GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA

Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities

Report No.239

Submitted to the Supreme Court of India in W P (C) NO. 341/2004,
Virender Kumar Ohri Vs. Union of India & Others

MARCH 2012

WRIT PETITION (C) NO. 341/2004
VIRENDER KUMAR OHRI VS. UNION OF INDIA & OTHERS
Report of Law Commission of India
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1. **Introductory remarks**

1.1 Inordinate delays in the investigation and prosecution of criminal cases involving serious offences and in the trial of such cases in the Courts is a blot on justice system. The objective of penal law and the societal interest in setting the criminal law in motion against the offenders with reasonable expedition is thereby frustrated. The adverse effect of delay on the society at large is immeasurable. The fear of law and the faith in the criminal justice system is eroded irretrievably.

1.2 The case referred to in this Writ Petition is an extreme example of the slow-motion of criminal justice process and the extent to which it can be subverted. It unfolds the apparent apathy on the part of all those concerned with administration of criminal justice. The fact that influential political personalities and their henchmen are involved in this case presents an added dimension to the issue and raises questions on the efficacy of the existing systems and practices to counter the moves of such influential persons facing serious criminal charges.

1.3 Public interest demands that the criminal cases especially those related to serious crimes are concluded within a reasonable time so that those guilty are punished. Further, from the point of view of accused also, the right to speedy trial is a fundamental right. People get frustrated in the system if at every stage there is delay and the process of justice is not allowed to take its normal course, more so, when deliberate attempts are made to subvert and delay the process. Further, with the long passage of time, whatever evidence is there, it will vanish or eclipse. Oral evidence which in most of the cases is vital to the prosecution, will take a devious or distorted course. Hostile witnesses and witnesses with faded memories will be writ large in the system, with the long passage of time. Heavy reliance on oral evidence has telling drawbacks. Lack of expertise and sustained effort in investigation and non-utilization of

scientific methods of investigation is resulting in low rate of convictions and even implication of innocent accused persons.

1.4 Before the specifics of the problem are discussed, it would be useful to refer to certain data touching on the general scenario of criminal justice in the country with special reference to the cases pending in the District and Subordinate (D&S) courts.

1.5 The total number of criminal cases pending before D&S Courts is about 1.90 crore (190 lakh) cases, about 82¼ lakhs civil cases are pending. That means, the number of criminal cases is about 2 ½ times more than civil cases. The largest number of criminal cases are from the States of UP, Maharashtra, West Bengal, Gujarat, Bihar, Rajasthan and Odisha.[1] In 12 States, out of which there are eight major States, the disposals are less than the institutions. However, on the whole, the institutions and disposals are almost matching in the year 2010. Out of the pending criminal cases, about 25% of the cases are pending for five years and more in many States.

1.6 At the end of the year 2010, 72.58 lakh cognizable criminal cases under IPC were pending trial[2] and 48.54 lakh cognizable criminal cases under Special and Local Laws were pending trial.[3] Trials were concluded in about 55.88 lakh cases (both IPC & SLL cases) during that year.

1.7 According to the data compiled by National Crime Records Bureau (NCRB), in its Publication relating to the year 2010, over 1.78 crore **cognizable** criminal cases, including cases registered under IPC and special/local laws (SLL), were pending for trial at the beginning of 2010 in various criminal courts.[4] 67.51 lakh cognizable crimes comprising 22.25 lakh

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1 Data received from High Courts.

2 Table 4.9, Crimes in India, 2010 Statistics, published by National Crime Records Bureau, Ministry of Home Affairs, Government of India.

3 Ibid, Table 4.13

4 Ibid, Tales 4.9 and 4.13

IPC Crimes and 45.26 lakh crimes under SLL were reported in 2010.[5] The figures relating to cases pending trial do not apparently tally with the statistics shown in 'Court News' published by Supreme Court and the data furnished by the High Courts to Law Commission of India and this aspect is being rechecked.

1.8 6330 cases have been pending investigation from previous year under the Prevention of Corruption Act (PoCA) & related sections of the IPC in 2010 and 3822 cases were registered during the year. Therefore, a total of 10152 cases were pending investigation in 2010 out of which chargesheet was filed for 2929 cases.[6] In relation to these cases, 4578 persons were chargesheeted. Trial was completed for 3379 persons, out of whom 891 persons were convicted. Hence, the conviction rate vis-à-vis persons accused under PoCA in 2009 is 26.4%.[7]

1.9 Conviction rate in 2010 for violent crimes such as attempt to commit murder, rape, riots etc., is 27.7%. Conviction rate for crimes against women (IPC and SLL cases) for 2010 is 27.8%.[8] Conviction rate for all cognizable cases under IPC is 40.7%.[9]

1.10 In the State of Jharkhand (which needs special mention as specific reference has been made to that State in this W.P.), about 2.41 lakh criminal cases are pending. The total pendency of Civil and Crl. Cases in that State is about 2.93 lakh. Out of the Criminal cases, 60,500 including sessions cases are **more** than five years old.[10] There were as many as 192 vacancies in District & Subordinate Judiciary in the State of Jharkhand as on 31ST December, 2010.

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5 Ibid, Figures At A Glance - 2010

6 Ibid, Table 9.1

7 Ibid, Table 9.2

8 Ibid, Figures At A Glance - 2010

9 Ibid, Table 4.11

10 Data received from High Court of Jharkhand

1.11 Year to year, the trend of increase in pendency of criminal cases including old cases is noticed except in a few States.

1.12 The total number of Jails (upto 2009) is 1374 and the total capacity of all jails in India is 3,07,052. However, the total number of inmates as on 31.12.2009 are 3,76,969. This shows that the number of jail inmates far exceeds the capacity of the jails in India. Out of them, 2,50,204 inmates representing 66.4% of the jail population are undertrial prisoners. Among them, the highest percentage (20%) of undertrials were charged with murder. 2422 (1%) undertrials were detained in jails for more than 5 years at the end of the year 2009.[11]

2. Causes For Delay – An Overview

2.1 The causes for delay in investigation and slip-shod investigation need to be taken stock of first in order to appreciate the problem in the proper perspective and to devise ways and means of checking the malady. Though the judiciary is not responsible for many delays that occur, in the public perception, it is the judiciary that is mainly responsible. Judiciary is mostly blamed without appreciating the real reasons. The judiciary, on its part, remains silent and refrains from conveying to the public that certain delays are beyond its control. This being the ground reality, what the judiciary is expected to do, is to introspect on the delays attributable to it and to vigorously undertake such measures, as are essential, to put its house in order. It is in this background that some essential remedial measures to be adopted by the judiciary are highlighted and they have direct or indirect bearing on the prosecution and trial of influential public men.

2.2 The causes for delay before the case reaches the Court for trial

1. Apathy and inaction on the part of the police in registering the FIRs and taking up the investigation in right earnest for various reasons. (This is so inspite of Police Manuals emphasizing the need for speedy and prompt investigation.)

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11 Snapshots – 2009, Prison Statistics India 2009, National Crime Records Bureau, Ministry of Home Affairs, Government of India

2. Police are either hesitant to proceed with the investigation against important/influential persons or they are under pressure not to act swiftly especially if the person accused is in power or an active member of the ruling party. They adopt a pusillanimous attitude when the accused are such persons.
3. Corruption at Police Station level is affecting the timely and qualitative investigation. Further, the Police Stations are understaffed and the police personnel lack motivation to act without fear or favour.
4. When the FIR is not registered within a reasonable time or the pace of investigation is tardy, there is no internal mechanism to check this effectively. Even in States where Addl. SPs are posted in every District to be mainly in charge of crimes (as distinct from general law and order duties) the situation has not improved, except marginally.
5. There is no periodical exercise to upgrade the skills of investigation. There is no intelligence network worth the name to get the inputs of crime and corruption and to take up preventive measures.
6. Sufficient priority is not given for investigation of crimes. The diversion of personnel from the Police Stations for various relatively unimportant duties such as 'Bandobust' is a common phenomenon. In most of the States, the existing police force attached to police stations is utterly inadequate and even the sanctioned strength always remains in deficit.

7. Sanctions for prosecution are unduly delayed by the Governments. These reasons are not peculiar to cases of public men – they are all problems surrounding the Criminal Justice system as a whole.

2.3 **Quality of investigation and documentation**:

(i)Police are quite often handicapped in undertaking effective investigation for want of modern gadgets such as cameras, video equipment etc. Forensic science laboratories are scarce and even at the district level, there is no lab which can render timely assistance to the investigating Police. Further, it is common knowledge that there is dearth of forensic and cyber experts in police departments of various States.

The result is that Police heavily lean towards oral evidence, instead of concentrating on scientific and circumstantial evidence.

(ii) Sufficient care and effort is not devoted for examining and recording the statements of witnesses. Further, promptness in this regard is found to be wanting.

(iii) The statements/FIRs/reports recorded are not fed to the computer immediately either because there is no computer network or there is no personnel trained in the job or for want of specific instructions.

(iv) Sufficient care and time is not bestowed in drafting the final reports/charge- sheets. Defective charge-sheets without narration of all relevant facts and charge-sheets unaccompanied by annexures are reported to be very common and tend to delay the proceedings. This important document which is normally prepared by a 'Writer' at the Police Station, is not carefully scrutinized by the Station House Officer. The 'Writer' posted at heavy Police Stations is overworked and can hardly spare the needed time.

(v) The photographs of accused (not to speak of witnesses) are not affixed to the charge-sheets/arrest Memos etc. nor even the identification marks are noted, making it difficult to identify the accused in the course of trial or to trace the absconding accused.

2.4 **Causes for delay in the progress of Crl. cases in trial Courts**

1) Absence of some or all the accused or non-production of undertrial prisoners at the stage of framing of charges and during trial. Earnest efforts are not being made by the Police in apprehending and producing the absconding accused. Execution of warrants has become the least priority for the police who have their own reasons – genuine as well as artificial. Where there are large number of accused, the delays on this

account have become a routine feature. If the accused are residing outside the District or the State, it compounds the problem further.

2) Police fail to ensure that prosecution witnesses turn up in time and quite often, even I.Os are defaulters. Trial cases are adjourned quite often for non-attendance of official witnesses.

3) One or the other advocate appearing for the accused seeking adjournments without adequate justification mainly to delay the trial or to give handle to the accused party to win over the witnesses. The heavy workload in the courts is taken advantage of by the advocates to press for adjournments. The witnesses are often constrained to leave the court without being examined. Sometimes, the Prosecution also seeks adjournment without prior notice to the advocate for the accused.

4) Lack of proper witness protection measures and the Court failing to act promptly in cases of complaints of harassment/inducement of witnesses.

5) Trial Judges not putting in place effective case management measures such as fixing up proper time-schedules and ensuring continuity in trial and dealing with the advocates with firmness and tact. Further, there is a tendency on the part of some of the Judges to be complacent, once they reach the prescribed number of units (i.e. required number of disposals per month).

6) Judges trying serious offences under the special Acts such as PC Act, NDPS Act, Economic offences being transferred (even when there are no specific complaints) before they complete their three year term.

7) Trial Judges not effectively availing of certain provisions of Cr. PC viz, Sections 293, 294 and 296. Section 299 (recording of evidence in absence of accused) being resorted to belatedly. So also delays are noticed in issuing proclamation orders against absconding accused.

8) Inadequate number of Courts especially in some major States.

9) Inadequate staff strength and deficient recruitment process.

10) Absence of effective mechanism at the High Court level to identify old matters especially Session cases and to take necessary remedial measures on regular basis.

11) District Judges not bringing to the notice of the High Court extraordinary delays being caused in specific cases while furnishing monthly/quarterly statements to the High Court.

12) Trials are often held up on account of pendency of quash proceedings in the High Courts after the charges are framed. In the recent judgment of Supreme Court in *Imtiyaz Ahmad's Case* [2012(2)SCALE 81], this problem has been dealt with and appropriate directions given.

2.5 Public Prosecutors:

(i) Vacancies in the offices of PP/APP resulting in one PP/APP shuttling from one Court to another thereby causing dislocation of Court work. There is no effective mechanism to oversee the functioning of Public Prosecutor. The recruitment process is either deficient or politically manipulated. The provision in Section 24(4) of Cr.P.C. which requires the District Magistrate to prepare a panel of names fit to be appointed as PPs/Addl.PPs for the district in consultation with the Sessions Judge, has been deleted or amended by many States. It is the sole prerogative of State Government to appoint PPs and Addl.PPs of their choice in many States.

(ii) Though the Cr.P.C. enjoins the constitution of Directorate of Prosecution and normally a Director of the rank of District Judge is appointed as Director, he is required to function under the administrative control of the Home Secretary vide Section 25A(3). Home Secretary hardly evinces any interest in matters related to Directorate of Prosecution. The Director and Deputy Director have no functional independence and they can only exercise peripheral supervision over the PPs/APPs.

(iii) Lack of coordination between the Police and Public Prosecutor. The assistance of concerned Police Officers is seldom available to Public Prosecutors. Prosecutors often feel helpless.

2.6 The principal causes of low rate of conviction are:

1. Inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery;
2. Police stations understaffed and manned by inadequately trained Police personnel; lack of trained and efficient prosecutors.;
3. Inordinate delay in disposal of cases by Courts resulting in witnesses not being available or changing the version;
4. Adducing fabricated evidence.

2.7 **Questions broadly**

(i) Should there be special monitoring mechanism at pre-trial and trial stages in respect of cases involving influential public men ?

(ii) Is it desirable and practicable to define or give a long list of such influential persons ? Should it not be left to the Police Officer or the Court concerned or the supervisory authority to identify cases of such persons and take necessary measures?

(iii) What steps are to be suggested to avoid delays and to ensure unhindered investigation and trial? How the monitoring mechanism has to be evolved? What role should the District Judges and High Courts play in this regard as well as in the clearance of old cases?

3. **Influential persons in public life – illustrative list.**

The question whether the term 'influential person in public life' needs to be defined has engaged the attention of the Law Commission. The Commission feels that such definition is not feasible and it does not serve any purpose. The influential persons are not merely those who are holding or who have held public offices; even their henchmen and close relations, the rich and powerful and men with muscle power having links with one or the other political party are quite influential in their own way and they have the potential to create stumbling blocks for smooth investigation and effective trial. Moreover, it is not desirable to give too much of an expansive meaning to this term so as to

include elected representatives at the Panchayat level or all the office-bearers of various political parties. To specify with precision the term 'influential person in public life' is a complex task. It is a wide and nebulous term. The whole object of specifying influential persons in public life as a category is to enable the Police and Judicial Officers concerned to keep track of cases involving such persons and to endeavour avoidance of delays and bottlenecks in the way of speedy investigation and trial. It must be left to the Police/Judicial Officers concerned to identify such persons creating delays and obstacles. Instead of drawing up an exhaustive list of the so-called influential persons, a broad indication as to whose cases should come up for special attention is sufficient. An illustrative list of the influential persons in public life is perhaps more appropriate. Accordingly, MPs, MLAs/MLCs including Ministers (former or present), Mayors, Chairpersons of Municipalities/Zila Parishads, elected or nominated Chairpersons (non-officials) of other State-level Public bodies and important office bearers of political parties at State level can be treated as influential persons in public life.

4. **Cases against high Government officials:**

4.1 As regards senior Government officials, the cases against them are mostly under the Prevention of Corruption Act which are assigned to Special Courts. Almost invariably, the officers facing trial in CBI/ACB or other Special Courts will be under suspension. Delaying the matters by virtue of their official position which they held some time in the past, may not be rampant. Of course, just as any other accused, if it suits them, they may delay the trial by seeking unnecessary adjournments through the lawyer or by seeking opportunity to cross-examine even formal witnesses. Such eventualities raise the question of case management by the Court concerned. These Courts, by and large, are not overburdened with the work assigned to them and they can adopt such measures as may be needed to counter the moves to delay the trials. However, quite often, there will be inaction or inordinate delay on the part of the prosecution to produce the summoned witnesses or examine the

investigating officer. If, in a few cases, the Presiding Officer (of the rank of District/Addl. District Judge) feels that the intervention of the High Court is necessary to give suitable directions to the Police/prosecuting machinery to activise them, the presiding officer should send up a report to the Registrar of the High Court.

4.2 In prevention of corruption cases, it is reported that the disproportionate assets cases get prolonged as a number of witnesses – necessary and unnecessary, will be examined. Even the filing of the charge-sheet in such matters, it is reported, is delayed, some times for more than a year after completion of investigation. Further, sufficient number of Special Courts to deal with PC Act cases are not in place in many States. These are the special problems in cases relating to Government officials. The identification of senior Government officials who held important positions in the Government is not at all a problem, nor is it necessary. It is not desirable to attempt at a classification of the cases involving senior Government officials and those at lower levels. If however such officials are seen to be adopting dilatory tactics or otherwise found interfering with the process of justice, the court is not helpless to press into service the necessary case management measures, apart from sending a special report to the High Court, as suggested earlier.

4.3 **Rationale behind keeping track of the cases of influential Public men – pros and cons:**

4.3.1 Before proceeding further, it needs to be considered. whether the criminal cases against influential persons in public life should be treated as a class and special attention should be paid to prioritize disposal of such cases. In other words, whether the delays shall be viewed more seriously in such cases when compared to delays in other cases and whether they should come up for special scrutiny. In this context, there can be two views reflecting the pros and cons of the issue. They are summarized below:

4.3.2 Criminal justice has to be administrated with even hand and there cannot be a different treatment of classes of accused. The fact that the accused are public persons occupying the positions of authority in the governmental structure should not normally be a ground to devise a special procedure for investigation or trial of such persons. One has to view the issue from the perspective of Article 14 as well and steer clear of the dimension of that Article. It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. The society at large has legitimate interest that the persons accused of serious crimes should be proceeded against with promptness and expedition and the process should not get tainted by undesirable or extra-legal practices. Further, viewed from the point of view of the accused, speedy trial is a fundamental right under Article 21. For the achievement of these objectives, it does not matter who the accused is, whether an important person or a common man. Public interest demands that investigation, prosecution and trials ought not to be allowed to drag on for years together. The bottlenecks coming in the way of prompt investigation and speedy trial should be removed. Old cases, irrespective of who the accused is, should not be allowed to clog the system. The causes for delays should be identified and remedial measures should be taken to remove all bottlenecks coming in the way of speedy investigation and trial. Special Courts for the so-called influential persons cannot be constituted without reference to nature of offences or class of offences as it would be against the basic principles of criminal justice. Any such differential treatment would attract the wrath of Article 14. There shall be uniform application of criminal law irrespective of the status of the accused. If there is material suggestive of the fact that the investigation is not being done swiftly at the instance of such influential public men or they are resorting to dilatory or intimidatory acts, that may be a ground to put in place such measures as are necessary to remove obstacles, but not to place all the cases involving Public men *en bloc* on fast-track irrespective of the age of the case.

4.3.3 On the other hand, it is argued with much force that the cases of those who are in a position of authority or those who can wield considerable influence by virtue of their political affiliations and proximity to ruling party create the need to bestow special attention by the police and the Court system. Needless to say that such cases have social ramifications, because those persons in spite of their criminal disposition can pervasively enter and influence the political and democratic process. It hardly needs emphasis that the criminalization of politics is a malady that is seriously bothering the society at the present juncture. According to the civil society alliance of the Association for Democratic Reforms and the National Election Watch, 153 Members of Parliament are accused in criminal cases, out of them 74 are accused of serious offences such as murder, attempt to murder, abduction, etc.[12] If this situation is allowed to remain, the fundamental right of citizens to have a clean democratic process will be in jeopardy. It is, therefore, necessary to keep a tab on such cases only to ensure that the course of justice is not obstructed or deflected by extraneous influences. If the accusations against such persons remain uninvestigated or investigated in a slip-shod manner, it gives rise to a reasonable suspicion that the police is in the grips of their influence. If the things are left out to take their own course without any scrutiny or monitoring at higher levels, the criminal justice process will take a devious course and throw up a challenge to the rule of law. Such situations should, therefore, be taken care of and in doing so, the authorities concerned do not adopt any discriminatory treatment. On the other hand, the community faith in the administration of criminal justice is thereby enhanced.

4.3.4 So also, at the stage of trial of criminal cases involving the aforesaid persons, it is expedient and desirable to keep an eye over such cases to make sure that undue delays are not caused by reason of the attempts made by them to protract the trial or to make the witnesses scarce. It is only for this limited purpose, special attention must be bestowed on such cases so that the trial will progress unhindered, as is expected of the system and nothing more.

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12 http://news.bbc.co.uk, visited 24.02,2012

4.3.5 The Commission is of the view that the cases of influential persons in public life need to come up for special focus for the reason that the experience shows occurrence of long delays both in investigation and trial. This is because of the influence they can wield with the Police and witnesses. Delays are also often caused by their prolonged abstinence from the court proceedings and the Police not taking effective steps to produce them in Court. Secondly, the persons holding public offices have a role to play in democratic governance and the people have legitimate expectation that the elected representatives are clean and free from criminal misconduct. Thus, public are equally interested in early conclusion of trial. The cloud cast on them should not linger on for years and decades.

4.3.6 In this context, it is useful to refer to the pertinent observations made by the Supreme Court. The Supreme Court in *Ganesh Narayan vs. S. Bangarappa*,[13] observed: *"the slow motion becomes much slower motion when politically powerful or high and influential persons figure as accused*". The Supreme Court cited with approval the following observations of Krishna Iyer, J. in *Re Spl. Courts Bill, 1978*[14]: *"Courts are less to blame than the Code made by Parliament for dawdling and Government are guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderella in our scheme. Even so, leaving V.V.I.P. accused to be dealt with by the routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be finical about absolute processual equality and must be creative in innovating procedures compelled by special situations".*

4.3.7 In that reference under Article 143 of the Constitution, the legality of setting up of Special Courts to investigate the offences committed by persons who held high public or political offices had come up for consideration before the Supreme Court. The Special Courts were ordained to be set up to try the offences alleged to have been committed during Emergency (in 1976) and some months prior to that. The constitutional validity of that provision was substantially upheld. However, in so far as the offences committed prior to

13(1995) 4 SCC 41

14(1979) 1 SCC 380

Emergency is concerned, the Supreme Court did not approve the rationality of such classification.[15]

5. **Special Courts**

Special Courts are set up quite often in cases involving large scale financial scams and diversion of public funds by those in public offices or corporate management. Crimes having inter-state criminal communal ramifications imperiling the security of society or terrorist crimes are also tried by Special Courts set up on ad hoc basis by the Governments. These are apart from regular Special Courts in vogue to try offences under the P.C. Act, the SC & ST (Prevention of Atrocities) Act, Economic offences etc. Large number of accused and the serious nature of crimes said to have been committed by them also afford justification to set up Special Courts. In this category falls the Jharkhand Case cited in the Writ Petition. The extraordinary delay in that case and a host of other cases and the causes that led to the delay reveal the need to set up a special court and the High Court supervising the progress of trial. Creation of more special courts to deal with corruption cases is an area which is engaging the attention of Central Government and High Courts. Crimes allegedly committed by influential persons holding high offices in extraordinary situations such as Emergency was held to be a justifiable ground to set up Special Courts. But, any blanket direction to set up Special Courts wherever influential public personalities are involved ought to be avoided, especially viewed from Article 14 angle. Special and extra-ordinary situations should be present, apart from the accused being in an influential position in public life.

6. Approach to be adopted:

Then arises the question as to whether and to what extent directions should be given within the framework of existing laws to ensure that Public men do not, by virtue of their influence and power, interfere with the process of investigation and do not create impediments in the way of expeditious and

15 Ibid, per Chandrachud, J., para 103, at 439

continuous trial. Though there could be special focus on the criminal cases involving influential public men, the steps to be taken should be part of the larger plan to check delays and deficiencies in investigation into serious crimes and to ensure progress of trials without hindrances and hurdles placed by the accused. There must be holistic approach. By and large, the measures contemplated should equally apply to other criminal cases involving serious crimes, irrespective of who the accused is. There must be special focus on old cases including those relating to public men and the bottlenecks in the way of progress should be removed. The suggestions are formulated in this Report, accordingly.

7. Some measures that may be directed to be taken by the Police after FIR is received/recorded

(i) A copy of FIR concerning the involvement of influential public men in cognizable crimes, apart from being sent to the Magistrate, should also be forwarded to SP/SSP concerned.

(ii) The investigation should be taken up promptly and with expedition [unless the police officer concerned forms an opinion under clause (b) of the proviso to Section 157(1) Cr.P.C]. The SP/SSP shall, from time to time, get reports from the SHO regarding the course and progress of investigation and issue suitable instructions. He may render such assistance as may be required by the SHO in this regard, to wit, providing additional police force, securing reports from the forensic science laboratories expeditiously etc.

(iii) The investigation shall be completed as far as possible within three months and at any rate not later than six months. The charge-sheet shall be filed within a month thereafter along with requisite documents properly indexed. A copy of the draft charge-sheet to be sent to SP/SSP for vetting.

(iv) The FIR, the statement of accused and witnesses examined and the record prepared by I.O. from time to time should be computerized so

that they could be made available to all concerned in an electronic form (non-re-recordable compact disc).

(v) The I.O., SP/SSP should be held personally responsible for the failure to ensure that the investigation is completed within the specified time limit and they shall face disciplinary proceedings for non-compliance, unless they establish that reasonably diligent steps were being taken by them. The responsibility lies with the DGP to initiate such disciplinary action as may be warranted.

(vi) The SP/SSP should maintain a record of FIRs in respect of influential public persons so as to enable him to keep track of such cases from time to time.

(vii) In cases involving influential public personalities, resort to S. 164 Cr. P.C. should be made more frequently.

(viii) While investigation of offences under the provisions of Cr. P.C. is the exclusive domain of the police, the Judl. Magistrate should have limited role to play to counter the moves of persons in influential positions to subvert the effective process of investigation. Accordingly, the I.O. shall bring to the notice of Magistrate the bottlenecks, if any, that are coming in the way of speedy investigation including the attempts being made by the accused to hinder the investigation. The Magistrate shall, apart from taking such steps as are permissible under law, for example, issuing summons for the production of documents in the custody of suspect/accused/or a third party, may also send up a report to the District Judge for appropriate action on the administrative side to eliminate delays..

(ix) In respect of serious crimes i.e. cognizable and punishable with imprisonment of 5 years or more irrespective of whether public men are involved, if investigation has not been completed within 6 months, a report has to be submitted by the I.O. to the SP/SSP who shall take necessary action to ensure completion of investigation. The SPs/SSPs

should maintain a register of such cases where there are delays in investigation and should take remedial steps to remove the bottlenecks.

(x) The photograph of the accused and full address/phone numbers, e-mail I.D. if any, shall be obtained and the photos be affixed to the arrest Memo and charge-sheet. (This is being done in some States e.g. Maharashtra).

(xi) The Police should take requisite steps to ensure proper and prompt maintenance of medico-legal registers maintained at the hospitals.

7.1 Duty of police in cases where there are no formal complaints: Whenever credible information is received by the police (SHO) that a cognizable crime is committed by a public servant or an important public personality, it is his duty to register the crime. For instance, the corruption may be exposed by sting operations which are aired in TV or published in media. They should act on them, subject to verification of the authenticity of report. Anirudha Bahal's case[16]decided by Delhi High Court brings to light the lapse of police in this regard.

7.2 In this context, it is pointed out that the provisions contained in Sections 154 and 157 read with Section 156 confer sufficient powers on the Police officer to initiate investigation.

7.3 Whenever statutory sanctions are required for prosecution of public servants and others, the Government concerned should act with expedition. Normally, it should be done within 3 or 4 months.[17] The Secretary in charge of the Department should ensure this.

8. **Measures to be taken after the Court is seized of the matter (during trial):**

16 172 (2010) Delhi Law Times 268

17 Dr. Subramanian Swamy Vs. Dr. ManmohanSingh, 2012 (2) SCALE 12

a) The cases in which delays are occurring in cognizable cases against influential public persons as well as others by reason of conduct of the accused or inaction on the part of the Police or prosecution, should be brought to the notice of District Judge who shall, if necessary, take up the issue with the SP/SSP.

b) In Sessions cases, if there are inordinate delays attributable to the accused/police/prosecution, and the ADJs trying the case feel helpless, it should be brought to the notice of District Judge who shall apprise the SP/SSP of the problem at the earliest and alert them to initiate necessary action by way of apprehending the accused or producing the witnesses. Inspite of that if the Police do not respond, the District Judge shall send up a special report to the High Court **especially** if the case relates to an influential public person.

c) Similarly, the District Judge should inform the High Court wherever inordinate delays are experienced by the District Judge in the trial of Sessions cases and the SP/SSP is not taking sufficient action.

d) There must be special drive to secure the attendance of Proclaimed offenders.

e) Applications for witness protection should be promptly disposed of by the trial Courts by giving appropriate directions to the Police.

f) There must be a Special Cell in the High Court exclusively to take stock of old pending Sessions cases. The Cell headed by a Registrar level officer should promptly bring to the notice of the concerned Administrative/Portfolio Judge or any other Judge/Committee nominated by the Chief Justice for this purpose, the factum of pendency of such cases, the District Judge's report, if any, and the reasons furnished for prolongation of the cases. It is desirable that the Judges of High Court who have comparatively less administrative work, are entrusted with the job of taking effective measures to check the delays

and pave the way for early conclusion of criminal trials. In this process, the concerned Administrative/Portfolio Judge may also be associated. The Special Cell should regularly coordinate with the Committee. The said Committee based on the information received from the District Judge in the quarterly statement or otherwise, should take necessary measures on the administrative side to remove the bottlenecks in the progress of trial, for instance, by way of giving necessary instructions to the DGP/DIG/SP.

g) In the quarterly statements also, the District Judges should record brief reasons for the delay in Sessions cases which are more than 3 years old from the date of framing the charges and inter-alia they must state **whether the case relates to an influential public person.**

h) Top priority should be given to the Sessions cases especially those related to influential public persons which are more than 5 years old (or even less depending on the workload position). The concerned High Court Committee should bestow special attention to such cases and review the progress from time to time so that the trial concludes most expeditiously. If necessary, the Committee may take steps for the transfer of such cases to the Court having less workload. Obviously, however, the Committee of High Court ought not to say anything even indirectly on the merits of the case, even if obstructionist tactics are adopted by the accused for some reason or the other.

i) The norm of continuity of trial shall be strictly observed in all cases (above 5 year old or even less depending on the workload positron), more especially in the cases related to important political persons. As a part of case management process, a calendar of dates should be drawn up for trial in consultation with the learned advocates and PP and the time-schedule shall be substantially adhered to. The High Court may, from time to time issue circulars stressing the need to adhere to the time-schedule and refusal of adjournments (unless there are special and

exceptional reasons) and they shall be exhibited on the notice-board of the Court and Bar Association.

By assuming a more proactive role in taking various measures as stated above, the High Courts will only be acting within the purview of the jurisdiction and authority conferred on them under Articles 235 and 227 of the Constitution of India as well as Section 483 of Cr. P.C. However, to make the position more clear, certain amendments to Cr. P.C. as per Annexure are desirable. High Courts have to frame Rules or issue Circulars in exercise of the powers conferred by the proposed provisions in Annexure. In any case, the High Courts can very well invoke Art. 235 of the Constitution to play their due role in ensuring speedy disposal of criminal cases.

j) The High Court, on the judicial side, should give top priority to the disposal of quash petitions/revisions in the pending trial matters. Records are not to be called for in such cases unless the perusal of any original document is found necessary. The trial can go on unless there is specific order of stay and this can be made clear by a circular issued by High Court.

k) The Special Cell should bring to the notice of Chief Justice from time to time the Sessions and other cases involving major crimes pending trial in which proceedings are stayed or the records are called for. In this connection, the recent judgment of Supreme Court in *Imtiyaz Ahmed Vs. State of U.P.*[18] is quite relevant.

l) Any representation by the aggrieved persons or victims regarding undue delay in the disposal of criminal cases shall receive due attention of the District Judge as well as the High Court Committee. Any such representations received by the Registry should be forwarded to the Special Cell.

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m) The Special Cell should also keep record of Sessions Cases or other cases punishable with imprisonment of more than 3 years against the advocates, as pointed out by the Law Commission of India in its written submissions to the Allahabad High Court (Lucknow Bench) in W.P. No. 9925 (M/B) of 2010, and place the information before the Committee of Judges so that appropriate directions may be given by the Committee to ensure early disposal of such cases.

9. **Need for ear-marked Police personnel for Court duties:**

9.1 The most conspicuous reason for the delays in the progress of trial is non-execution of warrants by the Police. Unserved summons and non-bailable warrants (NBWs) have a telling effect on the Criminal Justice scenario. Police inaction, indifference or inability are the contributory factor to the grim situation of pendency of large number of unexecuted NBWs. The cases get adjourned from time to time because of non-appearance of one or some of the accused. Police plead their inability to apprehend the accused (against whom NBWs and Proclamation orders have been issued) for good and bad reasons. The fact remains that Police do not consider it as a priority item and they act in a casual and routine manner. Even the prominent accused (holding a public position or leading a political party) are shown as absconding or not available for contact, as demonstrated by the case on hand. There is only one Police Constable attached to each Criminal Court and some times that single Constable attends to the work of two courts. He acts as a post office to carry the summons/warrants to the Police Station and leave it to the SHO to act on it. There are innumerable instances in which the Police Officer concerned does not even send up a report to the Court as to the stage of NBW and the specific reason for non-apprehension of the accused. In the State of Jharkhand, the feedback is that warrants remain unexecuted for months and years as the Police personnel are not available for attending to this work, inasmuch as they

are deployed on duty in remote and sensitive areas to cope up with the extremist menace etc.

9.2 In almost all the States, periodical meetings of District Judge with SSP/SP take place and in such meetings, the pendency of unexecuted NBWs and the progress made since the last meeting, are reviewed. So also, when the Administrative/Portfolio Judges go on visits to the concerned districts, the Supdts. of Police are instructed to expedite the execution of warrants. Such meetings convened by the District Judge and the instructions of the High Court Judge during his/her occasional visits do yield some results. Still, the problem substantially remains. The responses of the Police Officers are, by and large, ad hoc. Whenever there is pressure from the side of the judiciary, a special squad will be set up to apprehend the accused, but the tempo subsides after some time. In the State of U.P., it appears that there is a Summons Cell of Police in every district which is assigned the work of executing the summons/warrants. But, either the force attached to that Cell is inadequate or their services are diverted quite often to other jobs. Needless to state that the execution of warrants needs constant attention and surveillance. The Police plead genuine difficulties to devote the required attention for this item of work. It is a well known fact that Police Stations are understaffed and ill-equipped. Having regard to these problems and keeping in view the inputs received from the District Judges and other Judicial officers of various States, the Law Commission is of the view that dedicated Police personnel should be put in place to attend exclusively to Court-related duties viz., service of summons and execution of warrants. The number of personnel required for each Court may be in the range of 2 to 4. Such police personnel should work under the supervision of an Inspector of Police (exclusively deployed for this purpose) and the Inspector should report to the District Judge every month. They must be imparted training for atleast 4 weeks and should be provided with necessary infrastructure. SP level officer should monitor the work of this Police force attending to court-related duties. Such senior Police Officer should

be nominated for a region or a group of districts. Posting of such senior Police Officer shall be in consultation with the Registrar-General of High Court. Alternatively, each police station should have sufficient number of Head Constables and Constables exclusively deployed for Court-related duties. They should have sufficient infrastructure such as additional accommodation with a lock-up cell. The SHO should send monthly or bi-monthly reports to the concerned courts stating details of progress made.

9.3 There was a suggestion from some quarters that armed reserve Police who do not have much of work may be drafted for these duties till a regular cadre is constituted. This can be examined. However, the regular Police shall not shed their responsibility of extending necessary cooperation to the special Police personnel.

9.4 Before giving any direction in this regard, it is perhaps necessary that the State Governments shall be put on notice and their views, if any, are ascertained. Thereafter, the DGPs should be directed to initiate action in this behalf without delay.

9.5 There is one more aspect related to the same problem which needs to be tackled particularly. There are consistent reports that the execution of warrants against the accused, residing or staying in other States, has become a formidable problem. For years together, the warrants remain unexecuted and the out-of-State accused remain absent. The requisitions sent by the CJM or the Sessions Judge to the Police Officer and/or the CJMs of other States evoke no response from the police and Judicial officers of other States. In a few cases, the Police personnel of the State in which the case is pending, are sent to the other State to trace and arrest the accused. Even then, they can effect the arrest of the wanted person only with the cooperation of the Police of the other State. Quite often, even that cooperation will not be forthcoming. The Law Commission is of the view that the concerned SSP/SP of the other State should be made responsible for complying with the requisition sent by the Court in which the case is pending and it shall be made mandatory to send

reports on the steps being taken by the Police at least once in a month to the Court which has issued the warrant. The communication should be sent electronically or by fax. The Court concerned shall be required to furnish the fax and e-mail particulars. The District Judges of other States during their conferences with senior Police Officers, should review the steps taken to execute NBWs issued by the Courts of Magistrates/Sessions Judges of the State in which the case is being dealt with. The District Judges should maintain a record of such requisitions received on the basis of the information furnished by CJMs/Magistrates.

10. **Strengthening Prosecution Machinery**

As already pointed out, the prosecution machinery is in shambles. There is need to empower the Directorate of Prosecution with independent powers for effectively supervising the working off PPs/APPs. The recruitment/appointment process should be transparent and objective based on merit and experience. Their conditions of service need to be improved considerably. There must be intensive training and refresher courses and periodical review meetings. It is of utmost importance that vacancies of PPs/APPs are filled up promptly. There is every need to create additional posts as well.

11. **Increase in the number of courts and filling up of vacancies promptly**:

11.1 In All India Judges Association case[19] the Supreme Court, on a comparative assessment of the position existing in other countries, directed that there should be 50 judges for a million population as recommended by the Parliamentary Standing Committee (Rajya Sabha) 85th report[20] as well as recommended by the Law Commission of India in its 120th Report.[21]The Court noticed that the sanctioned strength of judges then existing was only 10.5 (or 13) per one million. Though the Supreme Court directed that there should be

19 AIR 2002 SC 1752, paras 24 and 25

20 Law's Delays: Arrears in Courts (December, 2001), para 38.2

21Manpower Planning in Judiciary: A Blueprint (31st July, 1987), para 9

addition of courts in a phased manner, very little progress has been made. Many State Governments plead financial difficulties for the creation of so many courts. The proportion which the present sanctioned strength of judges bears to the total population is about 15 per one million. The docket ratio per Judge in the District and Subordinate Judiciary is approximately 1630 cases. This is based on sanctioned strength. The unfortunate part of it is that at any given point of time, about 20% of the vacancies of Judl. Officers remain unfilled. This is on account of lack of proper planning on the part of the High Courts, coupled with inordinate delays in recruitment process and promotions. Further, delayed promotions naturally give rise to considerable heartburn among the members of the service.

11.2 It may be stated that with the setting up of Fast Track Sessions Courts in most of the States, lot of pendency has been cleared, as far as the Sessions cases are concerned. The Central Government has stopped funding such courts from April 2011. However, in many States, FT Sessions courts are continuing with State funding up to March 2012. While much progress has been achieved in the disposal of sessions cases, the pendency has increased in Magistrates courts. This is by reason of quicker promotions earned by Jr. Civil Magistrates' as a result of setting up of Fast Track Sessions Courts and the resultant vacancies in that cadre adding to the existing vacancies. The pendency in some of the courts of First Class Judicial Magistrates and Chief Judicial Magistrates runs into thousands and it is at an unmanageable level. Keeping this in view, the 13th Finance Commission has evolved a scheme for setting up of a large number of Fast Track Special Magistrates Courts (Evening courts/shift courts) to deal with the cases involving minor offences and simpler matters. Summary trial cases, cases under section 125 Cr. P.C., cases under section 138 of NI Act, traffic offences (other than those under MV Act) are to be assigned to these Magistrates. The Central Government meets the expenditure initially. There is a huge financial provision made for Gram Nyayalayas also. Certain practical difficulties are being experienced in making

these courts operational. The dearth of judicial officers and staff is being felt and in some States like UP, it is reported that the lawyers are not in favour of Evening/Morning Courts.

11.3 There is an allied problem of inadequate staff strength in the Courts, inefficient staff and large number of vacancies of essential posts like stenographers and staff having knowledge of computer operation. Further, the data posted on the website is not updated promptly. The lack of proper servicing facilities in the District and moffusil areas is resulting in the computers remaining in disrepair, un-rectified for months together. Moreover, the recruitment process followed by the courts needs to be refined so as to facilitate induction of efficient and competent candidates.

12. Other Issues

12.1 The issues relating to setting up of new courts and filling up of vacancies is engaging the attention of this Hon'ble Court before a Bench presided over by Hon'ble Justice D.K. Jain in two matters [W.P. (C) No. 122 of 2008 *Janhit Manch vs. UOI* and C.A. No. 1867 of 2006 (*Malik Mazhar Sultan vs. Union Public Service Commission)*]. The subject related to infrastructure for the Courts is being monitored by another Bench headed by Hon'ble Chief Justice of India in W.P. No1022 of 1989. Further, in a recent judgment (*Imtiyaz Ahmed Vs. State of U.P.*[22]) of this Hon'ble Court, the Law Commission of India has been entrusted with the task of ascertaining the number of additional Courts needed in the country after consulting the concerned Stake-holders.

In view of this, there is perhaps is no need for this Hon'ble Bench to go into the issue relating to inadequate number of courts and infrastructure in depth.

12.2 The need for dedicated police personnel attached to the criminal courts for service of summons and warrants has been dealt with in paragraph 9.1, page 26 above. It is necessary that having regard to the magnitude of the problem and the imminent need to speed up criminal justice, this Hon'ble

22 Supra note 18, at 25

Court be pleased to give appropriate directions to the State Governments and Governments of Union Territories in this regard.

12.3 Separation of investigation from law and order duties: Directions given in *Prakash Singh's case*[23] have not so far complied with except in a few Police Stations. The Commission does not propose to discuss this aspect firstly, for the reason that there is already a direction of the Supreme Court, secondly, there is already the report of Law Commission (154th report) recommending such separation, and thirdly, it involves interaction with both senior and junior level police officials, which is a time consuming process.

13. **Other important measures to improve Crl. Justice:**

13.1 It is submitted that two important steps are ideally required for speeding up the criminal justice in the hope that this will also augment the conviction rate. These are as under:

(a) Deployment of technology at the level of police stations.

(b) Strengthening Criminal Courts' infrastructure and upgrading facilities and amenities therein.

These steps have to be taken up in a phased manner after due planning.

The detailed suggestions under the above two heads are as under:

A. Deployment of technology at the Police Stations

a) **Recording of FIRs**: It is found that many of the acquittals are due to the delay, ante timing and absence of the necessary details of the incident in the FIRs. This one single factor can be eliminated by providing for compulsory and automatic recording of all landlines provided in the Police Stations. There should also be a provision for automatic relay of the telephone conversation between the caller and Police Station operator to all the Patrol vehicles of the police deployed in the area to reduce the response time of police. The patrol vehicles should also have connectivity with the police net for knowing the antecedents of the suspects/vehicles/documents etc. on the spot and instantly. FIRs shall be recorded on the computer and they shall be instantly sent to the Magistrates' Courts by e-mail. The practice of sending FIR through

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e-mail should be legally recognized. Similarly, section 161 statements should also be placed on the computer and posted on the website of the concerned court.

b) **Police Stations: Modernization:**

(i) Networking of all police stations to establish a link with all the courts:

(ii) Digital videography to be installed at police stations. At the time of receiving FIR/complaint, videography should be made compulsory. By this process, the earliest version of the informant will be evident. So also, at the time of inspection of the scene of offence and recovery of material objects, videography should be insisted upon.

(iii) Interrogation Rooms: Each Police Station should be provided with secure interrogation rooms, with simultaneous audio-visual recording facilities by two cameras, one focusing on the close-up of the face of the witness or the suspect and the second giving a wide angled picture to show that there is no coercion to influence the statement of the witness or the suspect. Statement of all suspects and witnesses should, by law, be required to be recorded in such windowless interrogation rooms with mirrors on the two walls. The question of treating as admissible the statements of the accused and witnesses examined in secure interrogation rooms deserve serious consideration.

c) **Mobile Forensic Vans**: At least, all District Headquarters should be provided with mobile forensic vans which should accompany the homicide teams to the place of occurrence. The mobile forensic vans should be equipped with equipment for instant blood test and finger print comparison, on the spot, in addition to the facilities of lifting the finger prints and blood samples from the scene of crime. The vans should also have provision for video-recording of the scene of crime as well as that of searches and seizures on the spot. In the Districts where NDPS crimes are more, narcotics testing kits should be provided to every Police Station.

d) **Charge-sheets by CDs**: All charge sheets should be required to be submitted in electronic form on a non-re-writable compact disc wherever such

facility exists. A suitable amendment to S. 173 can be thought of for this purpose. Police can be required to submit as many CDs as the number of accused figuring in the charge sheets. This will reduce considerable delays that take place in the cases triable by Court of Sessions.

B. Strengthening criminal courts' infrastructure & upgrading facilities therein:

1. **Properly designed Court Complexes**: It is essential that a standardized design of the criminal court complex be prescribed by the High Court which shall *inter alia* take care of separate rooms for witnesses, undertrial prisoners, Police personnel, advocates and prosecutors and shall provide for sufficient number of washrooms and filtered drinking water facilities.

2. **Summons etc. – Service**: All court notices, summons for appearance or summons for production of documents may be served through e-mail and in the absence of the e-mail of the addressees, through the e-mail of the police station, which must report compliance with regard to the service on a weekly basis through e-mails.

As regards official witnesses, in order to avoid delays in service, the summons can be sent through email or if the email ID is not ascertainable, the summons can be sent to the Head of Office (for instance, District Medical Officer who has administrative control over the hospitals.)

All bail orders to be communicated to the Jail through e-mail for delivery to the undertrial prisoners.

3. **Recording of evidence**: All criminal courts ought to be provided with Audio recording through tamper-proof technology for recording of statements of witnesses so that the appellate courts can also refer to the same for determining the exact statement made by the witnesses.

4. **Machines:** All criminal courts ought to be provided with transcription machines with the help of which the Audio-recorded statements can automatically be transcribed and supplied to the counsel & witnesses on the same day.

5. **Conferencing**: In order to interact with undertrial prisoners and police officials, video-conferencing facility needs to be provided. So also, video-conferencing will be very useful for the interaction between High Court and District Judges. It would save lot of time and resources and help in fulfilling the formalities without delay.

6. **Witness Rooms**: All criminal courts ought to be provided with a separate witness room where witnesses, who have been summoned in different courts, be provided with the facilities of comfortable seating, drinking water, urinals, tea/coffee machine & some reading material. It needs to be appreciated that witnesses are the eyes and ears of the court and the court needs them more for dispensing justice than they need the court. This will also enable them to be saved from the harassment they have to face at the hands of the accused as they also wait in the same corridors.

7. **Centralized Registry**: All criminal courts located in a single or nearby complex must have a centralized record room instead of separate record keeping for each court. The centralized record keeping will ensure that the relevant part of the file is placed before the concerned court as and when required.

8. **Stenographers**: Competent stenographers with good knowledge of computer operation and maintenance to be attracted to judicial service by offering higher pay and facilities.

Sd/
(Justice P. V. Reddi)
Chairman

Sd/

(Justice Shiv Kumar Sharma)
Member

Sd/

(Amarjit Singh)
Member

Sd/

(Dr Brahm Agrawal)
Member-Secretary

Annexure (additions of certain provisions to Cr. P.C.)

(See page 24)

Amendment to Section 477 Cr.P.C.

[e] providing for supervision and monitoring towards expeditious disposal of cases pending over a long period, or such categories or classes of cases having regard to their impact on administration of Justice or public interest.

[The rules may provide both for administrative and judicial supervision.]

Amendment to Section 483 Cr.P.C:

The existing provision may be substituted by the following:

[1] Every High Court shall so exercise its superintendence over

[a] all courts subordinate to it under this Code, and

[b] courts from whose orders or judgments appeals or revision lie to the High Court, so as to ensure expeditious and proper disposal of cases by such courts.

[2] The Public Prosecutor, the complainant or any other person on behalf of the victim/injured or deceased may apply to the High Court seeking exercise of the above-said power of superintendence.

A new provision - Section 157A

Any time after the passing of an order under sub-section (2) of Section 155 relating to investigation of non-cognizable cases or after receipt of a report under sub-Section (1) of Section 156, relating to investigation of cognizable cases, the court concerned, either *suo motu* or on an application by the public prosecutor, or any other person acting on behalf of the deceased, injured or the victim of the offence, may call for information regarding the investigation of the case and issue such directions as may be necessary to facilitate expeditious investigation without in any way prejudicing the manner of investigation.