

ITEM NO.28

COURT NO.1

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 54019/2023

(Arising out of impugned final judgment and order dated 26-12-2023 in CRWP No. 14/2023 passed by the High Court of Himachal Pradesh at Shimla)

SANJAY KUNDU

Petitioner(s)

VERSUS

REGISTRAR GENERAL & ORS.

Respondent(s)

(IA No.770/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.771/2024-EXEMPTION FROM FILING O.T. and IA No.774/2024-INTERVENTION/IMPLEADMENT and IA No.767/2024-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 03-01-2024 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Gagan Gupta, AOR
Mr. Arkaj Kumar, Adv.
Mr. Padmesh Mishra, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Ms. Tanya Aggarwal, Adv.
Mr. Rushab Aggarwal, Adv.
Mr. Aakarsh Mishra, Adv.

For Respondent(s) Mr. Rahul Sharma, Adv.
Mr. Shalinder Sain, AOR
Mr. Ashish Dogra, Adv.
Mr. Atharv Bhardwaj, Adv.

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

1 Permission to file the Special Leave Petition is granted.

- 2 The High Court by its impugned order dated 26 December 2023 directed that the petitioner (in the proceedings before this Court) should be moved out from the post of Director General of Police, Himachal Pradesh to any other post. A similar direction has been issued in respect of the Superintendent of Police, Kangra. The High Court has issued the above directions after recording a finding that the Petitioner in his capacity of the Director General of Police unfairly obstructed the course of an investigation
- 2 The proceedings before this Court under Article 136 of the Constitution have been moved by the Director General of Police who has been directed to be moved out of his position.
- 3 Besides Mr. Mukul Rohatgi, senior counsel appearing on behalf of the petitioner, we have heard Mr. Rahul Sharma, counsel papering on behalf of the complainant on whose email to the Registrar General of the High Court dated 28 October 2023, the High Court initiated suo moto proceedings. Liberty to implead the complainant
- 4 This Court has been apprised of the fact that the proceeding are listed before the High Court on 04 January 2024 to monitor the course of the investigation.
- 5 The principal grievance of Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioner is that the High Court passed the order directing the transfer of the petitioner from the post of Director General of Police without either the petitioner being impleaded or being given an opportunity of being heard to rebut the allegations which were made against him in the email by the complainant.
- 6 The petitioner was not a party to the suo motu proceedings and was not heard by the High Court. In view of this position, we order and direct as follows :

- (i) Liberty is granted to the petitioner to move the High Court, when the proceedings are taken up on 04 January 2024, with an application for recall of the order dated 26 December 2023;
 - (ii) We request the High Court to dispose of the recall application within a period of two weeks;
 - (iii) Till the recall application is disposed of, the direction for the transfer of the petitioner out of the post of Director General of Police, Himachal Pradesh shall remain stayed;
 - (iv) The Court has been apprised of the fact that on 02 January 2024, the petitioner has, in compliance with the order of the High Court, been posted as Principal Secretary (Ayush), Government of Himachal Pradesh.
Since the above posting is in pursuance of the impugned order of the High Court, we also direct that pending the disposal of the recall application, no steps shall be taken to enforce the order dated 02 January 2024.
- 7 All the rights and contentions of the parties are kept open.
- 8 Both Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioner and Mr Rahul Sharma, counsel appearing on behalf of the complainant have joined in stating that they has no objection if the investigation is transferred to the Central Bureau of Investigation so as to obviate any allegation of interference at the behest of the petitioner.
- 9 The High Court may take a considered view of the above submission after considering all the dimensions of the matter.

10 The Special Leave Petition is accordingly disposed of.

11 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR