

ITEM NO.15

Court 2 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No.699/2016

ASHWINI KUMAR UPADHYAY & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 73459/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 107427/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 39027/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 136819/2017 - CLARIFICATION/DIRECTION, IA No. 54637/2017 - CLARIFICATION/DIRECTION, IA No. 81287/2018 - CLARIFICATION/DIRECTION, IA No. 2029/2020 - CLARIFICATION/DIRECTION, IA No. 54552/2017 - DIRECTIONS, IA No. 146933/2018 - EXEMPTION FROM FILING O.T., IA No. 130543/2018 - EXEMPTION FROM FILING O.T., IA No. 103522/2019 - EXEMPTION FROM FILING O.T., IA No. 107431/2018 - EXEMPTION FROM FILING O.T., IA No. 61324/2017 - I/A FOR PERMISSION TO AMEND THE PRAYER ON BEHALF OF PETITIONER, IA No. 81286/2018 - INTERVENTION APPLICATION, IA No. 2027/2020 - INTERVENTION APPLICATION, IA No. 127368/2018 - INTERVENTION APPLICATION, IA No. 2083/2019 - INTERVENTION APPLICATION, IA No. 58124/2017 - INTERVENTION/IMPLEADMENT, IA No. 57812/2017 - INTERVENTION/IMPLEADMENT, IA No. 127023/2018 - INTERVENTION/IMPLEADMENT, IA No. 71929/2019 - INTERVENTION/IMPLEADMENT, IA No. 2085/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 98425/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 72938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 130542/2018 - STAY APPLICATION)

Date : 16-09-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE HRISHIKESH ROY

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UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

1. This matter of paramount public importance pertaining to inordinately delayed inquiries/investigation and/or criminal trials, pending against legislators under various enactments first came up for hearing on 14.09.2016, when notice was issued. This court had earlier passed various orders intending streaming and speedy dispensation of justice delivery.

2. In furtherance of the above, by our earlier order dated 10.09.2020, we sought information from certain High Courts regarding criminal cases pending against legislators under special legislations such as the Prevention of Corruption Act, 1988 etc. The operative part of the said order reads as follows:

"8. Lastly, the learned *amicus curiae* submitted that it appears that complete information regarding pending cases against legislators (sitting or former) relating to special legislations such as the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, Excise Act, 1944, Customs Act, 1962, Central Goods and Service Tax Act, 2017 and Companies Act, 2013 have not been placed on record.

9. Taking into consideration the relief sought, the pleadings and the orders passed by this Court in this matter, it is clear that all the criminal cases even under special legislations, where MPs/MLAs (sitting or former) are involved are the subject matter of the present proceedings. Even though we have granted time to all the High Courts to furnish the requisite information, only the High Courts of Karnataka, Madhya Pradesh, Tamil Nadu, Delhi, Jharkhand and Guwahati have done so. The remaining High Courts have not yet furnished the requisite information regarding cases pending against legislators (sitting or former) under the abovementioned special legislations, in compliance of our earlier orders.

10. In view of the above, we grant two days-time to all the remaining High Courts to provide the requisite details of the pending cases and their stages, in the format already approved *vide* order dated 05.03.2020, to the learned *amicus curiae* by way of e-mail to enable him to make submissions in the matter on the next date of hearing. A copy of the same be also sent to the Secretary General of this Court.

11. Let the matter be listed on Wednesday, the 16th September, 2020."

3. The revised office report indicates that 11 High Courts have submitted reports furnishing the information sought by us, with one of the High Courts having submitted the same only a night before this hearing. The learned *amicus curiae*, Mr. Vijay Hansaria, Senior Counsel, has submitted a supplementary report in addition to his report dated 08.09.2020, on the basis of the information furnished by 10 of the High Courts. The supplementary report indicates that there are about 175 cases under the Prevention of Corruption Act, 1988 and 14 cases are pending under the Prevention of Money Laundering Act, 2002 against sitting/former legislators (MPs and MLAs). These are in addition to the 4442 criminal cases indicated to be pending as per the earlier report of the learned amicus dated 08.09.2020.

4. The learned *amicus* has recorded his analysis of the data received from the High Courts in paragraph 3 of his supplementary report, which is reproduced below:

"3. Analysis of cases pending also show that -

- a. There is no uniformity as to the setting up of Special Courts for MPs/MLAs throughout the country.
- b. In the States of Andhra Pradesh, Karnataka, Madhya Pradesh, Telangana and West Bengal, there is one Special Court for all cases against MPs/MLAs. In the State of Telangana apart from Special Court for MPs/MLAs, cases are also pending before Special Court, CBI. In all other States, these cases are pending in respective jurisdictional courts.
- c. There is also no clarity as to the courts which are trying offences under Prevention

of Corruption Act, 1988. For example, in the State of Madhya Pradesh (where 21 cases are pending) and in Karnataka (where 20 cases are pending) all these cases are pending before Special Judge (MP/ MLA) at Bhopal and Bangaluru respectively. In State of Telangana, these cases are before Special Judge, CBI at Hyderabad. In Delhi, cases under Prevention of Corruption Act, 1988, registered both by Delhi Police and by CBI are before the Special Court MP/MLA. Similar is the situation with regard to offences punishable under Prevention of Money Laundering Act, 2002."

5. During the course of the hearing, the learned *amicus* submitted that despite the taking up of this matter by this Court, and passing of various orders since 2016, the backlog in pending criminal cases against sitting/former legislators (MPs and MLAs) has not declined. He pointed out numerous reasons for the same.

6. *Firstly*, the learned *amicus* stated that proceedings in a number of cases have been stayed by the various High Courts.

7. *Secondly*, the number of Special Courts constituted/designated for the hearing and disposal of these criminal cases registered against legislators is grossly insufficient. For instance, States such as Odisha, Jharkhand, Assam and Goa, do not have a Special Court. In other States such as Madhya Pradesh, Bihar, Tamil Nadu, Karnataka, Telangana and Maharashtra only one Special Court has been constituted.

8. *Thirdly*, he stated that there is a dearth of public prosecutors in these Courts. Additionally, warrants are not executed and witnesses are often not summoned. Sometimes, even the concerned authorities do not appear as required. Resultantly, there

are a number of cases still at the stage of appearance and no effective prosecution is taking place.

9. *Fourthly*, even though authorities may formally initiate investigations by registering an FIR, or with a preliminary enquiry by the CBI, or by registering an Enforcement Case Information Report (ECIR) by the Enforcement Directorate, these matters are not taken to their logical conclusion, and often do not even result in the registration of a chargesheet.

10. In order to overcome the aforesaid issues, the learned *amicus* has therefore made certain supplementary suggestions, in continuation of his suggestions already extracted in our order dated 10.09.2020. The supplementary suggestions are reproduced below:

"SUBMISSION

7. Having regard to the reports received from various High Courts, the following supplementary submissions are made:-

A. Special Courts in every district for trial of all criminal cases against MPs/ MLAs

- a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to one judicial officer in each district both for Sessions Courts and Magisterial Courts as Special Court MP/MLA. The High Courts may be directed to prepare a blueprint for expeditious disposal of the cases not later than 1 year for conclusion of trial. Hon'ble Chief Justice of each High Court may be requested to personally look into the matter and submit an action plan within such time as this Hon'ble

Court may deem fit and proper. A Draft format is attached as Schedule A.

- b. The High Court reports will also include mechanism for expeditious trial of criminal cases against MPs/ MLAs under special statutes including Prevention of Corruption Act. 1988, Prevention of Money Laundering Act, 2002, Protection of Children from Sexual Offences Act 2012, Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Companies Act, 2013, Negotiable Instrument Act, 1881 etc.
- c. The High Courts would designate a judicial officer for all such cases, who shall try these cases on priority basis. The judicial officer can be allotted other work depending on the workload, number and nature of criminal cases against MPs/MLAs. The judicial officer so designated shall have continuity of tenure for a minimum period of two years.
- d. Special Courts will give priority to the trial of cases in the following order:
 1. Offences punishable with death/life imprisonment;
 2. Offences under Prevention of Corruption Act 1988 and Prevention of Money Laundering Act, 2002;
 3. Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 and Offences under Protection of Children from Sexual Offences Act, 2012;
 4. Offences punishable with imprisonment for 7 years or more;
 5. Other offences.

- e. Cases involving sitting legislators be given priority over former legislators.
- f. No adjournment shall be granted except in rare and exceptional circumstances on a written application stating the ground of adjournment and for reasons to be recorded.

B. Cases under stay

- a. This Hon'ble Court in *Asian Resurfacing of Road Agency Pvt. Ltd. Vs. CBI*, 2018 (16) SCC 299, held as under:

"If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favor stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years."

- b. In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons.
- c. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before

Hon'ble Chief Justice for appropriate orders for urgent listing of such cases.

- d. Hon'ble Chief Justice of every High Court may be requested to list all pending against cases involving MPs and MLAs within 2 weeks before appropriate Bench; and upon being so listed, the cases will be decided by the appropriate Bench expeditiously. No adjournment shall be granted except on a written application disclosing the ground and for reasons to be recorded.

C. Nodal Prosecution Officer and Public Prosecutor

- a. Each District will have a Nodal Prosecution Officer, who shall be an officer not below the rank of Additional Superintendent of Police. The Nodal Prosecution Officer shall be responsible to ensure production of accused persons before the respective courts and the execution of NBWs issued by the courts. The said officer shall also be responsible for service of summons to the witnesses, their appearance and deposition in the courts. Any lapse on the part of the Nodal Prosecution Officer will make him/ her liable to disciplinary proceedings apart from initiation of contempt of court proceedings.
- b. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special courts and will submit all pending reports within one month.
- c. State Government/UTs will appoint/ designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.

D. Establishment of 'Safe and Secure Witness Examination Room'

The High Courts will also submit a report as to the establishment of 'Safe and Secure Witness Examination Room' in each court complex with availability of internet facility for the purpose of recording of evidence of the witnesses through video conferencing.

E. Rules for Video Conferencing for Courts

Each High Court may adopt "Rules for Video Conferencing for Courts" framed by the Karnataka High Court with such modifications as may be required. Till such time Rules are framed, the Karnataka Rules for video conferencing may be made applicable to all the High Courts. The High Courts will indicate the expenses required for setting up of Witness Examination Room and making of video conference facility available in all court complexes. The Central Government may be directed to incur these expenses."

11. The learned Solicitor General, Mr. Tushar Mehta, submitted on behalf of the Union of India that all the pending cases which have been stayed by the High Courts, must be concluded within a time bound manner, preferably within one month. He also suggested that the State Governments should provide necessary infrastructure within one month, for which the Central Government has already granted funds. He further brought it to the notice of this Court, that utilization certificates for the allocated funds have not been forwarded by the State Governments to the Central Government. The learned Solicitor General submitted that Central Agencies, like the CBI and the Enforcement Directorate, will pursue matters

effectively and they shall ensure that any pending investigation/trial will reach its logical conclusion. This Court additionally pointed out that apart from possible delays in investigations, it was also noticed that sanctions for prosecution, under Section 19 of the Prevention of Corruption Act, 1988 or under Section 197, Criminal Procedure Code, were still pending before the higher authorities in many cases, without any decision being taken thereto. In view of the above, the learned Solicitor General submitted that he would file a status report with respect to the initiation, current stage of investigation pending against sitting/former legislators (MPs and MLAs) before the CBI, Enforcement Directorate and other central agencies, pendency/grant of sanctions for prosecution, the expected time for completion of the investigation and reasons for delay in the same, if any, before the next date of hearing. He further submitted that appropriate action would be taken by the nodal departments against any officer responsible for any unreasonable delay.

12. Mr. Vikas Singh, senior counsel appearing on behalf of the Petitioners, submitted that the number of Courts needed per district ought to be rationalized and this may be left to the discretion of the respective High Court.

13. Heard the learned counsel representing the parties. We would, at the outset, like to appreciate the efforts made by the learned *amicus curiae* and acknowledge his able assistance.

14. One of the main objectives behind issuing notice in the

present Writ Petition, and the various orders that have been passed time to time by this Court, was to ensure that criminal prosecutions against elected representatives (MPs and MLAs) are concluded expeditiously. The Court was of the opinion that such special consideration was required not only because of the rising wave of criminalization that was occurring in the politics in the country, but also due to the power that elected representatives (sitting or former) wield, to influence or hamper effective prosecution. Additionally, as legislators are the repositories of the faith and trust of their electorate, there is a necessity to be aware of the antecedents of the person that is/was elected. Ensuring the purity of democratically elected institutions is thus the hallmark of the present proceedings.

15. However, despite all the initiatives taken by this Court in the present petition, there has been no substantial improvement in the situation when it comes to the disposal of pending criminal cases against sitting/former legislators (MPs and MLAs). Now, that we are well equipped with the information and data collected from the various High Courts, and looking at the suggestions made by the learned *amicus*, the learned Solicitor General and other learned counsel, we are better placed to assess the existing situation.

16. With respect to increasing the number of Special Courts and rationalizing the pending criminal cases, we deem it appropriate that, before passing any specific direction in respect thereto, it would be appropriate to direct the learned Chief Justice of each

High Court to formulate and submit an action plan for rationalization of the number of Special Courts necessary, with respect to the following aspects:

- a. Total number of pending cases in each district
- b. Required number of proportionate Special Courts
- c. Number of Courts that are currently available
- d. Number of Judges and the subject categories of the cases
- e. Tenure of the Judges to be designated
- f. Number of cases to be assigned to each Judge
- g. Expected time for disposal of the cases
- h. Distance of the Courts to be designated
- i. Adequacy of infrastructure

17. The learned Chief Justices while preparing the action plan should also consider, in the event the trials are already ongoing in an expeditious manner, whether transferring the same to a different Court would be necessary and appropriate.

18. The learned Chief Justices of the High Courts shall also designate a Special Bench, comprising themselves and their designate, in order to monitor the progress of these trials.

19. The learned Chief Justices are also requested to give their comments on the other suggestions of the learned *amicus*, as extracted by us in our order dated 10.09.2020 and this order. They are also requested to send us additional suggestions, if any, for the purpose of expedient disposal of pending criminal cases against legislators. The action plan, with the comments and suggestions of

the learned Chief Justices of the High Courts, are to be sent to the Secretary General of this Court, preferably within a week. A copy may also be sent to the learned *amicus curiae* by way of e-mail.

20. We further request the learned Chief Justices of all the High Courts to list forthwith all pending criminal cases involving sitting/former legislators (MPs and MLAs), particularly those wherein a stay has been granted, before an appropriate bench(es) comprising of the learned Chief Justice and/or their designates. Upon being listed, the Court must first decide whether the stay granted, if any, should continue, keeping in view the principles regarding the grant of stay enshrined in the judgment of this Court in *Asian Resurfacing of Road Agency Private Limited v. CBI*, (2018) 16 SCC 299. In the event that a stay is considered necessary, the Court should hear the matter on a day-to-day basis and dispose of the same expeditiously, preferably within a period of two month, without any unnecessary adjournment. It goes without saying that the Covid-19 condition should not be an impediment to the compliance of this direction, as these matters could be conveniently heard through video conferencing.

21. The Registrar Generals of all the High Courts are directed to place a copy of this order and our earlier order dated 10.09.2020 before the learned Chief Justices of their respective High Courts forthwith, for necessary directions.

22. With respect to the other suggestions made by the learned *amicus*, we will pass directions at an appropriate stage.

List this matter after 2 weeks.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(RAJ RANI NEGI)
DEPUTY REGISTRAR