

ITEM NO.2

COURT NO.1

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(S). 699/2016

ASHWINI KUMAR UPADHYAY

PETITIONER(S)

VERSUS

UNION OF INDIA & ANR.

RESPONDENT(S)

[I.A. NO.107427/2018 - APPROPRIATE ORDERS/DIRECTIONS
I.A. NO.81287/2018 - CLARIFICATION/DIRECTION
I.A. NO.136819/2017 - CLARIFICATION/DIRECTION
I.A. NO.54637/2017 - CLARIFICATION/DIRECTION
I.A. NO.54552/2017 - DIRECTIONS
I.A. NO.107431/2018 - EXEMPTION FROM FILING O.T.
I.A. NO.61324/2017 - I/A FOR PERMISSION TO AMEND THE PRAYER ON
BEHALF OF PETITIONER
I.A. NO.81286/2018 - INTERVENTION APPLICATION
I.A. NO.58124/2017 - INTERVENTION/IMPLEADMENT
I.A. NO.57812/2017 - INTERVENTION/IMPLEADMENT
I.A. NO.127368/2018 - INTERVENTION APPLICATION
I.A. NO.127023/2018 - INTERVENTION/IMPLEADMENT
I.A. NO.130542 & 130543/2018 - STAY AND EXEMPTION FROM FILING OT
I.A.NO.146933/20180 - EXEMPTION FROM FILING OT]

Date : 04-12-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

Mr. Vijay Hansaria, Sr. Adv.(A/C)
Ms. Sneha Kalita, AOR
Mr. Avnish Pandey, Adv.

For parties:

Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Ashwini Kumar Upadhyay -in-person
Mr. Vijay Kumar Pandita, Adv.
Mr. Krishna Kant Shukla, Adv.
Ms. Asha Upadhyay, Adv.
Mr. Krishnam Mishra, Adv.
Mr. Yasharth Kant, Adv.
Mr. Nishant Singh, Adv.
Mr. R. D. Upadhyay, AOR

Mr. Krishnan Venugopal, Sr. Adv.
Mr. Udai Rathore, Adv.

UOI Mr. A.N.S. Nadkarni, ASG
Ms. V. Mohana, Sr. Adv.
Mr. Rajiv Nanda, Adv.
Mr. Vijay Prakash, Adv.
Mr. Arvind Kr. Sharma, AOR

UOI Mr. A.N.S. Nadkarni, ASG
Mr. R. R. Rajesh, Adv.
For Mrs. Anil Katiyar, AOR

Ms. V. Mohana, Sr. Adv.
Ms. Sunita Sharma, Adv.
Mr. Sushma Verma, Adv.
Mr. R. R. Rajesh, Adv.
Mrs. Anil Katiyar, AOR
Mr. Raj Bahadur Yadav, Adv.

Mr. Mukesh Kumar Maroria, AOR

ECI Mr. Mohit D. Ram, AOR
Ms. Monisha Handa, Adv.

Mr. Balaji Srinivasan, AOR
Ms. Pallavi Sengupta, Adv.
Ms. Garima Jain, Adv.
Mr. Siddhant Kohli, Adv.

Mr. Pranav Sachdeva, AOR

Delhi HC Mr. Raju Ramachandran, Sr. Adv.
Mr. Annam D.N. Rao, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Sudipto Sircar, Adv.
Mr. Rahul Mishra, Adv.

State of MP Mr. Rajesh Srivastava, Adv.

State of Kerala Mr. G. Prakash, Adv.
Mrs. Priyanka Prakash, Adv.
Mr. Jishnu M.L., Adv.
Mrs. Beena Prakash, Adv.

Kerala HC	Mr. T.G.N. Nair, AOR
State of Odisha	Mr. Sibho Shankar Mishra, AOR Mr. Niranjan Sahu, Adv.
State/HC of Sikkim	Mr. A. Mariarputham, Adv. Gen. Sikkim Ms. Aruna Mathur, Adv. Mr. Avneesh Arputham, Adv. Ms. Anuradha Arputham, Adv. Ms. Geetanjali, Adv. For M/s Aruputham Aruna & Co., AOR
HC of Allahabad	Mr. Sunny Choudhary, AOR
State of Rajasthan	Mr. Amit Sharma, Adv. Mr. Ankit Raj, Adv. Ms. Nidhi Jaswal, Adv. Ms. Indira Bhakar, Adv. Ms. Ruchi Kohli, AOR
Rajasthan HC	Ms. Purnima Krishna, Adv. Mr. Siddharth Garg, Adv. Mr. Abhinav Mukherji, AOR
HP HC	Ms. Radhika Gautam, AOR
Uttarakhand HC	Ms. Radhika Gautam, AOR
Patna HC	Mr. Pravin H. Parekh, Sr. Adv. Mr. Kshtrashal Raj, Adv. Mr. Vishal Prasad, Adv. Ms. Tanya Chaudhary, Adv. Ms. Pratyusha Priyadarshini, Adv. Ms. Aishwarya Dash, Adv. for M/s Parekh & Co., AOR
HC of J&K	Mr. Bharat Sangal, AOR Ms. Babita Kushwaha, Adv.
HC of MP	Mr. Arjun Garg, AOR Mr. Aakash Nandolia, Adv.
HC of Jharkhand	Mr. Ambhoj Kumar Sinha, AOR
State of Arun.P.	Mr. Anil Shrivastava, AOR Mr. Rituraj Biswas, Adv. Mr. Satyendra Kumar Srivastav, Adv.

State of Jharkhand	Mr. Tapesh K. Singh, AOR Mr. Aditya Pratap Singh, Adv.
State of Haryana	Mr. Samar Vijay Singh, Adv. Mr. Navin Gupta, Adv. Mr. Sanjay Kumar Visen, AOR
State of Gujarat	Ms. Hemantika Wahi, AOR Ms. Jesal Wahi, Adv. Ms. Vishakha, Adv. Ms. Parul Luthra, Adv.
Govt. of Puducherry	Mr. V.G. Pragasam, AOR Mr. S. Prabu Ramasubramanian, Adv. Mr. S. Manuraj, Adv.
State of Manipur	Mr. Leishangthem Roshmani Kh., AOR
HC of Calcutta	Mr. Kunal Chatterjee, AOR Ms. Maitrayee Banerjee, Adv. Mr. Saurav Gupta, Adv.
State of Tripura	Mr. Shuvodeep Roy, AOR Mr. Rituraj Biswas, Adv.
HC Tripura	Mr. Naresh K. Sharma, AOR
UT of A & N admn.	Mr. Mirnal Kanthi Mondal, Adv. Mr. K.V. Jagdishvaran, Adv. Mrs. G. Indira, AOR
State of Nagaland	Ms. K. Enatoli Sema, AOR Mr. Amit Kumar Singh, Adv.
State of Bihar	Mr. M. Shoeb Alam, AOR Mr. Ujjwal Singh, Adv. Mr. Mojahid Karim Khan, Adv.
State of J & K	Mr. M. Shoeb Alam, AOR Mr. Ujjwal Singh, Adv. Mr. Mojahid Karim Khan, Adv.
State of Punjab	Mr. Karan Bharihoke, AOR. Mr. Kaushal Narayan Mishra, Adv. Ms. Navkiran Bolay, Adv.

State of Goa	Mr. A.N.S. Nadkarni, ASG Mr. Pratap Venugopal, Adv. Ms. Surekha Raman, Adv. Mr. Santosh Rebello, Adv. Mr. Debarshi Bhuyan, Adv. Ms. Remya Raj, Adv. For M/s K.J. John & Co., Adv.
State of U.P.	Mr. Sanjay Kumar Tyagi, AOR Mr. Yogendra Pal Singh, Adv. Mr. Sandeep Singh, Adv.
UT Chandigarh Admn.	Mr. Manoj Gorkela, Adv. Mr. Prakash Sharma, Adv. Ms. Prakriti Raj, Adv. Mr. Sarbendra Kumar, Adv. For Gorkela Law Office, AOR
State of Mizoram	Mr. Pragyan Pradip Sharma, Adv. Mr. Mudit Makhijani, Adv. Mr. Shikhar Garg, Adv. Mr. P.V. Yogeswaran, Adv.
State of Uttarakhand	Ms. Rachana Srivastava, AOR
State of Karnataka	Mr. V.N. Raghupathy, Adv. Mr. Lagnesh Mishra, Adv. Mr. Parikshit P. Angadi, Adv.
State of A.P.	Mr. Guntur Prabhakar, Adv. Ms. Prerna Singh, Adv.
Gauhati HC	Mr. Vijay Hansaria, Sr. Adv.(A/C) Ms. Sneha Kalita, AOR Mr. Avnish Pandey, Adv.
State of Meghalaya	Mr. Ranjan Mukherjee, Adv. Mr. Daniel Stone Lyngdoh, Adv. Mr. K.V. Kharlingdoh, Adv.
State of Assam	Mr. Shuvodeep Roy, Adv. Mr. Somnath Banerjee, Adv.
State of H.P.	Mr. Abhinav Mukerji, AAG, HP Mrs. Bihu Sharma, Adv. Ms. Pratishtha Vij, Adv.

State of Chhattisgarh	Mr. Jugal Kishore gilda, Adv.Gen. Mr. A.P. Mayee, Adv. Mr. Chirag Jain, Adv.
HC Chhattisgarh	Mr. Apoorv Kurup, AOR Mr. G. Kaushal, Adv.
HC Gujarat	Mr. A.P. Mayee, Adv. Mr. Chirag Jain, Adv.
HC of Bombay	Mr. A.P. Mayee, Adv. Mr. Chirag Jain, Adv.
Delhi HC	Mr. Raju Ramachandran, Sr. Adv. Mr. A.D.N. Rao, AOR Mr. Annam Venkatesh, Adv. Mr. Sudipto Sircar, Adv. Mr. Rahul Mishra, Adv. Ms. Hamsini Shanker, Adv.
State of W.B.	Mr. Suhaan Mukerji, Adv. Ms. Astha Sharma, Adv. Mr. Amit Verma, Adv. Mr. Abhishek Manchanda, Adv. Ms. Kajal Dalal, Adv. Ms. Dimple Nagpal, Adv. For PLR Chambers, AOR
State of T.N.	Mr. M. Yogesh Kanna, AOR Mr. Ashwani Kr. Dubey, Adv.
HC Uttarakhand	Mr. Mukesh K. Giri, AOR
GNCTD	Mr. Chirag M. Shroff, AOR Ms. Neha Sangwan, Adv. Ms. Deepa M. Kulkarni, Adv. Mr. Nishant R. katneshwarkar, AOR

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

We have heard Shri Vijay Hansaria, learned Senior Counsel who has appeared in the case as the Amicus Curiae. We have also perused the second report dated 3rd December, 2018 submitted/filed by Shri Vijay Hansaria, learned Amicus Curiae.

The second report of the learned Amicus Curiae dated 3rd December, 2018 compiled on the basis of information furnished by the High Courts indicate that there are presently 4122 number of cases pending against Members of Parliament (M.Ps.)/Members of Legislative Assembly (M.L.As) including former M.Ps./M.L.As. Out of this (i.e. 4122 number of cases) 2324 number of cases are against sitting legislators (both M.Ps./M.L.As.) and 1675 number of cases are against former legislators (both M.Ps./M.L.As.)

The report of the learned Amicus Curiae shows that in 1991 cases out of 4122 cases charges have not yet been framed. State-wise data with regard to cases where charges have not yet been framed has also been furnished in the said report and are available at Annexure 2 to the said report. The learned Amicus Curiae submitted a chart in the

course of the hearing showing State-wise number of pending cases involving life sentence against the sitting as well as former legislators. The said chart shows that 430 cases involving life sentence are pending against sitting as well as former legislators. What is the stage of the trial of these cases, however, has not been indicated.

To ensure effective trial of these cases the learned Amicus Curiae has suggested that instead of concentrating the cases in the 12 (Twelve) Special Courts that have been constituted pursuant to the earlier order(s) of this Court there should be one designated Sessions Court and one designated Magisterial Court in each District to try cases against sitting and former legislators on priority basis. The learned Amicus Curiae has also submitted that concentration of all the cases against former and sitting legislators in 12 Special Courts set up pursuant to the order(s) of this Court would result in delay of trial on account of witnesses and accused being required to come from far away places.

The learned Amicus Curiae has suggested that a special procedure should be adopted by the designated Courts which should fix a calendar for each case to be

taken up on day-to-day basis giving priority to the trial of cases in the following order:

"i. Offences punishable with imprisonment for life/death against sitting Mps and MLAs.

ii. Serious offences punishable with imprisonment of 5 years or more against sitting MPs and MLAs.

iii. Other offences against sitting MPs and MLAs

iv. Offences punishable with imprisonment for life/death against former MPs and MLAs.

v. Serious offences punishable with imprisonment of 5 years or more against former MPs and MLAs.

vi. Other offences against former MPs and MLAs."

Submission of monthly status reports to the concerned High Court; directions/requests to the concerned High Court/High Courts to expedite the cases pending before it/them where stay orders have been passed (264 number in all) and such are the matters have also been mentioned in the report of the learned Amicus Curiae.

We have considered the matter.

We appreciate the services of the learned Amicus Curiae in formulating his suggestions for effective disposal of criminal cases against sitting and former legislators, a task which this court had undertaken in the present proceedings.

Having considered the matter we are of the view that the suggestions of the learned Amicus Curiae should be tried out with certain modifications and in a limited manner which is indicated below:

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.

The action taken in terms of the present order by the High Courts of Kerala and Patna be laid before this Court on or before 14th December, 2018.

A copy of the present order be furnished to the learned Amicus Curiae in the course of the day who is requested to transmit the same to the Registrars General of the High Court of Kerala and Patna.

List the matter on 14th December, 2018.

[VINOD LAKHINA]

AR-cum-PS

[ANAND PRAKASH]

BRANCH OFFICER