

Sanjay Kundu

v.

**Registrar General, High Court of
Himachal Pradesh & Ors**

(Special Leave Petition (Criminal) No 550-551 2024)

12 January 2024

**[Dr Dhananjaya Y Chandrachud*, CJI, J B Pardiwala
and Manoj Misra, JJ.]**

Issue for Consideration

The proceedings before the High Court were initiated on an email from complainant, addressed to the Chief Justice of the High Court. The High Court *suo motu* registered a Criminal Writ Petition pursuant to the above email. The High Court directed that the petitioner herein, who is holding the post of DGP, and the SP, Kangra should be moved to any other post to ensure that a fair investigation takes place. The petitioner was neither impleaded in the proceedings nor was he heard before the above order was passed. On that ground, the petitioner challenged it in a Special Leave Petition before the Supreme Court.

Headnotes

Administration of Justice – Miscarriage of procedural justice – The principal grievance urged was that the petitioner was directly affected by the order of the High Court, but he was neither made a party to the proceedings nor was he furnished a notice of the proceedings – The Supreme Court permitted to file application for recall of the High Court’s order (26.12.2023) – The High Court dismissed the application – SLP filed by the petitioner for recall of the order of the High Court:

Held: Earlier, when the Supreme Court permitted the petitioner to move an application for recall of the High Court’s order, the directions of the High Court for transfer of the petitioner were stayed – The Court also stayed the order issued pursuant to the High Court’s directions posting the petitioner as Principal Secretary (Ayush), Government of Himanchal Pradesh – However, the High Court

* Author

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dismissed the recall application and directed the State to consider forming a Special Investigation Team consisting of IG level officers to coordinate the investigation in all the FIRs and to advise the government on providing effective security to the complainant and his family – In the instant case, the correct course of action for the High Court would have been to recall its ex parte order and to commence the proceedings afresh so as to furnish both the petitioner and the complainant and other affected parties including the SP, Kangra, an opportunity to place their perspectives before it – Instead, the High Court, while deciding the recall application, heavily relied on the status report submitted by the SP, Shimla – The impugned order suffers from a patent error of jurisdiction – The order was passed without compliance with the principles of justice, especially, the principle of *audi alteram partem* – The order dated 26.12.2023 had serious consequences, and it was passed without hearing the petitioner who stood to be affected by it – A post-decisional hearing of the kind conducted by the High Court lacks fresh and dispassionate application of mind to the merits of the recall application, and is for that very reason, likely to cause disquiet – Thus, the direction of the High Court directing the shifting out of the petitioner from the post of DGP is set aside – However, the directions of the High Court to consider constituting an SIT and grant of protection to the complainant and his family are not disturbed – Instead of and in place of the direction of the High Court requiring the State Government to consider constituting an SIT, the State is directed to do so – The SIT shall consist of IG level officers who shall not report to the petitioner for the purpose of the investigation. [Paras 33, 34, 36, 37]

List of Keywords

Administration of Justice; Principles of justice; Miscarriage of procedural justice; Error of jurisdiction; *Audi alteram partem*.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Criminal) Nos. 550-551 of 2024.

From the Judgment and Order dated 09.01.2024 of the High Court of Himachal Pradesh at Shimla in CRMP No.79 of 2024 and CRWP No.14 of 2023.

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Appearances for Parties

Mukul Rohtagi, Sr. Adv., Gagan Gupta, Arkaj Kumar, Padmesh Mishra, Ms. Ranjeeta Rohatgi, Ms. Tanya Aggarwal, Rushab Aggarwal, Aakarsh Mishra, Advs. for the Petitioner.

Rahul Sharma, Ms. Rashmi Malhotra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Dr Dhananjaya Y Chandrachud, CJI

1. Application for impleadment is allowed. Mr Nishant Sharma, complainant, shall be added as a respondent to these proceedings. Mr Rahul Sharma, counsel appears along with Ms Rashmi Malhotra, counsel on behalf of the newly added respondent.
2. These proceedings emanate from an order of a Division Bench of the High Court of Himachal Pradesh dated 9 January 2024.

Criminal Writ Petition and proceedings before the High Court

3. The proceedings before the High Court were initiated on an email from Mr Nishant Kumar Sharma, addressed to the Chief Justice of the High Court through the Registrar General. The complainant alleged in his email, that he was facing threats emanating from two persons - "X", a former IPS officer and "Y", a practicing advocate.
4. According to his email, the complainant is a resident of Palampur, in District Kangra of Himachal Pradesh. His family conducts a hotel in Palampur. A relative of "Y" had invested in the company of the complainant. He alleges that "Y" has been pressurizing him and his father through "X" to sell their shares in their company. "Y" was stated to have threatened the company's auditors, and obstructed its functioning. The complainant alleged that he had escaped an assault on 25 August, 2023 in Gurugram. The allegation was that he was receiving phone calls from the office of the petitioner, who is the Director General of Police¹, Himachal Pradesh at the behest of Y. Allegedly, the complainant received a WhatsApp message from the SHO, Palampur stating that the petitioner wished to speak to him

1 "DGP".

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and that he must call back on a particular phone number. When the complainant established contact, he was connected to the petitioner, who insisted that the complainant come to Shimla to meet him. The email detailed criminal complaints filed by him in Gurugram after an alleged attack on him, and subsequent instances of intimidation to compel him to withdraw them. No FIR was registered in respect of this complaint and a later complaint filed by the complainant in relation to an incident that transpired in Mcleodganj.

5. On 9 November 2023, the High Court suo motu registered a Criminal Writ Petition pursuant to the above email. The State of Himachal Pradesh, Superintendent of Police, Kangra and Superintendent of Police, Shimla were arrayed as respondents. On 10 November 2023, the High Court issued notice, directed the two SPs (Kangra and Shimla) to file status reports and appointed an *amicus curiae*.
6. Status reports were filed on 16 November 2023 before the High Court. The Advocate General assured the High Court that an FIR would be registered on the complaint lodged by the complainant on 28 October, 2023. On 16 November 2023, FIR No 55/2023 was registered by the Mcleodganj Police Station for offences punishable under Sections 341, 504 and 506 read with Section 34 of the Indian Penal Code², after the registration of the criminal writ petition before the High Court.
7. The status report submitted by the SP Kangra indicated that the complainant had addressed an email to her on 06 November 2023 stating that he had received a phone call intimating him that an FIR (No. 98/2023) had been registered against him at Shimla. The status report submitted by SP, Shimla, stated that the said FIR 98/2023, under Sections 299, 469, 499 and 505 of the IPC was registered on a complaint made by the petitioner to the SHO, Police Station East, District Shimla.
8. The status report of the SP Shimla indicated that there were telephonic conversations between the petitioner and the complainant. Moreover, on 27 October 2023 which is the date on which the incident is alleged to have taken place at Mcleodganj, there were 15 missed calls from the office land line numbers of the petitioner to the complainant. Shortly

2 "IPC".

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after the complainant refused to come to Shimla at the instance of the petitioner, he was accosted by two persons at Mcleodganj who called upon him to withdraw the complaint at Gurugram. The status report found *prima facie* evidence of extortion, use of criminal force to constrain the complainant to settle a civil dispute between him and “Y” and abuse of the office of the petitioner, as DGP of Himachal Pradesh.

9. A subsequent status report filed by the SP Shimla stated that an Additional Superintendent of Police was placed in charge of investigating FIR No 55 of 2023 filed by the complainant, in place of the DSP. Another status report indicated that FIR No 350/2023 was registered on 27 November 2023 for offences under Sections 323, 506 read with Section 34 of the IPC at Police Station, Sector 9, Gurugram on the complaint lodged on 25 August 2023 by the complainant.
10. On 21 December 2023, the Advocate General, appearing on behalf of the State of Himachal Pradesh, submitted that the investigation was being carried out uninfluenced by the office of the DGP. The High Court flagged its concern at that stage in the following terms :
 - “(i) there is material detected in the investigation, as pointed out in the status report of the respondent No.3, which showed that the Director General of Police had also been in continuous contact with Y, the alleged business partner of the complainant (with whom the complainant has disputes);
 - (ii) the Director General of Police had put the complainant under surveillance;
 - (iii) that Director General of Police also made missed calls on 27.10.2023 (the date of incident on Mcleodganj alleged by the complainant) to the complainant’s mobile phone and also spoke to him on that day; and
 - (iv) the Director General of Police had himself got registered an *FIR No.98/2023 dt. 4.11.2023* under Sections 299, 469, 499 and 505 IPC against the complainant.”

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11. The High Court observed that in the backdrop of the status report, the FIR registered at the behest of the petitioner, the surveillance of the complainant and communication between the petitioner and the complainant, the failure of the Police to act on the complaint was not explained by the SP, Kangra. It noted that the FIR was registered belatedly on 16 November 2023 only after the Court had entertained the Writ Petition. The High Court then proceeded to observe that the material collected by the SP, Shimla indicated *prima facie* that the Director General of Police:
 - (i) Had been in touch with “Y”, the alleged business partner of the complainant;
 - (ii) Had made 15 missed calls in an effort to contact the complainant on 27 October 2023;
 - (iii) Had spoken to the complainant on 27 October 2023 and after he refused to come to Shimla, the complainant was threatened in an incident at Mcleodganj;
 - (iv) Placed the complainant under surveillance; and
 - (v) Lodged FIR No 98/2023 on 4 November 2023 against the complainant.
12. The High Court observed that there is a real possibility that the investigation would not be carried on fairly. It accordingly directed that the petitioner, who is holding the post of DGP, and the SP, Kangra should be moved to any other post to ensure that a fair investigation takes place.
13. The petitioner was neither impleaded in the proceedings nor was he heard before the above order was passed. On that ground, the petitioner challenged it in a Special Leave Petition before this Court.
14. The principal grievance urged before this Court was that the petitioner was directly affected by the order of the High Court dated 26 December 2023, but he was neither made a party to the proceedings nor was he furnished a notice of the proceedings.
15. This Court permitted the petitioner to move an application for recall of the High Court’s order dated 26 December 2023. The recall application was directed to be disposed of within a period of two weeks and until then, the directions of the High Court for transfer of the petitioner were stayed. This Court also stayed the order issued

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pursuant to the High Court's directions posting the petitioner as Principal Secretary (Ayush), Government of Himanchal Pradesh.

16. This Court recorded that both petitioner and complainant had no objection if the investigation were to be transferred to the Central Bureau of Investigation³ so as to obviate any allegation of interference at the behest of the petitioner.

The present Special Leave Petition:

17. The present SLP stems from the rejection of the petitioner's recall application mentioned above. The High Court has dismissed it and has directed the State Government to consider within a week, forming a Special Investigation Team⁴ consisting of IG level officers to coordinate the investigation in all the FIRs and to advise the government on providing effective security to the complainant and his family.
18. By the impugned order, the High Court also rejected an application filed by the SP Kangra, to implead her and to recall its earlier order dated 26 December 2023 by which she was also directed to be moved out of the post. Though the State Government had implemented the order of the High Court against the petitioner, it has not been implemented against SP, Kangra yet.
19. Before the High Court, it was admitted on behalf of the petitioner that he had requested the complainant to come to Shimla. The case of the petitioner was that he was contacted by a senior advocate (referred to as "Y") who had a dispute in regard to business transactions with the complainant. Allegedly, the dispute had taken an ugly turn when scandalous allegations were made by the complainant against "Y", following which, on 9 October 2023, an email was addressed by "Y" to the petitioner to take action against the complainant. The petitioner admitted that in pursuance of the email, on 27 October 2023, he asked his Private Secretary to contact the complainant through his official land line. The petitioner states that he was informed that the complainant could not be reached despite repeated attempts. Eventually, on 27 October 2023, the complainant made a call to the petitioner and when he was requested to come to Shimla, he declined to do so on the ground that he was travelling out of India.

3 "CBI".

4 "SIT".

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20. On the other hand, it is the complainant's case that "Y" has been using his connections so as to intimidate the complainant into selling his shares in his company. Having failed in the takeover bid, "Y" has resorted to threatening the complainant and his family, through the petitioner.
21. The High Court observed that while it could not decide on the rival contentions, the petitioner, who is a public servant, had overstepped his authority by intervening in what was clearly a private civil dispute. The High Court noted that the status report submitted by the SP Shimla indicated the continuing contact of "Y" with the petitioner between September and November 2023 and that the SHO, Palampur had approached the complainant requiring him to call up the land line number of the petitioner. The High Court observed that the petitioner had admitted in his recall application to having placed the hotel run by the complainant under surveillance for alleged drug running activities in September 2023.
22. The status report filed by the SP Shimla on 4 January 2023 alleged that the petitioner was intimidating in his conduct towards the Investigating Officer handling the case initiated by FIR No. 98/2023 filed at the instance of the petitioner against the complainant. The status report stated that the conduct of the petitioner raised suspicion about his role in the alleged offences against the complainant. When the petitioner was confronted with this status report of the SP, Shimla, the petitioner imputed mala fide intentions to the said officer.
23. Before proceeding further, it is necessary to note the submissions which have been urged by Mr. Mukul Rohatgi, senior counsel appearing for the petitioner in relation to the imputations against the SP, Shimla. A blast is alleged to have taken place on 18 July 2023 in Shimla resulting in the loss of two lives and injury to several others. The blast was investigated under the supervision of the SP Shimla who, according to the petitioner, sought to cover it up as an accidental blast of an LPG cylinder. The petitioner is stated to have addressed a communication to the Additional Secretary in the Union Ministry of Home Affairs requesting an investigation by the National Bomb Data Centre of the National Security Guard. In subsequent communications to the Chief Secretary on 10 August 2023 and 1 September 2023, the petitioner alleged negligence in the post-blast investigation by the SP Shimla and requisitioned the

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NSG for investigation, suspecting the use of an IED including RDX which was allegedly detected at the site of the blast.

24. In this backdrop, the petitioner has alleged that the SP Shimla was on inimical terms arising out of his communications to the State Government in regard to SP Shimla's handling of the blast.
25. The Advocate General has opposed the plea of the petitioner for recalling the order and opposed the allegations levelled by the petitioner against the SP Shimla.
26. This court had noted in its previous order dated 3 January 2024, that counsel for both the complainant as well as the petitioner are agreeable to the transfer of the investigation to the CBI. The High Court noted that the Advocate General has opposed the transfer of the investigation. Bearing in mind the principles laid down by this court - that the power to transfer an investigation to an outside agency is to be exercised with circumspection - the High Court rejected the plea for transfer of the investigation to the CBI.

Analysis

27. The case has travelled to this Court once again arising out of the rejection of the application filed by the petitioner for recall of the earlier order of the High Court.
28. The consequence of the impugned order is that:
 - (i) The earlier order of the High Court directing that the petitioner should be shifted out of the post of DGP, Himachal Pradesh stands revived;
 - (ii) The State Government has been directed to consider forming a Special Investigation Team consisting of IG level officers to coordinate the investigation of all the FIRs; and
 - (iii) The grant of protection to the complainant has been directed to be evaluated by the Government.
29. We have heard Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioner and Mr Rahul Sharma, counsel appearing on behalf of the newly added respondent-complainant.
30. At the outset, we must express our reservations about the manner in which the High Court took up the matter *ex parte* and issued directions transferring the petitioner out of the post of DGP in the first

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instance. The proceedings were triggered by an email addressed by the complainant to the Chief Justice imputing allegations of the misuse of his official position as DGP against the petitioner. The allegations which were levelled by the complainant are that the petitioner, in his official capacity, intervened in a civil dispute and attempted to use his office to intimidate the complainant. The allegations are apparently serious and evidently formed the basis of the order that the High Court originally passed on 26 December 2023.

31. Based on the status reports filed in the proceedings before it, the High Court came to a *prima facie* conclusion that the investigation into the FIRs could not be conducted fairly with the petitioner at the helm as the DGP. The High Court thus directed that the petitioner be moved to other posts to ensure a fair investigation. In doing so the High court has assumed disciplinary jurisdiction over the petitioner. This was clearly impermissible. As a serving police officer, the petitioner is subject to the disciplinary control which is wielded over him in terms of the rules governing service. The High Court has improperly assumed those powers to itself without considering the chain of administrative control in the hierarchy of the service. The State Government shifted the petitioner as Principal Secretary (Ayush) in compliance with the directions of the High Court. The consequence of shifting out of an IPS officer has serious consequences. The order was passed without an opportunity to the petitioner to contest the allegations against him or to place his response before the Court. There was thus a manifest miscarriage of procedural justice.
32. By this Court's order dated 3 January 2024, the petitioner was relegated to the remedy of a recall application before the High Court since his grievance was the denial of an opportunity to be heard before the High Court, before it passed the order dated 26 December 2023.
33. The correct course of action for the High Court would have been to recall its *ex parte* order dated 26 December 2023 and to commence the proceedings afresh so as to furnish both the petitioner and the complainant and other affected parties including the SP, Kangra, an opportunity to place their perspectives before it. Instead, the High Court, while deciding the recall application, heavily relied on

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the status report submitted by the SP, Shimla on 4 January 2024. The High Court has, in the course of its order, also relied on the earlier status reports which were referred to in its order dated 26 December 2023.

34. The impugned order suffers from a patent error of jurisdiction. The order was passed without compliance with the principles of justice, especially, the principle of *audi alteram partem*. The order dated 26 December 2023 had serious consequences, and it was passed without hearing the petitioner who stood to be affected by it. A post-decisional hearing of the kind conducted by the High Court lacks fresh and dispassionate application of mind to the merits of the recall application, and is for that very reason, likely to cause disquiet.
35. At this stage, we are desisting from expressing any opinion on the allegations which are made against the petitioner or, for that matter, the allegations that the petitioner has made against SP, Shimla. The SP Shimla is not present before this Court. It is, therefore, necessary to clarify that the submissions which have been made by the petitioner earlier, as recorded above, have not been commented upon in the course of this judgment.
36. The High Court has directed the State Government to consider constituting an SIT so that an objective and fair investigation can take place. The High Court has directed that the SIT shall consist of IG level officers who will probe all aspects of the matter including the FIRs which gave rise to the proceedings before it. Likewise, the High Court has directed that the State Government should consider granting adequate protection to the complainant and his family. We are not disturbing either of these two findings by the High Court.
37. However, it would be inappropriate to maintain the order of the High Court directing that the petitioner be shifted out of the post of DGP in pursuance of the earlier order dated 26 December 2023 which stands affirmed by the impugned order. The above direction of the High Court directing the shifting out of the petitioner from the post of DGP is set aside. The petitioner shall exercise no control whatsoever in respect of the investigation which is to be carried out by the Special Investigation Team. Instead of and in place of

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the direction of the High Court requiring the State Government to consider constituting an SIT, we issue a direction to the State Government to do so. The SIT shall consist of IG level officers who shall not report to the petitioner for the purpose of the investigation. The State Government is directed to provide adequate security to the complainant and to the members of his family and to continue to do so based on its evaluation of the threat perception. We clarify that since the investigation is to be carried out by the SIT, we are not expressing any opinion on the merits of the allegations which shall be duly investigated in accordance with law.

38. The Special Leave Petitions are accordingly disposed of.
39. Pending applications, if any, stand disposed of.

Headnotes prepared by: Ankit Gyan Result of the case: SLPs disposed of.