

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

IA NO. 39027/2020

**IN**

**WRIT PETITION (CIVIL) NO 699 OF 2020**

**(PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay

..Petitioner

Versus

Union of India & Others

..Respondent(s)

**APPLICATION FOR DIRECTION**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

**THE MOST RESPECTFULLY SHOWETH AS THE UNDER:**

1. The present application has been filed seeking a direction to expedite adjudication of cases pending against Members of Legislative Assembly (“**MLAs**”) and Members of Parliament (“**MPs**”).
2. That the present Writ Petition has been filed with an object to set up Special Courts to try criminal cases of MPs and MLAs and for utmost expeditious disposal of those cases. To this effect, this Hon'ble Court has consistently passed orders for setting up fast track courts for speedy disposal of criminal

cases related to MPs and MLAs. However, political persons are leaving no stone unturned to defeat the purpose of this Writ Petition and the effect of the orders passed by this Hon'ble Court. Further, the State has failed to prioritise the issue of speedy disposal of cases against MPs or MLAs.

3. *Vide* the order dated 01.11.2017, this Hon'ble Court had directed Respondent No. 1 to lay down a scheme for setting up of courts exclusively to deal with criminal cases involving political persons. The relevant extract is as under:

*“4. Insofar as setting up of Special Courts are concerned, setting up of Special Courts and infrastructure would be dependent on the availability of finances with the States. Without going into the controversy raised on the aforesaid score, the problem can be resolved by having a Central Scheme for setting up of Courts exclusively to deal with criminal cases involving political persons on the lines of the Fast Track Courts which were set up by the Central Government for a period of five (05) years and extended further which Scheme has now been discontinued.*

4. *A Scheme to give effect to the above may be laid before the Court on the next date fixed indicating the amount of funds that can be earmarked for setting up of Special Courts where-after the issue of appointment of Judicial Officers, Public Prosecutors, Court staff and other such requirement of man-power and infrastructure (which would depend on the availability of funds from the Central Government) will be dealt with by the Court, if required, by*

*interacting with the representatives of the respective State Governments.”*

True copy of order dated 01.11.2017, passed by this Hon'ble Court in the instant matter is annexed as **Annexure A-1** (Pages \_\_\_\_\_).

5. In compliance with the aforesaid order, Respondent No.1 proposed a scheme to set up 12 fast track courts. This scheme was approved by this Hon'ble Court *vide* order dated 14.12.2017. The relevant extract reads as under:  
*“Insofar as issues 4 and 5 outlined in the order dated 1.11.2017 are concerned i.e. setting up of Special Courts, a scheme, though, rudimentary at this stage, has been placed before the Court the essence of which is that based on certain calculations and perspectives with regard to the time that would be taken to dispose of the 1581/1571 cases presently pending against the elected MPs/MLAs, the Union of India proposes to set up 12 Fast Track Courts combining several State(s) in respect of which jurisdiction will be exercised by one Special Court.”*

True copy of order dated 14.12.2017, passed by this Hon'ble Court in the instant matter is annexed as **Annexure A-2** (Pages \_\_\_\_\_).

6. That this Hon'ble Court further directed the State Governments in consultation with the respective High Courts to set up the fast track courts and granted power to the High Courts to trace the case records of Trial Courts and transfer those cases to the respective Special Court. Order reads:  
*“The High Court(s), acting through the various trial Courts, will trace out from the case records the particular case(s) pending in the files of the respective judicial officers under the jurisdiction of the High Court(s) which are required to be dealt with by the Special Courts under the Scheme and thereafter transfer the said cases to such Special Courts(s) for adjudication.”*

7. The State of Tamil Nadu has always adopted an approach to frustrate letter and spirit of the directions issued by this Hon'ble Court for speedy disposal of criminal cases related to MPS and MLAs.
- 7.1. The cases pending against MPs and MLAs were not being transferred to the Special Courts constituted to try criminal cases involving MPs and MLAs of Tamil Nadu. The courts where these cases were pending were merely adjourning the matters. Therefore, the Petitioner was constrained to file IA 31721/2019, before this Hon'ble Court seeking a direction to the Registrar General, Hon'ble High Court of Judicature at Madras to transfer all criminal cases related to MPs and MLAs pending under its jurisdiction, to the Special Courts. *Vide* order dated 25.03.2019, this Hon'ble Court passed an order to this effect. The relevant extract is as under:
- “We direct the Registrar General of the High Court of Judicature at Madras to transfer all criminal cases related to MPs and MLAs pending under its jurisdiction to the Special Court for cases related to Elected MP and MLA of Tamil Nadu, Chennai.”*
- True Copy of the order dated 25.03.2019, passed by this Hon'ble Court in the instant matter has been annexed as **Annexure A-3**(Pages \_\_\_\_ to \_\_\_\_).
- 7.2. The State of Tamil Nadu has around 313 criminal cases pending against MPs and MLAs. Political persons of all the parties have applied every trick in the book and the Government of Tamil Nadu has collaborated with them

to prevent speedy disposal of these cases. The prominent reasons for delay in disposal of the cases related to MPs and MLAs are produced below:

- i.** Instead of establishing fast track courts dealing exclusively with the matters of MPs and MLAs in every district, the Government of Tamil Nadu has constituted two Special Courts in the cadre of Session judge and one additional Special Court in the cadre of Assistant Session Judge, for Chennai District. In addition to these Special Courts the Government has also designated Principle District and Session Court in every Session Division in the State of Tamil Nadu for the trial of session cases and cases under Special Acts involving elected MPs and MLAs. Besides this, the Government has also designated a Judicial Magistrate Court for each District in Tamil Nadu for the trial of magisterial cases involving elected MPs and MLAs. These Courts are dealing with other matters as well. It is frustrating the directions of this Hon'ble Court as the cases of MPs and MLAs are treated like other cases and no effective hearing is done. Therefore, it does not aide in granting speedy disposal of cases of MPs and MLAs. Thus, the State has intelligently over reached the directions issued by this Hon'ble Court to set up exclusive courts for trial of MPs and MLAs.

- ii.** The posts of judges are vacant in several courts where the cases of MPs or MLAs are pending. Therefore, these cases get adjourned on every date without any progress.
- iii.** There are several cases in which MPs and MLAs approach Hon'ble High Court or this Hon'ble Court in order to get stay on their matters. Although this Hon'ble Court has clearly stated that all the cases involving MPs and MLAs should be tried by Special Courts, the main argument for grant of stay in the Hon'ble High Court was that the accused were not elected Members of Parliament or Members of Legislative Assembly at the time of offence and at the time of registration of FIR. It is relevant note that contrary to these arguments, Thiru Balakrishna Reddy, former Minister of Government of Tamil Nadu was convicted by the Special Court in Chennai constituted for MPs and MLAs on 07.01.2019 in SC No. 505/2018 in spite of the fact that he was neither elected MP or MLA at the time of the offence for which he was convicted. Stay is granted despite observations of this Hon'ble Court in *Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation*, (2018) 16 SCC 299, against pendency of cases on account of stay being granted by courts. Matters cannot proceed till the stay orders are in force. This leads to inordinate delay in disposal of the matter. The relevant extract from the aforesaid judgment are as under:

*“36. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”*

- iv.** There are cases which are being delayed as the accused do not appear on the date of hearing. For instance there is a case filed under Prevention of

Corruption Act, 1988 against the MLA of Tirukovilur from DMK namely, K. Ponmudi along with his family members viz., his wife and mother-in-law, and friends in 2011. On each date of hearing one or the other family member seeks exemption from appearance, preventing progress of trial.

- v. Special court grants adjournments to the accused mechanically and has not issued warrant for any accused in any case so far out of the total 313 cases. This is the case in spite of very clear instructions from the Hon'ble High Court to dispose the cases within six months. The cases are not moving forward at all.
- vi. There are cases in which owing to the resources and contacts of political persons, service of summons on them is delayed. The matter gets adjourned unnecessarily till the service is complete.
- vii. Former ministers file petitions on a frivolous ground that there is no jurisdiction to try the case against them as they are no longer MPs or MLAs. Therefore, it is necessary to provide clear guidelines along with a strict timeline for adjudication of matters pending against MLAs and MPs.

For convenience of this Hon'ble Court, some cases pending against MPs and MLAs in the State of Tamil Nadu have been produced below:

S. No.	Name of the accused	Party	Court	Sections of law	Stage of case	Reason for delay



1.	ThiruMulai vendanEx MLA and Others	DMK	Special Principal District Court, Krishnagiri	Royakottai P.S. Cr. No. 148/2003 u/s 147, 148 and 157 of IPC and Section 3 of PPDL Act	Awaiting document from High Court	<b>Judge post vacant</b>
2	Ramachandran	CPI	Chief Magistrate, Salem	DCB Krishnagiri (Dt) Housor Town PS Cr. No. 614/1995 u/s 120B, 302, 218, 419 of IPC	Trial	<b>Stayed by High Court</b>
3	Thiru A Vijayakant. Ex-MLA	DMDK	Special Court I for Trial of Criminal Cases Related to MPs and MLAs, Chennai	500 of IPC CC No. 32/2012	Pending	<b>Stayed by this Hon'ble Court</b>
4	Aslam Basha Ex-MLA	Independent	Principal District Sessions Court, Vellore	Cr. No. 303/2015 u/s 147, 148, 152, 120B, 294(b), 506 and 109 of IPC u/s 4 of Prevention of Damage to Public Property Act (PPD)	Next date of hearing on 23.03.2020	<b>Stayed by High Court</b>

5	Dayanidhi Maran and 19 Others	DMK	Add. Spl. Court of Criminal Cases Related to MPs and MLAs	Cr. No. 45/18, u/s 143, 149 of IPC and 41(6) of City Police Act	Service not complete	<b>Summons not served on A1. Fresh summons to A1</b>
6	K. Ponmudi	DMK	Spl. Court of Criminal Cases Related to MPs and MLAs, PDJ Court, Villupuram	Cr. No. 04/2002 Spl. Case 02/19 u/s 13(2) r/w 13(1)(e) of Prevention of Corruption Act	Witness Summons Stage	<b>Non appearance of accused</b>

8. It is evident that an extraordinary situation is created wherein, the entire state machinery is being used to delay early disposal of trial. It is submitted that this is being done under active collaboration across parties like AIADMK, DMK, AMMK, DMDK etc. whose only intention is to delay the trial.

9. In view of the above, it has become necessary that the following directions are needed in order to ensure that all 313 cases registered against MPS and MLAs are disposed of at the earliest:

- i. Direct the Registrar General of the Hon'ble High Court of Judicature at Madras to:
  - a. ensure judges are appointed to Special Courts;

- b. monitor day to day progress of cases pending before Special Courts;
  - c. dispose of revisions and appeals preferred by accused on expedited basis
  - d. ensure that all the cases involving elected MP and MLAs be transferred to Special Courts and no heed should be given to the argument that they were not MPs or MLAs at the time of the offence or at the time of registration of FIR be transferred
- ii. Direct State of Tamil Nadu to establish exclusive Special Courts in every districts, exclusively for trial of cases involving MPs and MLAs and dispense with the trial of these cases in the designated Principle District and Session Courts in all Session Divisions in the State and also to provide adequate infrastructure to the Special Courts, within a period of 30 days

10. It is humbly submitted that in view of the reasons for delay which have been observed, this Hon'ble Court may pass a direction for filling up vacant posts of judges; to take action against the accused or anyone else who delays service of summons; and to pass strictures against orders granting stay on cases pending against MPs or MLAs.

11. That no adversarial relief is being sought *vide* present application. The present application is *bona fide* and in the interest of justice.

#### **PRAYER**

In view of the above, this Hon'ble Court may be pleased to:

- i. pass an order or direction to adjudicate the cases against MPs and MLAs within one year;
- ii. pass any other order or direction as this Hon'ble Court may deem fit.

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Advocate for the Petitioner

Date:

Place: