

ITEM NO.13 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  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).699/2016

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(MR. VIJAY HANSARIA, (SR.ADV.) IS AMICUS CURIAE IN THE INSTANT MATTER.

IA No.73459/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No.107427/2018 - APPROPRIATE ORDERS/DIRECTIONS  
IA No.39027/2020 - APPROPRIATE ORDERS/DIRECTIONS  
IA No.81287/2018 - CLARIFICATION/DIRECTION  
IA No.2029/2020 - CLARIFICATION/DIRECTION  
IA No.136819/2017 - CLARIFICATION/DIRECTION  
IA No.54637/2017 - 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 PET.  
IA No.2083/2019 - INTERVENTION APPLICATION  
IA No.81286/2018 - INTERVENTION APPLICATION  
IA No.2027/2020 - INTERVENTION APPLICATION  
IA No.127368/2018 - 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  
IA No. 130542/2018 - STAY APPLICATION)

Date : 04-11-2020 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 ANIRUDDHA BOSE

Amicus Curiae(s) Mr. Vijay Hansaria, Sr.Adv.  
Ms. Sneha Kalita, Adv.

Mr. Abhinis Pandey, Adv.  
Mr. Abhinav Hansaria, Adv.  
Ms. Bristi Rekha Mahanta, Adv.

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Mr. A.K. Sharma, Adv.  
Mr. Raj Bahadur Yadav, Adv.

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Mr. Arvind Kumar Sharma, Adv.

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Mr. Kshatrashal Raj, Adv.  
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Ms. Bhaswati Singh, Adv.

For High Court of Jharkhand Mr. Ambhoj Kumar Sinha, Adv.

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For High Court of Allahabad	Mr. Sunny Choudhary, AOR
For Bombay & Gujarat High Court	Mr. Aniruddha P. Mayee, AOR
For State of Uttarakhand	Ms. Rachana Srivastava, AOR
For High Court of Delhi	Mr. Annam D. N. Rao, AOR Mr. Venkatesh Rao, Adv.

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For High Court of Chhattisgarh	Mr. Apoorv Kurup, AOR Mr. Aditya Chanakya Boxipatro, Adv. Ms. Nidhi Mittal, Adv.
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Mr. Mukesh Kumar Maroria, Adv.

Mr. Satish Pandey, Adv.

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

The Court is convened through Video Conferencing.

1. On 06.10.2020, this Court requested the High Courts to send certain additional information in order to provide more clarity to the rationalization exercise being undertaken. All the High Courts have submitted reports in furtherance of the aforementioned order. The learned *amicus*, through his 12<sup>th</sup> report dated 02.11.2020, has collated the information provided.

2. During the course of the hearing, the learned *amicus* took us through the aforementioned report in detail. The *amicus* has highlighted certain important issues which are revealed from the data furnished by the various High Courts:
- a. Although video conferencing facilities are available in some of the courts, the same are not adequate to facilitate recording of evidence of witnesses. For the efficacious disposal of these cases, robust video conferencing facilities and upgradation of infrastructure is necessary. However, most of the State Governments have expressed their inability to bear the expenses for the same, owing to the current situation. The *amicus* therefore put forth a suggestion that the Central Government may bear the initial expenses for setting up of such video conferencing facility.
  - b. Considering the sensitivity of these cases, most witnesses are unwilling to appear before the respective Courts, although this Court has given its imprimatur to the Witness Protection Scheme, 2018. The learned *amicus* suggested that the requirement for the witnesses to make an application seeking protection, as provided under the Scheme, be waived in these cases as witnesses may be apprehensive of making such an application in the first place.
  - c. Taking into account the fact that in certain States there are cases which have been pending for more than 25 years, it is imperative to appoint Nodal Prosecution Officers who will be responsible to ensure that arrest warrants are being executed, accused are being produced regularly, summons are being served,

and so on.

d. To ensure speedy disposal of the pending cases, the learned *amicus* suggested that the tenure of judicial officers dealing with the aforesaid cases is at least 2 years in order to ensure continuity.

e. Additionally, the judicial officers should follow effective case management strategies and should not grant unnecessary adjournments which might lead to delay.

f. Lastly, the *amicus* brought to our notice specific issues being faced by certain High Courts.

- The High Court of Kerala has specifically placed on record that the police officials are reluctant to arrest and produce the legislators.
- The same issue is also being faced by the Calcutta High Court. Apart from the same, the *amicus* expressed concerns regarding the suitability of assigning 134 cases to a single Special Court in the State of West Bengal.
- Even with respect to the State of Karnataka, the *amicus* brought up the issue of a Special Court being designated for the entire State, which is located in Bengaluru.
- Certain issues that have been raised by a Committee appointed by the Chief Justice of the High Court of Madras were also highlighted by the learned *amicus*.

3. Learned senior counsel for the Petitioner, Mr. Gopal Sankaranarayanan, supplemented the submissions made by the *amicus* and stated that, *firstly*, some clarification might need to be



provided by this Court that the present writ proceedings relate to criminal cases pending against both sitting and former legislators (MPs/MLAs). *Secondly*, the learned senior counsel submitted that stay of proceedings, if granted, should not be extended indefinitely in line with the various pronouncements of this Court.

4. Before passing any direction, we may note that on 06.10.2020, the learned Solicitor General sought time to submit the status report relating to investigations by special agencies, in terms of our earlier order dated 16.09.2020. We had accordingly granted him additional time, and directed him to do so by 19.10.2020. The learned Solicitor General was also directed to enquire from the Central Government regarding the possibility of providing funding for the establishment of at least one video conferencing facility in every district for conducting these cases.
5. Today, at the commencement of hearing, learned Solicitor General sought further time to do the needful. We, accordingly, grant him a week's time to file a reply, in terms of our orders dated 16.09.2020 and 06.10.2020, with a direction to serve a copy in advance to the learned *amicus*. We hope and expect that the Union of India will take into consideration the requests made by the State Governments and a timely response will be submitted on all the above queries.
6. Having heard learned counsel appearing on behalf of the parties and the learned *amicus*, we consider it appropriate to pass the following directions:
  - i. The Witness Protection Scheme, 2018, approved by this Court in the case of *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 should be strictly enforced by the Union and States and

Union Territories. Keeping in mind the vulnerability of the witnesses in such cases, the Trial Court may consider granting protection under the said Scheme to witnesses without their making any specific application in this regard.

- ii. We have already passed directions with respect to vacation of stay that may have been granted by the High Courts *vide* order dated 16.09.2020. In that order, we had directed the Chief Justices of the High Courts to list the matters relating to the aforementioned cases before an appropriate bench, and to decide on any issue relating to stay by keeping in view the principles laid down by this Court in *Asian Resurfacing of Road Agency Private Limited v. CBI*, (2018) 16 SCC 299. Recently the law as stated in the above case has been reiterated by a three-Judge Bench of this Court *vide* order dated 15.10.2020 in Miscellaneous Application No. 1577 of 2020 in Criminal Appeal Nos. 1375-1376 of 2013 [*Asian Resurfacing (supra)*], wherein the Court has held as follows:

"We must remind the Magistrates all over the country that in our pyramidal structure under the Constitution of India, the Supreme Court is at the Apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. This kind of orders fly in the face of para 35 of our judgment. We expect that the Magistrates all over the country will follow our order in letter and spirit. Whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same."

*(emphasis supplied)*

The above pronouncements must be followed with full rigor by all the Courts.

- iii. Keeping in mind the public interest involved in these matters, and in order to prevent undue delay, we direct that no

unnecessary adjournments be granted in these matters.

- iv. At the cost of repetition, it is clarified that the directions in the present writ proceedings are applicable to both sitting as well as former legislators (MPs and MLAs).
7. As regards the concerns highlighted by the *amicus* with respect to specific States:
- i. The counsel appearing on behalf of the High Court of Calcutta is directed to give a list of cases about the non-execution of warrants against the sitting and former legislators (MPs/MLAs) to the counsel appearing on behalf of the State of West Bengal. The Chief Secretary/ Director General of Police of the State of West Bengal is directed to file an affidavit indicating the implementation of the orders passed by this Court, as well as the High Court, by the next date of hearing.
  - ii. Learned counsel appearing on behalf of the State of Kerala submitted that the State Government is cooperating with the Court in execution of the warrants in criminal cases. However, learned senior counsel appearing on behalf of the High Court of Kerala denied the said fact. In view of the above, we direct the learned senior counsel appearing for the High Court of Kerala to furnish a list of cases to the Chief Secretary/ Director General of Police where the warrants are not being executed. Learned counsel for the State of Kerala is directed to file a report in this regard before this Court on the next date of hearing.
  - iii. The learned counsel appearing on behalf of the High Court of Karnataka is directed to file an affidavit regarding the sufficiency of the designated Special Court to deal with the pending cases in a timely manner before the next date of hearing. He is further directed to submit the status of the stays granted.
  - iv. On a query being placed by this Court, the learned counsel for the High Court of Tamil Nadu sought two weeks' time to obtain

further instructions regarding the same. We, accordingly, grant the same.

8. The other suggestions made by the *amicus* and other counsel will be considered by this Court on the next date of hearing.

List the matter after three weeks.

I.A. No. 61324 of 2017 in W.P. (C) No. 699 of 2016

Learned senior counsel for the Petitioner, Mr. Gopal Sankaranarayanan submitted that although the Union of India has sought time to file a counter affidavit to the present application for amendment of the writ petition, being I.A. No. 61324 of 2017, their stand with respect to the issues raised are already on record in their reply to an intervention application in the present writ proceeding which was earlier allowed by this Court.

With respect to the submission of the learned senior counsel for the Petitioner regarding the application for amendment, we had issued notice *vide* order dated 10.09.2020 and directed the Union of India to file a counter affidavit within a period of six weeks. Learned senior counsel appearing on behalf of the Union of India, Ms. V. Mohana, has sought one week's additional time to file the counter affidavit. The same is, accordingly, granted. List I.A. No. 61324 of 2017 separately, in the month of January, 2021.

(SATISH KUMAR YADAV)  
DEPUTY REGISTRAR

(RAJ RANI NEGI)  
DEPUTY REGISTRAR