

ITEM NO.303,302,302.1 & 302.2 COURT NO.1 SECTIONS PIL-W/X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.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. 107427/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No.39027/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 73459/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 81287/2018 -CLARIFICATION/DIRECTION, IA No. 2029/2020 -CLARIFICATION/DIRECTION, IA No. 136819/2017- CLARIFICATION/DIRECTION, IA No. 143394/2021 -CLARIFICATION/DIRECTION, IA No. 108743/2021 -CLARIFICATION/DIRECTION, IA No. 54637/2017 - CLARIFICATION/DIRECTION, IA No. 54552/2017 - DIRECTIONS, IA No.107431/2018 - EXEMPTION FROM FILING O.T., 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. 101624/2021 - EXEMPTION FROM FILING O.T., 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. 71929/2019 -INTERVENTION/IMPLEADMENT, IA No. 127553/2020 - INTERVENTION/IMPLEADMENT, IA No. 58124/2017 - INTERVENTION/IMPLEADMENT, IA No. 57812/2017 - INTERVENTION/IMPLEADMENT. IA No. 108742/2021 - INTERVENTION/ IMPLEADMENT, IA No. 127023/2018 - 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)

Writ Petition(Criminal) No.442/2021

(IA No. 146977/2021 - EX-PARTE STAY & IA No. 137664/2021 - EXEMPTION FROM FILING O.T.)

W.P.(Crl.) No.444/2021 (X)

(FOR ADMISSION and IA No.138988/2021-EXEMPTION FROM FILING O.T.)

W.P.(Crl.) No.443/2021 (X)

(FOR ADMISSION and IA No.138428/2021-EXEMPTION FROM FILING O.T.)

Date : 24-11-2021 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)

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Mr. Ashwini Kumar Upadhyay, Adv.

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Ms. Priyanka Singh, Adv
Mr. Chandra Shekhar, Adv
Mr. Kartik Yadav, Adv

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

IA NO.149484/2021 IN WRIT PETITION(Civil) No.699/2016:-

This Court on 10-8-2021 *inter alia* passed the following
Order:-

"In the meanwhile, to ensure expeditious disposal of pending cases, it is necessary for this Court to direct the officers presiding over Special Courts or CBI Courts involving prosecution of MPs or MLAs to continue in their present posts until further orders.

This direction, barring transfer of judicial officers, will be subject to their superannuation or death. If any

further necessity or emergency arises, the Registrar General of the High Courts are at liberty to make an application before us for retention or to relieve those officers " .

The Rajasthan High Court has filed an application on 17-11-2021 seeking facilitative directions for the transfer of four judicial officers.

The application is allowed.

Interlocutory Application stands allowed in the afore-stated terms.

WRIT PETITION(CRL) NOS.442/2021, 443/2021 & 444/2021:-

1 While invoking the jurisdiction of this Court under Article 32 of the Constitution in three petitions, the petitioners seek the transfer of their trials from the Court of the Special Judge and Additional Sessions Judge, MP/MLA Court, Rampur to the Magistrate having jurisdiction. Details of the Case Crimes from which the trials arise are set out below:

(i) Case Crime No.4/2019 registered at Police Station Ganj, Rampur for offences punishable under Sections 420, 467, 468 and 471 of the Penal Code;

(ii) Case Crime No.980/2019 registered at Police Station Civil Lines, Rampur for offences punishable under Sections 420, 467, 468, 471 and Section 120-B of the Penal Code;

(iii) Case Crime No.594/2019 registered at Police Station Civil Lines, Rampur for offences punishable under Sections 420, 467, 468 and 471 of the Penal Code, and Section 12 (1A) of the Passport Act, 1967.

2 On 16 August 2019, the High Court of Judicature at Allahabad issued a Notification by which Special Courts of Additional District and Sessions Judges were constituted for sixty-two out of the seventy-four districts in the State of Uttar Pradesh.

3 The text of the Notification (in so far as is relevant) reads thus:-

"In pursuance of orders dated 04.12.2018 of the Hon'ble Supreme court of India passed in Writ Petition (Civil) No(S) 699 of 2016 Ashwini Kumar Upadhyay Vs Union of India & Anr Hon'ble court has been pleased to constitute/ Designate the Special Court of Additional District & Sessions Judge mentioned in Column 3 for local area in the district specified in column 2 of the said schedule excluding the jurisdiction of 12 districts namely Allahabad, Sonbhadra, Chandauli, Mirzapur, Varansi, Azamgarh, Mau, Ghazipur, Bhadohi at Gyanpur, Kaushambi, Ballia and Jaupur, which lies with the Special Court at Allahabad created vide Government letter dated 29.06.2018 for baying criminal cases pending against elected MPs/M.L.As."

The above Notification purports to have been issued in pursuance of the order dated 4.12.2018 of this Court in Ashwani Kumar Upadhyay and Union of India & Another. (Writ Petition (Civil) No.699 of 2016).

4 Initially, on 14 December 2017, this Court issued directions for setting up Fast Track Courts for the trial of cases pending against elected MPs/MLAs. The order clarified that the directions were "tentative at this stage" so as to get the Court(s) operational and functional. The Court indicated that as and when necessary changes were required to be made in those directions, or if any additional directions were required, they would be issued from time to time.

5 On 4.12.2018 this Court issued the following directions :-

"1. Instead of designating one Sessions Court and one Magisterial Court in each District we request each High Court to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the each High Court

may consider proper, fit and expedient. This, according to us, would be a more effective step instead of concentrating all the cases involving former and sitting legislators in a Special Court(s) in the district.

2. The procedural steps indicated by the learned Amicus Curiae, narrated above, will be followed by each of the designated Court to whom work would be allocated in terms of the directions above except that offences punishable with imprisonment for life/death against sitting M.Ps./M.L.As. as well as former M.Ps./M.L.As. would be taken up on first priority followed by sequential order indicated above without creating any distinction between cases involving sitting legislators and former legislators.

3. At this stage, we are of the view that the above directions should be made applicable to cases involving former and sitting legislators in the States of Bihar and Kerala.

The National Capital Territory of Delhi where the position is somewhat different and the difficulties of distance and territories do not come in the way the trial of cases by the Special Courts (both Sessions Court and Magisterial Court) will continue.

4. So far as the cases involving States of Kerala and Bihar are concerned, such of the case records which have been transmitted to the Special Courts in the two States will be re-transmitted to the jurisdictional courts wherefrom the records have been sent for being dealt with in the manner indicated above. This will be done forthwith.

5. The registry of the High Courts of Kerala (State of Kerala) and Patna (State of Bihar) will initiate necessary action in this matter without any delay.

6. Rest of the Special Courts already set up shall continue to work and try cases assigned to it until further orders are passed in this regard by this Court.

7. The designated Courts in the districts in the aforesaid two States of Kerala and Bihar will submit monthly report to the High Court with regard to the cases where charge-sheets have not yet been filed; cases

where charges have not yet been framed giving reasons therefor; and the progress of the trial where the cases are ready. The High Courts, in turn, will forward the said reports to the registry of this Court with a copy to Shri Vijay Hansaria, learned Amicus Curiae who is requested to go through the said reports and assist the Court by placing the information conveyed before this Court in an appropriate manner on the next date/dates of hearing."

6 On 16.9.2020 further directions were issued by this Court by which the Chief Justices of the High Courts were to submit an action plan for rationalizing the number of Special Courts required. In so far as is material, relevant part of the directions is extracted below:

"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

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."

7 We have heard Mr Kapil Sibal, learned senior counsel for the petitioners, Mr S V Raju, learned Additional Solicitor General for the Union Government, Ms Garima Prasad, learned Additional Advocate General of the State of UP and Mr Sunny Chaudhary, learned Advocate-on-Record for the High Court of Judicature at Allahabad.

8 The Order of this Court dated 4.12.2018 makes it abundantly clear that instead of designating one Sessions Court and one Magisterial Court in each District, the High Courts were requested to assign and allocate criminal cases involving former and sitting legislatures to as many Sessions Courts and Magisterial Courts as each High Court would consider appropriate fit and expedient.

9 The above directions do not mandate the High Courts to transfer cases which are triable by Magistrates to Sessions Courts. The directions contained in the Order dated 4 December 2018 do not supplant the jurisdictional provisions contained either in the Code of Criminal Procedure, 1973 or in other special enactments governing the trial of offences governed by those enactments. The directions of this Court mandate the assigning and allocation of criminal cases involving former and sitting legislators to Sessions Courts or, as the case may be, Magisterial Courts. This has to be in accordance with the governing provisions of the law as applicable. Consequently, where a case is triable by a Magistrate

under the Penal Code, the case would have to be assigned/allocated to a Court of a Magistrate vested with jurisdiction and the Order of this Court dated 4 December 2018 cannot be construed as a direction requiring the trial of the case by a Sessions Court. In the State of Uttar Pradesh, no Magisterial Courts have been designated as Special Courts for the trial of cases triable by Magistrates in terms of the directions of this Court dated 4 December 2018. The Notification issued by the High Court of Judicature at Allahabad on 16 August 2019 is based on an evident misconstruction of the directions contained in the Order of this Court.

10 The High Court of Judicature at Allahabad shall accordingly ensure allocation of criminal cases involving former and sitting legislatures to as many Sessions Courts and Magisterial Courts as required, in order that cases which are triable by a Magistrate are assigned to a designated Court of a Magistrate, while cases triable by a Sessions Court are assigned to a designated Court of Sessions.

11 We further direct that cases triable by Magistrates which are pending before the Sessions Court in view of the Circular dated 16 August 2019 shall stand transferred to the Court of competent jurisdiction. However, the entire record and proceedings shall be transferred to the Court of the designated Magistrate and the proceedings shall commence from the stage which has been reached prior to the transfer of the proceedings, as a consequence of which the trial shall not have to commence afresh.

12 The above directions shall govern the generality of cases involving former and sitting legislators in the State of U.P. which are to be tried by Special Courts by the Sessions Courts or, as the case may be, Magistrates' Courts in terms of the provisions of the Code of Criminal procedure, 1973 or a special enactment governing the trial of the offence with which the accused is charged. The High Court shall issue a fresh circular in conformity of the present order.

13 The Writ Petitions shall accordingly stand disposed of in terms of the above directions.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)