in terms of ***Manoj's*** case supra for evaluation. That, if this results in imposition of death sentence at the stage of confirmation, the High Court would have the benefit of independent evaluation of those materials. Even if, on the other hand, death sentence is not imposed, then the High Court be still in a position to evaluate if the sentence is adequate and whenever appropriate and just, impose special or fixed term sentence. Further, it has been held that in view of the imperative need for such materials to form part of the Court's consideration, in case the trial court has failed to carry out such exercise, for whatever reason, then the High Court has to call for such materials for considering the Appeal. It may be pertinent to refer to paras 13, 14 & 22 of ***Vikas Chaudhary's*** case supra *(2023 SCC Online SC 472)*

which read as follows:

*"**13.** In Bachan Singh v. Union of India, this court upheld the imposition of capital sentence, subject to the caveat that it should be invoked in the rarest of rare cases. The court, in its later judgments sought to evolve a principled approach towards capital sentencing. In Machhi Singh v. State of Punjab this court, building upon the observations in Bachan Singh, observed that a balance sheet of "aggravating and mitigating circumstances" needs to be drawn where "mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised". The court also laid down a broad two-pronged approach:*

*"(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*

*(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"*

***14.** During the last two decades or so, however, the capital sentencing decisions adopted no symmetrical approach; this led to the court to lament, on more than one occasion, that the exercise of considering aggravating and mitigating circumstances (which Bachan Singh had highlighted) had become more of a formality. In Santosh Kumar Satishbhushan Bariyar (supra), this court enunciated a two-step process to decide whether a convict deserved the death sentence : first, that the case belonged to the "rarest of rare" category, and second, that the option of life imprisonment would simply not suffice. The aggravating and mitigating circumstances - according to the first step, were to be identified and considered equally. The court, in the second step, was to consider whether the alternative of life imprisonment was unquestionably foreclosed as the sentencing aim of reformation was unattainable, for which the State was obliged to provide material. In Shankar Kisanrao Khade (supra) the court fashioned 'the crime'; 'the criminal' and 'the R&R test' (rarest of rare test) which emphasized the need to look intensively into all factors. This court also highlighted that in many previous decisions, sentencing was resorted to without considering mitigating circumstances, and without any material on the possibility of reformation of the convict.*

***22.** In view of the above discussion, it is held that wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of Manoj, for evaluation. In case this results in imposition of death sentence, at the stage of confirmation, the High Court would have the benefit of independent evaluation of these materials. On the other hand, if death sentence is not imposed, then, the High Court may still be in a position to evaluate, if the sentence is adequate, and wherever appropriate and just, impose a special or fixed term sentence, in the course of an appeal by the state or by the complainant/informant. Given the imperative need for such material to form a part of the court's consideration, it has to be emphasized that in case the trial court has failed to carry out such exercise (for whatever reason), the High Court has to call for such material while considering an appeal filed by the state or complainant for enhancement of sentence (whether resulting in imposition of capital punishment,*

*or a term sentence). ”*

35. We also note a series of orders, passed by the Apex Court, collectively referred to as Annexure E to the aforesaid report dated 16.03.2023, submitted by the Amici Curiae, in these cases. The said orders are (1) Order dated 10.01.2022 in SLP (Crl) Nos.6587-6588/2021 in ***Ramanand @ Nandlal Bharti v. State of U.P.***, (2) Order dated 06.05.2022 in SLP (Crl) Nos.9578-9579/2017 in ***Rajesh & Anr. v. State of M.P.***, (3) Order dated 17.05.2022 on SLP(Crl.) Nos.5007-5008/2018 in ***Irfan @ Naka v. State of U.P.***, (4) Order dated 20.05.2022 on Crl.A. Nos.572-573/2019 in ***Karan @ Faitya v. State of M.P.,*** (5) Order dated 19.10.2022 on Crl.A. Nos.425-426/2020 in ***Prakash Vishwanath Darandale v. State of Maharashtra***, (6) Order dated 19.10.2022 on Crl.A.Nos. 450-451/2020 in ***Ganesh @ Pravin Popat Darandale v. State of Maharashtra***, (7) Order dated 3.11.2022 on Crl.A.Nos.489-490/2019 in ***Naveen @ Ajay v. State of M.P.***, (8) Order dated 10.11.2022 on SLP(Crl.) Nos.5928-5929/2022 in ***Ramkirat Munilal Goud v. State of Maharashtra***, (9) Order dated 16.3.2023 on Crl.A. Nos. 1381-1382/2017 in ***Madan v. State of U.P.,*** (10) Order dated 8.12.2022 on SLP(Crl.) Diary No.26241/2022 in ***Samivel @ Raja v. State of T.N.,*** (11) Order dated 13.3.2023 on SLP (Crl) Nos. 10723-10724/2022 in ***Shivkumar Ramsundar Saket v. State of***

***Maharashtra,*** (12) Order dated 16.2.2023 on Crl.A. No. 879/2019 in ***Chandrabhan Sudam Sanap v. State of Maharastra***. All these orders appear to have been passed by the Apex Court during the pendency of the SLP (Crl)/ Criminal appeals, as the case may be, and therein it has been *inter alia* noted that certain directions have already been issued by the Apex Court in ***Manoj & Ors v. State of M.P.*** [(2023) 2 SCC 353) and in some other reference matters, after conclusion of the argument on the issue of conviction. However, it has been held therein that the assessment, as regards the conduct of the accused, if made in advance, before the learned counsel for both sides advanced their submissions, will be helpful in every respect. The said order broadly reads as follows:-

> *"We have passed certain directions in Manoj v. State of M.P. (Crl.A. No.248-250/2015) and some other death sentence matters, which directions were passed after conclusion of the arguments on the issue of conviction.*
>
> *However, the assessment, if made in advance, before the learned counsel makes the submissions, will be helpful in every respect."*

36. The operative portion of one such interim order dated 10.01.2022 in SLP (Crl.) Nos.6587-6588/2021 in ***Ramanand v. State of U.P.***, as given in pages 3 & 4 thereof, read as follows:-

> *"In order to have complete assistance in the matter, we direct as under:*
>
> *a. The State shall place before us the Report(s) of all the Probation Officer(s) relating to the accused before the next date of hearing. In case there have been more than one Report, let all Reports be placed for the consideration of this Court.*
>
> *b. The Director General (Prison) of the State shall place on record the Report(s) from the concerned jail(s)/prison(s) where the appellant was or is presently lodged, about his conduct and nature of work done by him while in jail(s)/prison(s).*
>
> *c. We also feel that interest of justice dictates that we obtain a psychological evaluation of the petitioner. We direct the Director,*

*Bareilly Mental Health Hospital, to constitute a suitable team for psychological evaluation of the accused appellant in this case and send a report before the next date of hearing.*

*d. The Jail Authorities, Central Jail, Bareilly, where the appellant is presently lodged shall render complete co-operation in facilitating access to and due evaluation of the appellant in all respects.*

*e. Ms. Cathleen Kaur, who is associated with Project 39-A of the National Law University, Delhi, is allowed to have access to the appellant, who is presently lodged in Central Jail, Bareilly, to have an independent assessment and to submit an appropriate Report to this Court."*

37. Further, it is seen that the Division Bench of the Bombay High Court (Aurangabad Bench) has passed order dated 19.12.2022 on Criminal Application No.2381/2021 in Criminal Appeal No.280/2021 and Confirmation Case No.1/2021 etc., in the case ***Baburao Ukandu Sangerao @ Baburao Malegaonkar v. State of Maharashtra & Ors.***, copy of which has been produced as Annexure F on pages 174 to 176 of the afore report dated 16.03.2023, filed by the Amici Curiae in these cases and the operative portion of the said order given on para 3 thereof reads as follows:-

*"In view of the directions of the Apex Court Court in the cases of (i) **Manoj and Ors. vs. State of Madhya Pradesh**, Criminal Appeal Nos.248-250 of 2015 decided on 29.09.2021 and (ii) **Ramkirat Munilal Goud vs. the State of Maharashtra**, Petition(s) for Special Leave to Appeal (Crl.) Nos.5928-5929/2022 decided on 10.11.2022, we issue following directions:*

*(i) The respondent-State shall place before this Court the report(s) of all the Probation Officers relating to the applicant/appellant, within a period of eight weeks;*

*(ii) The Superintendent of the Yerawada Central Jail, Pune, shall submit a report in regard to the nature of work which has been performed by the applicant while in jail and a report in regard to the conduct and behaviour of the applicant while in jail, within a period of eight weeks;*

*(iii) The Head of Sassoon General Hospital, Pune, shall constitute a suitable team for the purpose of carrying out a psychological evaluation of the applicant. The report of the evaluation shall be submitted to this Court through learned Addl. Public Prosecutor, within a period of eight weeks;*

*(iv) Dr.Kaustubh Joag, Psychiatrist, accompanied by Ms.Shrenika Hatarote, Clinical Psychologist, are permitted to have access to the applicant, who is presently lodged in Yerawada Central Jail, Pune, to submit report in regard to the psychological assessment of the applicant,*
*(v) The Head of the Yerawada Central Jail, Pune, where the applicant is presently lodged, shall render complete co-operation in facilitating access to and due evaluation of the applicant in all respects,*
*(vi) Learned Registrar (Judicial) of this bench is requested to ensure compliance of these directions,*
*(vii) The Criminal Applications stand disposed of.*
*(viii) The prayers in the applications, which have not been specifically granted by this order, shall be deemed to v have been refused."*

38. So, it can be seen that the 3 Judge Bench of the Apex Court in the aforementioned interim orders, in various pending cases, as well as the Bombay High Court had taken the view that if the assessment regarding mitigating circumstances is made in advance, before the learned Advocates for both sides advance their submissions on the merits of the main appeals, then such an approach is helpful in every respect. The said orders would also indicate that the expert associated with Project 39A of National Law University (NLU), New Delhi, has been appointed by the Apex Court to make independent assessment. The involvement of Project 39A of National Law University (NLU), New Delhi, has also been *inter alia* mentioned in para 3 of ***Sundar's case supra***.

39. Further, a reading of the impugned Sessions court judgment in the former case (SC No.1480/ 2014 on the file of the Sessions court, Thiruvananthapuram), would broadly indicate that the judgment of conviction in that case was rendered on 15.04.2016 and the sentence has been imposed on 18.04.2016, after hearing the accused. *Prima facie*, we

would observe that a reading of the said impugned judgment may broadly indicate that the Sessions court may not have conducted any proper mitigation study in that case, except hearing the versions of the accused. So also, the impugned Sessions court judgment of conviction in the latter case (S.C. No.662/2016 on the file of the Court of Sessions and Special Judge for SC/ST cases, Ernakulam Division) has been rendered on 12.10.2017 and the sentence has been imposed on 14.12.2017, after hearing the accused. Prima facie, a reading of the said latter judgment may also indicate that effective and proper mitigation study may not have been done, except hearing the versions of the accused. Of course in both the cases, various case laws have been discussed with reference to its application, in the facts of the case.

40. *Prima facie*, we would venture to observe that there is no point in critiquing the approaches of the Sessions court, as mitigation investigation is a newly emerging approach. True that, recently the Apex Court has taken the lead in fine tuning the legal principles and applying the same in various cases. The Sessions court, generally, may not be equipped with the necessary perspectives and the wherewithal to enter into detailed mitigation investigation, even in Sec. 302 cases.

41. So, it is the duty of this Court, as the head of the State Judiciary to carry forward the perspectives and approaches taken by the

Apex Court in cases of this nature, so that the appropriate legal culture is evolved and the same can be imbibed by the Session Courts at the District Judiciary level, etc. Even in these cases, now there is some resistance, as the approach in these perspectives is seen as novel.

42. The Apex Court has held in para 40, more particularly in para 40.4, of ***Accused X v. State of Maharashtra*** *[(2019) 7 SCC 1]* that the opportunity of hearing under Sec.235(2) of the Cr.P.C. requires that the accused and the prosecution, at their option, be given meaningful opportunity and that, non-compliance thereof at the trial stage can be rectified in the appellate stage as well as by providing meaningful opportunity.

43. Further, it is also to be noted that, it is well settled that, even if a sentence is suspended at the appellate stage, the conviction rendered by the trial court, during the pendency of the appeal, cannot be said to be obliterated. It is to be noted that, ordinarily, in a case where death sentence is imposed, there may not be any issues of suspension of such a sentence. Further, in such a case, stay of conviction may not be an option at the appellate stage.

44. At the trial stage, there cannot be any two opinions that mitigation studies, etc., can be contemplated only after the conviction is arrived at and at the commencement of the sentencing process. Where

such meaningful opportunity for mitigation studies have not been rendered by the trial court, then the appellate court has an obligation and duty to ensure that steps in that regard may be taken so that the obligation of the judicial organ to provide meaningful opportunity of hearing at the sentencing stage, as envisaged in Sec.235(2) of the Cr.P.C., is endeavoured to be fulfilled.

45. The Court, the prosecution and the defence will have to take cumulative and harmonious efforts to ascertain as to whether, the case would fall within the rarest of rare category for warranting a death penalty, if the conviction is sustained. Ordinarily, at the Death Sentence Reference stage, it has to be convincingly established that the alternate penalty of life sentence is unquestionably foreclosed, so as to warrant a death penalty. Further, if the evaluation assessment of mitigating circumstances is taken up by the appellate court only after the conviction is affirmed and not before that, then it may have certain other ramifications. The Apex Court, in ***Santa Singh's*** case supra *[(1976) 4 SCC 190]*, has *inter-alia* held that the sentencing hearing process should not be turned into an instrument for unduly protracting the proceedings and the claim of due and proper hearing will have to be harmonized with the requirements of expeditious disposal of the proceedings.

46. Going by the multifarious factors that may have to be

ascertained in the mitigation exercise, more often than not in cases of this nature, such evaluation process will take quite some time and it would probably take time, even up to 3 to 4 months or even more than that.

47. If the study process is commenced only after the conviction is affirmed at the appellate stage, then there will be serious issues and delay, if the said exercise is to be carried out meaningfully and effectively thereafter. This will lead to the position that the convict, who was awarded death sentence by the trial court, will face more anxious and agonizing time, and for all purposes, he may experience a “Damocles' sword hanging over his head”, guessing with great tension, as to whether the death sentence awarded by the trial court will be confirmed by the High Court or would be commuted to life sentence. As the defence can take up a plea that this would amount to a traumatizing and mentally torturing process for the convict, who has been awarded death sentence by the trial court and who is awaiting for the confirmation process by the High Court, this serious problem can be substantially or at least significantly reduced to the maximum extent possible, if mitigation study efforts are taken even before the commencement of the hearing on the issue of conviction, etc. so that, in case the conviction is affirmed, minimal time alone may be required for completing the remaining formalities of the said assessment process and after hearing both sides, the High Court may be equipped to render a

decision as to whether the death sentence could be converted to life sentence or whether the impugned death sentence is liable to be confirmed.

48. So, the avoidance of unduly protracting the hearing proceedings by the High Court at the appellate stage, at the Sec.235(2) stage is also a cardinal aspect, as held by the Apex Court in ***Santa Singh's*** case supra. Moreover, if the mitigation efforts are undertaken only after the conviction is over, then to avoid allegations of delay, more often then not short time alone may be taken and this may lead to scenarios of not granting effective and meaningful opportunity of hearing by the High Court.

49. Therefore, this is also an important and cardinal aspect, which would persuade this Court to hold that there is no legal bar in the High Court, at the appellate stage, to commence mitigation study efforts, even before the commencement of the hearing process on the issue of conviction, etc.

50. True that, if the mitigation efforts are undertaken earlier and ultimately the conviction is set aside, then certainly, the mitigation study may not be of any use, for the adjudication process. Can that be said to be as a mere wastage of time and money? This Court is of the view that such narrow and hypertechnical approaches should not be taken to label the serious efforts taken by the Appellate Court, as one leading to wastage of

time and money, in case the conviction is set aside.

51. The courts in exercise of the sovereign judicial powers as well as the State executive organ in exercise of its sovereign executive powers and all other executive authorities concerned have an obligation to ensure that death penalty is awarded only in the rarest of rare cases and if it is established convincingly that the option of alternate life sentence is unquestionably foreclosed so as to necessarily warrant the imposition of death penalty, as enunciated in the celebrated decision of the Constitution Bench in ***Bachan Singh's*** case supra. Therefore, for providing such meaningful and effective opportunity of hearing, if such mitigation studies are conducted in advance, the same is in fulfillment of the duties, functions and obligations of the courts in exercise of its sovereign judicial powers.

52. Therefore, the plea as if, the entire output would turn out to wastage of time and money if it is undertaken earlier and if ultimately the conviction is set aside, etc., cannot be the approach to be taken in cases of this nature, which involves the obligations and duties of courts in exercise of their sovereign judicial duties and functions.

53. Further, now, Project 39A of the National Law University (NLU), New Delhi, which has received recognition, whose services have been frequently availed by the Apex Court, has now offered that they will undertake the above mitigation studies pro bono. In other words, the

State Government may not have to involve any expenditure in that regard. However, that will not, in any manner, prevent the State, to conduct their own mitigation study in cases of this nature.

54. Sri.K.Gopalakrishna Kurup, learned Advocate General, instructed and assisted by Sri.T.B.Hood, learned Prosecutor, has submitted that since the legal issues in this area are newly emerging, this Court may pass appropriate orders in tune with the various aforesaid interim orders passed by the Apex Court and the interim order passed by the Bombay High Court, which are annexed along with the afore reports of the Amici Curiae and without treating such order to be passed by this Court as a precedent. Needless to say, that as the order now proposed to be passed by this Court in these two cases are essentially interim orders, the issue of precedent may not be very pertinent. However, orders to be passed in other cases, will depend upon the facts and circumstances of each such case and of course, keeping in mind issues of maintenance of consistency in interim orders and also, taking into account whether the aforesaid approaches rendered by the Apex Court in the aforesaid cases have been altered in subsequent cases.

55. Further, we would also hold that the learned Amici Curiae are right in submitting that the Judges may not see the papers in the mitigation studies, if the study is undertaken before the conviction is

affirmed, as it could lead to plausible arguments of the defence or even by the prosecution that, there could be a reasonable likelihood of bias, if the reports are negative, vis-a-vis, depending upon the nature of the various reports.

56. The said issue can be resolved by ordering that the papers of the mitigative investigation may be filed and the same shall be kept in a confidential file by the Registry and that access should not be given to the Judges until the issue regarding the sustainability or otherwise of the conviction is decided by the Appellate Court. Further, the prosecution and the defence should also ensure that such papers are kept confidential and are not circulated to anybody else.

57. The learned Prosecutor, after securing instructions from the jail authorities concerned, has submitted that the respondent accused in DSR No.2/2016, viz., Nino Mathew, Convict No. 4104, is now detained in Central Prison and Correction Home, Poojapura, Thiruvananthapuram-695 012 and further that, the respondent accused in DSR No.2/2018, viz., Muhammed Ameer-ul Islam, Convict No. 3898, is now detained in Central Prison and Correction Home, Viyyur, Thrissur-680 010.

58. Accordingly, the following orders and directions are passed based on the pleas made in the interim reports filed by the learned Amici Curiae:-

*(i) In DSR No.2/2016, it is ordered that Ms. C.P. Sruthy, who is associated with Project 39A of the National Law University, New Delhi, shall have access to the death row convict in that case (Sri.Nino Mathew, Convict No. 4104), who is presently lodged in Central Prison and Correction Home, Poojapura, Thiruvananthapuram, to make an independent assessment regarding matters relevant to this case and to submit appropriate report in that regard before this Court, without much delay, preferably within 2 months. Ms.C.P. Sruthy, should be permitted by the Jail Superintendent concerned and all others concerned, to effectively conduct the above independent assessment by visiting the convict multiple times in prison and conduct interviews. The jail authorities will ensure that the afore independent assessor is enabled to conduct such assessments, including interviews etc., on a confidential basis and proper facilities in that regard shall be made available by the jail authorities concerned. Further, permission is accorded to Ms.C.P. Sruthy, to obtain documents and other materials pertaining to Sri.Nino Mathew, including one not limited to medical records, jail conduct, certificates of an educational, vocational or employment opportunities undertaken, etc. All authorities concerned will give necessary assistance to Ms.C.P. Sruthy, in that regard to conduct an effective study in that regard.*

*(ii) In DSR No.2/2018, it is ordered that Ms.Nooriya Ansari, who is associated with Project 39A of the National Law University, New Delhi, shall have access to the death row convict in that case (Sri.Muhammed Ameer-ul Islam, Convict No. 3898), who is presently lodged in Central Prison and*

*Correction Home, Viyyur, Thrissur, to make an independent assessment regarding matters relevant to that case and to submit appropriate report in that regard before this Court, without much delay, preferably within 2 months. Ms.Nooriya Ansari, should be permitted by the Jail Superintendent concerned and all others concerned, to effectively conduct the above independent assessment by visiting the convict multiple times in prison and conduct interviews. The jail authorities will ensure that the afore independent assessor is enable to conduct the said assessments, including interviews etc., on a confidential basis and proper facilities in that regard shall be made available by the jail authorities concerned. Further, permission is accorded to Ms.Nooriya Ansari,, to obtain documents and other materials pertaining to Sri.Muhammed Ameer-ul Islam, including one not limited to medical records, jail conduct, certificates of an educational, vocational or employment opportunities undertaken, etc. All authorities concerned will give necessary assistance to Ms.Nooriya Ansari, in that regard to conduct an effective study in that regard.*

*(iii) The independent assessors may file their reports before the Registry, upon which the Registry will keep the same in sealed covers so that they are not perused by the Court till the issue of conviction is decided in these Appeals. Copies of such reports of the independent assessors shall be given to the respective Prosecutors in these 2 cases as well as to the respective Advocates appearing for the 2 convicts concerned. The Prosecution and the defence shall keep such reports of the independent assessors confidential, till the issue of conviction is decided in these Appeals. However, the Prosecution and the*

*defence will be at liberty to collect materials to rebut the materials and findings in the afore reports of the independent assessors. Such additional materials relied on by the Prosecution and the defence may be filed before the Registry, upon which the Registry will keep such materials also in sealed cover, as above.*

*(iv) In both these cases, further directions as hereunder are also issued:*

*(a) In tune with the directions contained in para 250 of* ***Manoj's*** *case supra [(2023) 2 SCC 353], it is ordered that the State/Prosecution authority concerned should file report before this Court on various relevant particulars of the death row convict in each of these 2 cases, like (i) age, (ii) early family background (siblings, protection of parents, any history of violence or neglect) (iii) present family background (surviving family members, whether married, has children, etc.) (iv) type and level of education (v) socio-economic background (including conditions of poverty or deprivation, if any), (vi) criminal antecedents (details of offence and whether convicted sentence served, if any), (vii) income and the kind of employment (whether none, or temporary or permanent,etc.), (viii) other factors such as history of unstable social behaviour or mental or psychological ailments, alienation of individual (with reasons, if any). Such reports shall be filed by the prosecution before this Court, in a sealed cover and the same is not to be perused by the Judges, till the issue of conviction is decided in these Appeals. However, copies of such reports shall be served on the respective Advocates appearing for each of the 2 convicts in these cases and the convicts will have the liberty to produce materials in rebuttal of any such adverse aspects*

*pointed out by the prosecution in their reports.*

*(b) The Prosecution Agency, in these two cases, shall collect the reports of all Probation Officers relating to these 2 death row convicts and all these reports shall be filed before the Registry of this Court. The Registry will ensure that the same is placed in a sealed envelope. The copies of the said probation reports shall be kept by the learned Prosecutor/Special Prosecutor concerned as the case may be and copies thereof shall be served to the respective learned Advocates appearing for the convicts concerned.*

*(c) The Director General of Prisons of the State shall place on record reports from the jail authority concerned, where these two convicts have been lodged, about their conduct, nature of works done by them in the jail concerned. The reports shall be placed in sealed cover before the Registry. Copies thereof shall be served by the Prosecution on the respective Advocates for the convicts concerned.*

*(d) The respondent-State will also ensure that both these convicts are subjected to assessment by two separate Psychiatrists of the Government Medical College concerned and also by a Clinical Psychologist attached to the Government service. The reports of the Psychologist and the reports of the Clinical Psychologist, should be filed before the Registry and the same shall be maintained by the Registry in confidential sealed envelops. Copies of the same shall be served by the State to the learned Advocates appearing for the respective convicts concerned.*

*(v) The Registry will keep the above papers/reports on a confidential basis and a officer designated by the Registrar (Judicial) shall be responsible*

*for keeping those documents in sealed covers in safe custody of the court and the same need not be given for perusal of the Judges, till the issue regarding the sustainability or otherwise of the conviction in this case is decided. The Prosecution Agency and the learned Advocates appearing for the respective convicts shall also keep those papers on a confidential basis and shall not circulate the same to anyone else.*

*(vi) The State/Prosecution Agency will also be at liberty to have the option of their own mitigation study, if they are so advised, after the reports are filed by the respective independent assessors. At the appropriate stage, the prosecution agency will be at liberty to file applications in these cases before this Court, seeking for permission as above, upon which, after hearing both sides, orders could be passed by this Court thereon.*

*(vii) If the independent assessors concerned in these cases wants any orders in the matter, it is for them to approach the learned Amici Curiae who, in turn, may file report seeking for any orders in the matter and copies of such reports should be served to both the learned Advocates appearing for the convicts as well as to the learned Prosecutor, in advance and Registry may list such application for orders before this Court.*

*(viii) In the cause list, the Registry will show the name of Sri.T.B.Hood, learned Prosecutor in the former case and Sri.N.K.Unnikrishnan, learned Special Public Prosecutor, in the latter case.*

59. Today, we are also apprised by both sides that the Apex Court recently has passed order dated 17.4.2023 in SLP (Crl.) Diary No.9994/2023 *(arising out of the impugned judgment dated 12.11.2014 in DSR.No.1/2010 and Crl.Appeal No. 1663/2010 on the file of the High Court of Kerala)* wherein it has been *inter alia* ordered by the Apex Court that the Expert associated with the Project 39A of the National Law University, Delhi, has been entrusted with the responsibility of submitting report in regard to the psychological assessment of the appellant death row convict and also, issued further directions regarding furnishing of reports of the Probation Officer and also, that of the Psychiatrist regarding the psychological evaluation of the death row convict etc. The said submission is also placed on record.

60. We are told that the Registry does not now use any abbreviation for the description of Death Sentence Reference under Sec.366 (1) of the Cr.P.C. Hence it is also ordered that the Registry may use the abbreviation "DSR" for Death Sentence References, in all proceedings, cause-lists, computer listing, etc. and the Registrar General may take further steps for compliance in that regard.

With these observations and the directions, the above Criminal Miscellaneous Applications will stand disposed.

**Sd/-**

**ALEXANDER THOMAS, JUDGE**

**Sd/-**
**C.JAYACHANDRAN, JUDGE**

Nsd, MMG, sdk+