



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1015 of 1989

Aditya Kumar and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	Ansar Ahmad, Sushil Kumar Pandey
Counsel for Respondent(s)	:	A.G.A.

Court No. - 44

HON'BLE J.J. MUNIR, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

On the 6th of January, 2026, we passed the following order :

The office report dated 13.08.2024 reads:

"13/08/2024 Office Report

It is humbly submitted that a letter dated 09/06/2021 (at filag 'A') has been received from CJM Elawah, wherein it is stated that notice has been served upon appellants (1) Aditya (2) Ram Vilas.

Appellant (3) Harvilas has died.

Appellant (4) Virendra Kumar is missing for about 25 years.

A letter (at flag 'B') dated 22/07/2024 has been received from District Judge Etawah wherein it is stated that order has been passed for reconstruction of record, as soon as report is received it will be sent to Hon'ble Court.

The case is put up for orders."

So far as appellant no. 4, Virendra Kumar *alias* Chuni is concerned, let non-bailable warrants of arrest issue against the said appellant ordering him to be arrested and produced before this Court, in custody, on 13.01.2026 at 2.00 p.m.

The warrants shall be issued through the learned Chief

Judicial Magistrate, Etawah and caused to be executed by the Senior Superintendent of Police, Etawah by all means and the said appellant produced before the Court, as directed.

It is made clear that it will not be acceptable for an answer returning the warrant unexecuted that the appellant cannot be found. The only two contingencies in which a warrant can be returned unexecuted, as in this case, are if the concerned appellant is dead or left the Indian shores. In either case, the Police, while making a report of that kind, must annex some evidence of the relevant facts showing the contingencies indicated; else, warrant has to be executed.

The Senior Superintendent of Police, Etawah will take note of it and submit a report separately.

The other issue that is involved in this matter is that the lower Court record is reported to be untraceable and an order for reconstruction thereof has been passed by the learned Sessions Judge, Etawah. The said fact is recorded in the office report dated 13.08.2024 which says that no further report has been received from the Judgeship of Etawah.

In the circumstances, let the learned Sessions Judge, Etawah forward the reconstructed record, if already done, by the next date or submit a report in the matter, without fail.

Mr. Y.C. Dubey, Advocate holding brief of Mr. Rajesh Gupta, learned Counsel, is present for appellant no. 1.

List on **13.01.2026 at 2.00 p.m.**

Let this order be communicated to the learned Sessions Judge, Etawah, the learned Chief Judicial Magistrate, Etawah and through the learned Chief Judicial Magistrate, Etawah to the Senior Superintendent of Police, Etawah by the Registrar (Compliance) **within 24 hours**.

There are two parts to the order. The first concerns itself with the execution of non-bailable warrant issued against the appellant no. 4, Virendra Kumar *alias* Chunni, son of Bachchan Lal, ordering him to be

arrested and produced before this Court in custody today, and the other is about reconstruction of records of the trial held before the Sessions at Etawah. We proceed to deal with the first part regarding execution of the non-bailable warrant, for a first.

The office report dated 13.01.2026 shows that the non-bailable warrant could not be executed and has been returned unexecuted, because the fourth appellant, Virendra Kumar *alias* Chunni, had sold off his movable and immovable property in the year 1988, situate in the village, and so did the other appellants, and moved out to some unknown place. The office report also reflects that according to the report of the Police, despite a thorough investigation into the whereabouts of the fourth appellant, he could not be found.

When the case was called on, appellant no. 4, Virendra Kumar *alias* Chunni son of Bachchan Lal has appeared before the Court, not in custody of the Police, but a free man. Mr. Ansar Ahmad, Advocate, has appeared on his behalf and identified him, on the basis of papers produced in chambers before him.

It is a quaint situation, where appellant no. 4 should have been produced in custody, has appeared as a free man and the Police, who should have held him in custody and produced him, too have appeared before this Court through two of their officers - Sub-Inspector Hari Shankar Diwakar, Writ Cell, Etawah (PNO 902030075) and Head Constable Amrish Kumar, Writ Cell, Auraiya (PNO 062492502).

Prima facie, we would think that it is the Police who have tipped off the fourth appellant and asked him to appear here on his own and seek recall of the non-bailable warrant of arrest against him, and, themselves

appeared through two of their officers, one from Etawah and the other from Auraiya.

It is a very disturbing trend with the police establishment in the State that they do not regard the execution of processes of this Court and the District Courts, including coercive processes, a part of their duty, for which, they are paid salaries from the exchequer. From the course of conduct that the Police have exhibited, it appears that they take their duties to the Court, including the execution of our processes, as some additional duty or a burden, which they are at freewill to discharge or not. When we think of fixing responsibility about this constant dereliction of duty, we are of considered opinion that the responsibility for the dereliction of duty by the policemen in any district cannot be fixed upon any officers below the rank of the District Superintendent of Police, whether designated a Superintendent of Police or a Senior Superintendent of Police. This we say because the District Superintendent of Police is responsible for the entire police administration in the district, which is the unit administration of the Police and subordinate officials, particularly, the Inspectors, can hardly be blamed, because, they look to the policy of the District Superintendent of Police. If the District Superintendent of Police says that orders of the Court or warrants are to be placed on the back-burner and not considered important in the priority of duties, the Inspectors and the Constabulary take the District Superintendent of Police's word for the law. Therefore, it is the District Superintendent of Police who is answerable for all such lapses. The facts of the case are self-speaking, and, therefore, the District Superintendent of Police, Etawah is answerable in the matter.

Along with the report, that has been submitted to this Court by the learned

Chief Judicial Magistrate, Auraiya, there is a detailed correspondence and reports submitted to the learned Chief Judicial Magistrate, Etawah by the Station House Officer, Police Station Achalda, District Etawah and the Senior Superintendent of Police, Etawah, who has addressed a report to the learned Registrar General of this Court, all in purported compliance with the orders of this Court issuing non-bailable warrants against appellant no. 4. This correspondence is all designed to thwart the process of this Court and execution of the non-bailable warrants.

It is, again, a typical methodology with administrative officials, which includes the Police, to write reports full of words that say nothing. The purpose of all this long-winded correspondence is to evade quick dispatch and prompt discharge of duties in terms of compliance. The fact that appellant no. 4 has not been found by the Police, and as they say, he has relocated to Delhi, but appeared before this Court is, *prima facie*, reflective of two features of gross negligence on the part of the District Superintendent of Police, Etawah. One is that he did not cause a search for this appellant to be made throughout his country, which was his obligation, and the other is that he could not check his subordinates, believing that he did not do so himself, from communicating the fact to the fourth appellant himself, living in Delhi, *prima facie*, clandestinely advising him to appear before this Court and moved a recall application.

We were, indeed, intrigued to know as to how appellant no. 4 got information of our orders, when the Police could not trace him out. We, accordingly proceed to record his statement :

Q. आपको कैसे पता चला की आपको यहाँ आना है?

A. गांव का लड़का है न, उसने कहा की तुम्हारा वारंट निकला है।

Q. गांव के लड़के का क्या नाम है, जिसने आपको ये बताया?

A. आदित्य।

This explanation given by the fourth appellant, perhaps, dispels the second part of our impression that it is the Police who conveyed the information to the appellant, but the first part, *prima facie*, still remains. A man, who is facing a non-bailable warrant of arrest, living in Delhi, who could be informed by a native of the village, himself a convict in this appeal, could very well be reached by the Police, with not much effort and just by a little bit of conscience towards discharge of duties. Of course, it would have been possible only if the District Superintendent of Police, Etawah thought that it was his duty to faithfully carry out the orders of this Court, without giving priority to his other engagements.

Prima facie, the District Superintendent of Police, Etawah is guilty of negligence in performance of his duties.

Before any further action is taken against him in the matter, we require the District Superintendent of Police, Etawah to show cause, by his own affidavit, why necessary and further orders, recommending action against him on the departmental side, be not taken. The personal affidavit shall be filed by the Senior Superintendent of Police, Etawah, on or before 20.01.2026.

Now that appellant no. 4 has appeared before us, Mr. Ansar Ahmad, learned Counsel has moved a recall application on his behalf, being Criminal Misc. Recall Application No. Nil of 2026, seeking recall of our order 06.01.2026, issuing non-bailable warrant of arrest.

Looking to the conduct of appellant no. 4, we are not minded to grant that prayer. The recall application is, accordingly, **rejected**. The office shall

assign a number to this application.

Appellant No. 4, Virendra Kumar *alias* Chunni, who is present in Court, shall be forthwith taken into custody and produced before the learned Chief Judicial Magistrate, Etawah, who will commit him to prison through a suitable custody warrant. It shall be open to the fourth appellant to move a bail application.

Adjourned to **20.01.2026**.

To be taken up in the cause list of the day at **02:00 p.m.**

The Registrar (Compliance) is directed to communicate this order to the learned Chief Judicial Magistrate, Etawah, and through him, to the Senior Superintendent of Police, Etawah **within 24 hours next**. Let this order be also communicated to the learned Chief Judicial Magistrate, Auraiya, **also within 24 hours**.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

January 13, 2026

I. Batabyal