Imtiyaz Ahmad vs State Of U.P.& Ors on 1 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 642, 2012 (2) SCC 688, (2012) 2 CHANDCRIC 134, 2012 (1) SCC (CRI) 986, (2012) 2 JCR 289 (SC), 2012 (1) CALCRILR 470, 2012 (2) SCALE 81, 2012 (1) SCC 986, (2012) 111 ALLINDCAS 249 (SC), (2012) 1 CURCRIR 384, (2012) 1 DLT(CRL) 556, (2012) 2 ALLCRIR 1972, (2012) 2 RECCRIR 1, (2012) 2 SCALE 81, (2012) 76 ALLCRIC 915

Bench: T.S. Thakur, Asok Kumar Ganguly

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.254-262 OF 2012

(@ SLP(Crl.) Nos. 1581-1598/2009)

Imtiyaz Ahmad .....Appellant(s)

- Versus -

State of Uttar Pradesh & Ors. ....Respondent(s)

O R D E R

GANGULY, J.

Leave granted.

1. Heard learned counsel for the parties, including the learned Amicus Curiae.

2. In these appeals, this Court is concerned with a case where orders were passed by the High Court on several dates after the registration of FIR and on stay order being granted, investigation, and framing of charges or trial thereafter in the matter remained pending in the High Court for a long period of time. The stay order dated 9.4.03 and several orders dated 29.4.03, 30.4.03, 10.10.03, 7.5.04, 26.5.05, 19.9.06, 27.9.06, 6.10.06 & 18.12.08 of the High Court passed thereafter have been impugned in these appeals.

3. The questions which crop up in this case are of serious magnitude and transcend the immediate facts in the appeal and are of great national importance.

4. These appeals are directed against a batch of interlocutory orders passed by a learned Single Judge of Allahabad High Court in Criminal Writ Petition No. 1786/2003 pending before the learned Judge.

5. It appears that by order dated 9.4.2003, the learned Single Judge admitted the writ petition filed by respondent Nos. 2 and 3 herein and also stayed the order dated 7.12.2002 passed by the Additional Chief Judicial Magistrate, Gautam Budh Nagar whereby direction had been given for registration of case against the said respondents. Thereafter, the matter has been listed on various days before the High Court but the matter was getting adjourned. As on the date of filing of the SLP, the writ petition had been kept pending for six years.

6. The SLP came up for hearing before this Court on 8.1.2010. This Court was very greatly concerned about the manner in which criminal investigation and trial have been stayed by the High court and also being aware of the fact that similar cases are happening in several High Courts in India wanted a serious consideration of the issues and appointed Mr. Gopal Subramanium, Senior Advocate (at that time Solicitor General of India) to assist the Court as Amicus Curiae.

7. The Court also issued a direction dated 8.1.2010 to the Registrars General/Registrars of all the High Courts in the country to furnish a report containing statistics of cases pending in the respective High Courts in which the proceedings have been stayed at the stage of registration of FIR, investigation, framing of charges and/or trial in exercise of power under Article 226 of the Constitution or Sections 482 and/or 397 of the Code of Criminal Procedure. The report was to deal with the following types of cases:

a) murder,

b) rape,

c) kidnapping, and

d) dacoity.

8. In response to the above direction, most of the High Courts submitted their reports. Two High Courts, Sikkim and Himachal Pradesh, reported that they do not have any such pending criminal cases of the types mentioned above. The reports submitted by different High Courts disclosed that altogether there were large number of such cases pending. Such pendency of cases was analyzed by the Amicus Curiae with the valuable assistance of Dr. Pronab Sen, Secretary and Dr. G.C. Manna, Deputy Director in the Ministry of Statistics and Programme Implementation.

9. The important findings arrived at after the analysis of the data are as under:

a) Out of the four categories of cases, murder cases were found to be the most common type, accounting for 45% of all the cases.

b) About one-fourth of all the cases pending are for 2 to 4 years from the date of stay order.

Nearly 8% of the cases are, however, pending for 6 years or more.

c) In most of the cases in different High Courts, the duration for which the case is pending varies from 1 to 4 years. It is seen that 34 out of 201 cases in Patna High Court and 33 out of 653 cases in Allahabad High Court are pending for 8 years or more.

10. About total pendency, in the report dated 12.4.10 filed by the Amicus, the following position emerges. Table 1 below shows the total number of cases pending in each High Court and the percentage share of the total pendency.

TABLE 1: TOTAL PENDENCY High Court Number of criminal cases by type % share of High Court in total number of cases Murder Rape Kidnap Dacoity All ping (1) (2) (3) (5) (6) (7) Allahabad 144 100 341 68 653 28.6 Andhra 46 8 2 4 60 2.6 Pradesh Bihar 92 36 42 31 201 8.8 Bombay 14 5 4 6 29 1.3 Chhattisgarh 4 0 0 1 5 0.2 Delhi 4 5 2 0 11 0.5 Gauhati 6 5 2 8 21 0.9 Gujarat 56 9 34 16 115 5.0 J & K 4 4 6 0 14 0.6 Jharkhand 18 11 12 0 41 1.8 Karnataka 11 4 4 3 22 1.0 Kerala 12 2 5 1 20 0.9 Kolkata 431 209 21 48 709 31.1 Madhya 10 14 1 5 30 1.3 Pradesh Madras 0 1 2 0 3 0.1 Orissa 111 40 26 10 187 8.2 Punjab & 17 9 5 1 32 1.4 Haryana Rajasthan 23 11 17 5 56 2.5 Uttarakhand 18 19 24 10 71 3.1 All 1021 492 550 217 2280 100

11. It may be seen that the Hon'ble Calcutta High Court has the highest percentage share (31.1%) in total number of cases. It is followed by the Hon'ble High Courts of Allahabad (28.6%), Patna (8.8%) and Orissa (8.2%). Thus, these four High Courts taken together account for 76.9% of all the pendency.

12. Table 2 gives the distribution of all cases and the period for which the cases are pending in each High Court.

TABLE 2: DURATION OF PENDENCY

High Court	Duration for which pending							
	Nil	<6m	6m-1y	1-2y	2-4y	4-6y	6-8y	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Allahabad	1	38	126	19	158	90	17	33	653
Andhra Pradesh	0	16	16	17	11	0	0	0	60
Bihar	7	14	11	33	27	8	4	34	201
Bombay	0	1	6	8	6	3	2	3	29

Delhi	0	1	2	4	0	3	1	0	11
Gauhati	0	3	5	4	3	0	6	0	21
Gujarat	0	8	6	34	46	20	1	0	115
J & K	0	5	2	3	4	0	0	0	14
Jharkhand	0	7	4	2	9	3	9	7	41
Karnataka	9	4	3	5	0	1	0	0	22
Kerala	0	1	0	1	5	13	0	0	20
Kolkata	7	40	104	13	209	17	38	0	709
Madhya Pradesh	0	2	6	2	12	6	1	1	30
Orissa	0	9	37	52	60	18	4	7	187
Punjab & Haryana	0	10	9	4	6	1	1	1	32
Rajasthan	0	8	8	11	22	6	0	1	56
Uttarakhand	0	7	10	9	21	20	3	1	71
All	8	176	355	51	600	36	89	89	2280

13. The category wise distribution is as follows:

> TABLE 3: CATEGORYWISE DISTRIBUTION Type of Duration for which pending Case (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) Nil <6 6m- 1- 2- 4- 6- >8 All m 1y 2y 4y 6y 8y y Murder 25 65 132 18 30 211 43 54 1021 Rape 25 46 83 11 12 68 21 11 492 Kidnappin 16 51 120 15 11 67 12 12 550 Dacoity 21 14 20 66 48 23 13 12 217 All 87 17 355 51 60 369 89 89 2280

14. It is clear from the above that out of the four categories, murder cases account for nearly 45% of the total pendency. This share increases if only the oldest pending cases are considered.

Out of the 178 cases pending for 6 years or more, 97 are murder cases - i.e. a share of almost 55%.

15. In that report indications were also given about the frequency of listing of cases by different High Courts.

16. On the hypothesis that if a case is listed frequently, it indicated that the matter was being actively considered by the High court, data was also called for on the number of times the case was listed after the grant of the stay order.

17. The following table gives the average number of times a matter was listed for hearing after the grant of stay order.

High Court	Total number of cases	Average number of times the matter was listed per case
Allahabad	653	4.0
Andhra Pradesh	60	3.4
Bihar	201	21.7
Bombay	29	5.1

Chhattisgarh	5	4.3
Delhi	11	12.2
Gauhati	21	17.0
Gujarat	115	13.4
J & K	14	7.7
Jharkhand	41	3.5
Karnataka	22	5.0
Kerala	20	11.4
Kolkata	709	N/A
Madhya Pradesh	30	3.0
Madras	3	2.3
Orissa	187	5.8
Punjab & Haryana	32	8.8
Rajasthan	56	7.9
Uttarakhand	71	3.1

All 2280 6.1

18. However, the above analysis was not pursued any further, since there was no way of ascertaining which of the hearings were effective and which were non-effective. Hence, it could be misleading to draw any conclusions from this data.

19. On the basis of the aforesaid data it is clear that problems which the administration of justice faces today is of serious dimensions.

Pendency is merely a localized problem, in the sense that it affects some High Courts far more than others. As seen above, just four High Courts in this country amount for 76.9% of the pendency. This may well be because of various social, political and economic factors, which are beyond the scope of the current enquiry by this Court.

20. It is a matter of serious concern that 41% of the cases have been pending for 2-4 years, and 8% (approximately 1 out of every 12 cases) have been pending for more than six years.

21. After considering the first report by the Amicus, this Court passed the following order on 3.5.2010:-

> "The suggestions given by the Solicitor General have been considered. But before passing any order, we deem it proper to request learned counsel representing Allahabad High Court to place before the Court total number of cases in which power under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure has been exercised and the proceedings of the criminal case have been stayed at the stage of investigation or trial."

22. Pursuant to the above order, the Allahabad High Court furnished information of a total of 10,541 cases where power under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure has been exercised and the proceedings of the criminal case have been stayed at the stage of investigation or trial. Pursuant to a request of the Amicus Curiae, the Allahabad High Court also furnished the above data in electronic form.

23. The data was then analyzed by the Amicus Curiae with the help of Dr. T.C.A. Anant (the current Secretary) and Dr. G.C. Manna, Deputy Director General in the Ministry of Statistics and Programme Implementation. Then a second report was prepared and placed for the consideration of this Court.

24. Important findings from the second report are:-

"Out of the data for 10,541 cases received, data for 10,527 cases could be meaningfully analysed (as the rest had some missing elements). The important findings in respect of these are:

(a) As high as 9% of the cases have completed-more than twenty years since the date of stay order.

(b) Roughly 21 % of the cases have completed more than ten years.

(c) Average pendency per case (counted from the date of stay order till July 26, 2010) works out to be around 7.4 years.

(d) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this category. The next two prominent stages are found to be "appearance" and "summons", with each comprising 19% of the total number of cases. (If "appearance" and "summons" are considered interchangeable, then they would collectively account for the maximum of stay orders."

25. Table below gives the duration for which cases have been pending since the date of the stay order:

No. of years Number of Percentage of cases passed cases 0 763 7.2 1 1250 11.9 2 1272 12.1 3 1024 9.7 4-5 2003 19.0 6-7 1125 10.7 8-10 920 8.7 11-15 577 5.5 16-20 648 6.2 21-25 631 6.0 More than 25 314 3.0 All 10527 100.0

26. A perusal of that information reveals that shockingly thirty-two cases have been pending for thirty years or more.

27. The data was also analyzed to ascertain the stage of the proceedings at which stay order was granted. Table below may be seen:-

Stage at which Number of cases Percentage of cases proceeding stayed Chargesheet 3365 32.0 Appearance 2016 19.2 Summons 1951 18.5 "Further 563 5.3 proceedings stayed"

Before charge	380	3.6
Trial	330	3.1
Evidence	323	3.1
Complaints	315	3.0

Cognizance	245	2.3
Disposal	237	2.3
Issue of notice	178	1.7
Others	624	5.9
All	10527	100.0

28. As stated in the First Report and Second Report, the fact-finding exercise directed by this court has revealed a problem of serious concern. It is respectfully submitted that it is simply unacceptable for a case to remain pending for three decades under any circumstances, and more so when the pendency is a consequence of the stay proceedings granted by the High Court.

29. Thereafter, vide Order dated 26.08.2010, this Court was of the view that the existing infrastructure in the High Court's and District Court's must be improved and had directed that a comprehensive exercise should be undertaken to prepare the system in which all the cases instituted in the Court are listed for hearing without undue delay and some arrangement be made for monitoring of the listing and disposal of the cases. As a pilot project, the system is to be first implemented in the Allahabad High Court.

30. Thereafter, meetings were held between the officers of NIC, the Ministry of Statistics, the Allahabad High Court and the Amicus Curiae and efforts were made to develop the comprehensive system that the Court has directed. Another Report was filed by the Amicus Curiae setting out the steps taken by the Allahabad High Court, the Central Government and also certain suggestions given by Dr. G.C. Manna, Director General, Ministry of Statistics, who had been requested to visit the High Court to interact with the officials there to see how a better system of listing and tracking cases could be developed.

31. Thereafter, vide Orders dated 14.07.2011 and 17.08.2011, this Court again called for status reports from all the High Courts as to what steps had been taken specifically in the context of this case, in order to expeditiously dispose of matters where proceedings are stayed at the stage of registration of FIR, investigation,

framing of charges or trial.

Status reports were furnished by some of the High Courts and reports from other High Courts were awaited.

32. Then, vide Order dated 29.09.2011, this Court observed that considering the larger issues which are involved in this case which virtually have a direct impact on administration of justice, it was fit and proper to implead the Central Government in this proceeding.

33. It is submitted that the issues being considered in this case have far reaching implications for maintaining of rule of law.

Where investigation/trial is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation/trial may not be very fruitful for the simple reason, that evidence may no longer be available. Witnesses may not be able to recall the events properly, and some may have moved away or even died. Even the parties to the litigation may not survive.

Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21.

Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.

34. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable (See United Nations Development Programme, Access to Justice -

Practice Note (2004)].

35. The present case discloses the need to reiterate that 'Access to Justice' is vital for the Rule of Law, which by implication includes the right of access to an Independent Judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of Rule of Law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of the citizens' rights under the Constitution, in particular under Article 21.

36. In a very important address to the Virginia Bar Association in 1908, William H. Taft observed that one reason for delay in the lower courts is the disposition of judges to wait an undue length of

time in the writing of their opinions or judgments. [See William H. Taft, The Delays of the Law, Yale Law Journal. Vo1.18. No.1 (Nov., 1908), pp.28-39)]. The Judge should deliver the judgment immediately upon the close of the argument. It is almost of as much importance that the court of first instance should decide promptly as that it should decide right. It should be noted that everything which tends to prolong or delay litigation between individuals, or between individuals and State or Corporation, is a great advantage for that litigant who has the longer purse. The man whose rights are involved in the decision of the legal proceeding is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him.

37. Dispatch in the decision making process by Court is one of the great expectations of the common man from the judiciary. A sense of confidence in the Courts is essential to maintain a fabric of order and liberty for a free people. Delay in disposal of cases would destroy that confidence and do incalculable damage to the society; that people would come to believe that inefficiency and delay will drain even a just judgment of its value; that people who had long been exploited in the small transactions of daily life come to believe that courts cannot vindicate their legal rights against fraud and overreaching; that people would come to believe that the law - in the larger sense cannot fulfil its primary function to protect them and their families in their homes, at their work place and on the public streets. [See Belekar Memorial Lecture Series, organized by High Court Bar Association, Nagpur. Lecture delivered on August 31, 2002]

38. Merely widening the access to justice is not enough to secure redress to the weaker sections of the community. Post Independence, it was evident that litigation in India was getting costlier and there was agonizing delay in the process. After the adoption of the Constitution and creation of a Welfare State, the urgency of some structural changes in the justice delivery system was obviously a major requirement. In the 14th Report of the Law Commission under the Chairmanship of the first Attorney General for India, Shri M.C. Setalvad, it was observed as under:-

> "In so far as a person is unable to obtain access to a court of law for having his wrongs redressed.... Justice becomes unequal and laws which are meant for his protection fail in their purpose."

39. In a very important discourse Roscoe Pound argued that by responding to the doctrine of social justice, the concept of justice has advanced through various stages. [See Roscoe Pound, Social Justice and Legal Justice (Address delivered to the Allegheny County Bar Association, April 5, 1912]. At the first stage justice was equated with dispute settlement. At the second stage justice was equated with maintenance of harmony and order.

In the third stage, justice was equated with individual freedom. Pound argued that a fourth stage had developed in society, but had not yet been fully reflected in the courts, and that was what Pound called 'social justice'. That is the ideal form of justice where the needs of the people are satisfied, apart from ensuring that they have freedom.

40. Despite complicated social realities, it is submitted that Rule of Law, independence of the judiciary and access to justice are conceptually interwoven. All the three bring to bear upon the quality of aspirations which are guaranteed under our Constitution. In order to fulfil the aspiration, it is important that the system must be a successful legal and judicial system. This would involve improvement of better techniques to manage courts more efficiently, cutting down costs and duration of proceedings and to ensure that there is no corruption in the judiciary and the establishment of the judiciary and would also require regular judicial training and updating.

41. The memorable words of Lord Devlin (as quoted by D.M. Dharmadhikari, J.) are pertinent to note:

> "... The prestige of the judiciary and their reputation for stark impartiality is not at the disposal of any government; it is an asset that belongs to the whole nation ... "

[See Justice D.M. Dharmadhikari, Nature of Judicial Process, (2002) 6 SCC (Jour) 1.

42. Under the principle of the Rule of Law, adequate protection of the law must be given to all persons and to give meaning to it, there must exist an unimpeded right of access to justice. In the 'Words of Lord Bingham:

> "It would seem to be an obvious implication of the principle that everyone is bound by and entitled to the protection of law that people should be able, in the last resort, to go to court to have their civil rights and claims determined. An unenforceable right or claim is a thing of little value to anyone."

[See Tom Bingham, The Rule of Law, p. 85]

43. The right of access to justice has been recognised as one of the fundamental and basic human rights in various international covenants and charters. [See Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR)]

44. The right of access to justice is also recognised under Article 67 of the Statute of the International Criminal Court (Rome Statute).

45. In the context of the European Union, Article 47 of the European Charter on Fundamental Rights provides for the right to an effective remedy and to fair trial. With respect to the Council of Europe, the European Convention on Human Rights and Fundamental Freedoms, Article 6 significantly protects this right to access justice.

46. The European Court of Human Rights has held that a broader interpretation must be given to Article 6(1) of the ECHR laying emphasis on 'right to a fair administration of justice' in the case of Delcourt v. Belgium.

> "...In a democratic society within the meaning of the Convention, the right to a fair administration of justice hold such a prominent place that a restrictive interpretation of Article 6(1) would not correspond to the aim and purpose of that provision."

[See [1970] ECHR 1.]

47. Article 8 of the Universal Declaration of Human Rights provides that:

> "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

48. Article 16 of the Principles of Freedom from Arbitrary Arrest and Detention provides that:

> "To ensure that no person shall be denied the possibility of obtaining provisional release on account of lack of means, other forms of provisional release than upon financial security shall be provided."

49. The principle of 'Access to Justice or Courts' is recognized as a right in South Africa's Constitution as well:

> "Access to Courts.
>
> 34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

50. The learned Amicus urged that having regard to the paramount importance of the right to access, the Court which he argues is a basic fundamental right specially the Central Government and the State Governments have a duty to ensure speedy disposal of cases for proper maintenance of rule of law and for sustaining peoples' faith in the judicial system. He further argued that with the present infrastructure it is not possible for Courts, whether it is District Courts or the State High Courts or this Court to effectively dispose of cases by just and fair orders within a reasonable timeframe. The learned Amicus also urged that the problem is huge and the considerations are momentous. To understand the magnitude of the problem, the Government must appoint a permanent commission to make continuous recommendation on measures which are necessary to streamline the existing justice delivery system. In support of his submission, he referred to the Report of Lord Woolf submitted to Lord Chancellor in England:

"...It will not only assist in streamlining and improving our existing systems and process; it is also likely, in due course, itself to be a catalyst for radical change as well..."

[Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (Lord Woolf's Report), 1996, Chapter 21, para 1]

51. The learned Amicus submitted that this huge pendency of cases operates as a burden on the mindset of a Judge. He submitted rightly that the inner charter of the judge is constantly under a pressure to somehow decide the case and the quality of justice suffers. Therefore, according to him, it is the constitutional duty of both the Central Government and the State Government to provide adequate infrastructure to the judiciary and only an independent commission which functions on a permanent basis can assess the necessity of the required infrastructure and make recommendations to the Government for providing necessary steps which the Government should take to make the Constitutional promise of justice a reality.

The learned Amicus developed his argument by referring to various decisions of this Court and also various provisions of the Constitution. He further submitted that the plea of the Government that in view of financial crunch it cannot provide the necessary infrastructure cannot be countenanced by this Court and in support of the said submission he referred to the decision of this Court in the case of R. Ramachandra Rav v.

State of Karnataka, reported in (2002) 4 SCC

578. The relevant observations made in the said judgment are as follows:-

> "...The law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty or administrative inability..."

52. As the Central Government has been impleaded in this proceeding it was represented by Mr. Harin P. Raval, the learned ASG.

53. The learned ASG very fairly submitted that the questions debated in this case, by and large, are not adversarial. The learned ASG submitted that the Government also accepts that right of access to Court is a fundamental and constitutional right. The learned ASG also accepted that if right to access justice is denied to the citizens then most of the rights given under the Constitution virtually become a rope of sand. The learned ASG submitted that the Government is aware of the importance of these rights and are taking several steps to make these rights vibrant. In the counter affidavit, which has been filed by the Under Secretary, Ministry of Law and Justice dated 9.1.2012 several steps which have been taken by the Government to ensure speedy justice and to reduce delay are as follows:-

> I. Appointment of Court Managers in High Courts and Sub-ordinate Courts.
>
> II. Vision Statement and Action Plan adopted by the National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays.
>
> III. To prepare National Arrear Grid IV. National Mission for Justice Delivery and Legal Reforms.
>
> V. National and State Legal Service Authorities constituted under Legal Service Authorities Act, 1987.

VI. National Court Management System (as proposed by Hon'ble Chief Justice of India).

54. The learned ASG referred to the agenda notes and the minutes of the meeting of the Advisory Council of the National Commission for Justice Delivery and Legal Reforms. He submitted that the National Mission spanning from 2011 to 2016 would focus on two major goals envisaged in the Vision document, namely, (i) increasing access by reducing delays and arrears in the system, and (ii) enhancing accountability through structural changes and by setting performance standards and capacities.

55. It was also pointed out that the tentative action plan covers five strategic initiatives and one of them is improving infrastructure of the District and Subordinate Courts and creation of special and additional courts like morning and evening courts etc. He referred to various pages of the Meeting of the Advisory Council of the National Mission held on 18.10.2011 in Vigyan Bhawan, New Delhi to show that the Government is aware of the problem and is seeking to address the same. However, in the course of his arguments the learned ASG took the leave of this Court and filed another affidavit dated 18.1.2012 by Dr. S.S. Chahar, Joint Secretary and Legal Advisor, Ministry of Law and Justice.

56. By filing the said affidavit the learned ASG wanted to urge before this Court that even though the Government is aware of the urgency of the problem and the immediate necessity of addressing it, Government is not willing to accept the suggestion of the learned Amicus for setting-up of a permanent commission for the purposes suggested by the learned Amicus.

57. The learned ASG on the other hand submitted in view of the stand taken by the Central Government in its affidavit dated 18.1.2012 that the existing terms of reference of the 19th Law Commission are wide enough to include within its ambit the question of setting up additional courts for the purpose of tackling the arrears so that access to justice is ensured.

In this connection, he referred to the terms of reference of the 19th Law Commission. The said terms of reference are as follows:-

"A. Review/Repeal of obsolete laws:

i. To identify laws which are no longer needed or relevant and can be immediately repealed.

ii. To identify laws which are in harmony with the existing climate of economic liberalization which need no change. iii. To identify laws which require changes or amendments and to make suggestions for their amendment.

iv. To consider in a wider perspective the suggestions for revision/amendment given by Expert Groups in various Ministries/Departments with a view to coordinating and harmonizing them. v. To consider references made to it by Ministries/Departments in respect of legislation having bearing on the working of more than one Ministry/Department. vi. To suggest suitable measures for quick redressal of citizens grievances, in the field of law.

B. Law and Poverty i. To examine the Law which affect the poor and carry out post-audit for socio- economic legislation.

ii. To take all such measures as may be necessary to harness law and the legal process in the service of the poor. C. To keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure: - i. Elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decisions should be just and fair.

ii. Simplification of procedure to reduce and eliminate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice. iii. Improvement of standards of all concerned with the administration of justice.

D. To examine the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislation as might be necessary to implement the Directive Principles and to attain the objective set out in the Preamble to the Constitution.

E. To examine the existing laws with a view to promoting gender equality and suggesting amendments thereto.

F. To revise the Central Acts of General Importance so as to simplify them and to remove anomalies, ambiguities and inequities.

G. To recommend to the Government measure for bringing the statute book up-to-date by repealing obsolete laws and enactments or parts thereof which have outlived their utility.

H. To consider and to convey to the Government its views on any subject relating to law and judicial administration that may be referred to it by the Government through Ministry of Law and Justice (Department of Legal Affairs).

I. To consider the requests for providing research to any foreign countries as may be referred to it by the Government through Ministry of Law and Justice (Department of Legal Affairs).

J. To examine the impact of globalization on food security, unemployment and recommend measures for the protection of the interests of the marginalized.

The Commission shall devote, its time bound attention to all issues relating to item (A) of the terms of reference as indicated above, viz., review/repeal of obsolete laws and shall make its recommendations to Government for repeal of obsolete laws and for appropriate amendments in others as may be found necessary ON TOP PRIORITY basis. The Commission shall submit its reports in Hindi and English with sufficient number of copies for being placed on Tables of both houses of Parliament. The Law Commission shall also make its reports available through website or otherwise as soon as reports are submitted to the Government. Various Law Commissions have given about 234 Reports so far. Many of them are made available on the website of Law Commission. Since many of the Reports are voluminous it will be difficult for researchers to read entire Report online. To facilitate the researchers to choose the topics of their area and to create awareness amongst Judges, Lawyers, Law Teachers and Students on the various recommendations of the Law Commission, a brief summary of all the Reports of the Law Commission shall be made available by the Law Commission, online."

58. The learned ASG submitted that in view of Clause `H' of the terms of reference of the 19th Law Commission, the present Law Commission can go into the question of making a proper research and a scientific and empirical study to assess the requirement of setting up additional courts and making available additional infrastructures for ensuring free access to court and speedier disposal of cases.

The learned ASG submitted that the pendency of cases cannot be tackled by only setting up additional courts. Various other factors are also involved including the cooperation of the members of the Bar, the quality of legal education, policy of legislation, recruitment of quality manpower and such other issues which the Law Commission should urgently address and make recommendations on.

59. The learned ASG also submitted that having regard to the provision of Article 235 of the Constitution the control over district and subordinate courts rests with the respective High Courts in each State. In assessing the requirement of setting up of additional courts and creating additional benches, the opinion of the High Court and the State Government have to be ascertained including the question of budget allocation to each State Government. The learned ASG also submitted that since the Government is keenly interested to address these problems it is open to any suggestion. It was submitted that any direction from this Court will help the Government and the Law Commission to tackle this problem in a very effective way.

60. The Court, upon a detailed and very anxious consideration of the aforesaid issues and specially huge pendency of arrears in different High Courts and considering the stand of the Central Government in its affidavit dated 18.1.2012 is giving the following directions.

I. Certain directions are given to the High Courts for better maintenance of the Rule of Law and better administration of justice:

> While analyzing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:
>
> (i) such an extraordinary power has to be exercised with due caution and circumspection.
>
> (ii) Once such a power is exercised, High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.
>
> (iii) High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued.

61. It is true that this Court has no power of superintendence over High Court as the High Court has over District Courts under Article 227 of the Constitution. Like this Court, High Court is equally a Superior Court of Record with plenary jurisdiction. Under our Constitution High Court is not a Court subordinate to this Court. This Court, however, enjoys appellate powers over High Court as also some other incidental powers. But as the last court and in exercise of this Court's power to do complete justice which includes within it the power to improve the administration of justice in public interest, this Court gives the aforesaid guidelines for sustaining common man's faith in the rule of law and the justice delivery system, both being inextricably linked.

II. Certain directions are also given to the Law Commission which are as follows:

> a) Since the Law Commission itself is seized with the problem and is making investigation having regard to its terms of reference specially clause `H', thereof, this Court requests the Law Commission, which is headed by a distinguished retired judge of this Court, to undertake an enquiry and submit its recommendation in relation to the following matters:-
>
> I. Keeping in view that timely justice is an important facet to access to justice, the immediate measures that need to be taken by way of creation of additional courts and other allied matters (including a rational and scientific definition of "arrears" and delay, of which continued notice needs to be taken), to help in elimination of delays, speedy clearance of arrears and reduction in costs. It is trite to add that the

qualitative component of justice must not be lowered or compromised; and II. Specific recommendations whenever considered necessary on the above aspects in relation to each State be made as a product of consultative processes involving the High Courts and other stake holders, including the Bar.

b) In doing so, the Commission may take such assistance from the Central Government and the State Governments as it thinks fit and proper.

c) Accordingly, it is directed that on the Commission's request for assistance both the Central Government and the State Governments shall render all possible assistance to the Commission to enable it to discharge its functions, as directed by this Court in its order. The Commission shall at the discretion of its Chairman be free to co-opt purposes of the enquiry to be undertaken by it. Such legal & technical, experts as may be considered necessary by it for an effective and early completion of the assignment hereby made.

d) The Commission is requested to submit its report within six months from the date of this order.

e) Such recommendations be sent to the Registrar General of this Court in sealed covers.

62. The matter may appear before the appropriate Bench after being nominated by the Hon'ble the Chief Justice on the 7th August, 2012 for further consideration by this Court of the recommendations by the Law Commission and if necessary for further directions to be passed in these appeals.

.....J. (ASOK KUMAR GANGULY) .....J. New Delhi (T.S. THAKUR) February 1, 2012 REPORTABLE- 62/2012 SECTION-II SUPREME COURT OF INDIA No. F. 3/Ed. B. J./17/2012 New Delhi.

Dated: 03.03.2012 CORRIGENDUM IN CRIMINAL APPEAL NO(s). 254-262 of 2012 (Judgment dated FEBRUARY 01, 2012) Imtiyaz Ahamd ....Appellant Versus State of Uttar Pradesh & Ors. ....Respondents PARA FOR READ 34 inequitable equitable BRANCH OFFICER EDITORIAL BRANCH ***