

**IN THE HIGH COURT OF HIMACHAL PRADESH****AT SHIMLA****Cr.MP.Nos.79 and 84 of 2024****IN****CR. WP no.14 OF 2023****Reserved on:05.01.2024****Pronounced on: 09.01.2023**

COURT ON ITS OWN MOTION.**Versus**

1. STATE OF HIMACHAL PRADESH THROUGH SECRETARY (HOME-II) TO THE GOVT. OF HIMACHAL PRADESH
2. SUPERINTENDENT OF POLICE, KANGRA, DISTRICT KANGRA, HIMACHAL PRADESH
3. SUPERINTENDENT OF POLICE, SHIMLA, DISTRICT SHIMLA, HIMACHAL PRADESH
4. SHRI SANJAY KUNDU, IPS, S/O Dr. C.L.KUNDU, AGED 59YEARS, R/O TYPE-VI, SET NO.6, BLOCK NO.6, JAKHU, SHIMLA, HIMACHAL PRADESH- 171001
5. MS.SHALINI AGNIHOTRI, D/o SHRI RAMESH KUMAR AGNIHOTRI, VILLAGE AND POST OFFICE THATHAL, TEHSIL AMB, DISTRICT UNA, HIMACHAL PRADESH.

...Respondents

Coram:**Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.****Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.****Whether approved for reporting?**

Amicus curiae : Mr. Neeraj Gupta, Sr. Advocate with Mr.Vedhant Ranta, Advocate.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Rakesh Dhaulta & Mr. Pranay Pratap Singh, Additional Advocate Generals, and Mr.

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Sidharth Jalta & Mr. Arsh Rattan, Deputy Advocate Generals, for respondent no.1 and 3.

Mr.Sanjay Jain, Senior Advocate through Video Conference with Mr.Arjun Lall, Mr.Aakash Thakur and Mr.Aakarsh Mishra, Advocates for Mr.Sanjay Kundu (respondent No.4)

Mr.Shrawan Dogra, Sr. Advocate with Mr.Tejasvi Dogra, Advocate for Ms.Shalini Agnihotri (respondent no.5)

M.S. Ramachandra Rao, Chief Justice.

The order dt.26.12.2023 in Cr.W.P.No.14 of 2023

On 26.12.2023, an order had been passed by this Bench in Cr.W.P.No.14 of 2023 directing the State of Himachal Pradesh represented by it's Principal Secretary, Home –II (respondent No.1) to take steps at the earliest to move Shri Sanjay Kundu, the then incumbent holding the post of Director General of Police, Himachal Pradesh (for short "DGP") and Ms.Shalini Agnihotri, the then incumbent holding the post of Superintendent of Police, Kangra at Dharamshala (respondent No.2) to other posts where they would not have any opportunity to influence the investigation in (i) the FIR No.55/2023 registered by the Mcleodganj Police Station, District Kangra at the instance of a businessman by name Nishant Sharma against unknown persons under Sections 341,504,506,34 IPC on the basis of a email/complaint dt.28.10.2023 made by Nishant Sharma and (ii) FIR No.98/2023 dt.4.11.2023 registered by Shri Sanjay Kundu in Police Station East, Shimla, District Shimla. We had directed the listing of the case again on 4.1.2024.

To avoid repetition, the circumstances which led this Court to pass the said order and the reasons therefor set out in the said order may be read as part and parcel of this order.

The order dt.3.1.2024 of the Supreme Court in SLP (Criminal) No.129 of 2024

This order was challenged by Shri Sanjay Kundu before the Supreme Court of India in SLP (Criminal) No.129 of 2024 (SLP (Criminal) Diary No.54019/2023). He contended that he was not impleaded as a party in the Cr.WP.No.14/2023 and he was not heard by this Bench to rebut the allegations made against him in the email dt.28.10.2023 of Nishant Sharma.

The said SLP was disposed of on 3.1.2024 by the Supreme Court agreeing with his contention, and granting him liberty to move this Court when proceedings are taken up on 4.1.2024 with an application for *recall* of the order dt.26.12.2023.

The Supreme Court directed this Court to decide the recall application within 2 weeks.

Till it was disposed off, the Supreme Court stayed the direction for the transfer of Shri Sanjay Kundu of the post of DGP. It also directed that no steps shall be taken to enforce the consequential order issued on 2.1.2024 by the State Government posting him as Principal Secretary (Ayush), Govt. of Himachal Pradesh.

Hearing on 4.1.2024

When the Cr.W.P.No.14 of 2023 was listed on 4.1.2024, it was informed that recall petition No. Cr.WP.No.79 of 2024 was filed by Shri Sanjay Kundu.

The Bench was also informed that Ms. Shalini Agnihotri, the Superintendent of Police, Kangra District at Dharamshala filed (a) Cr.MP.No.74 of 2024 to implead her in her personal capacity and (b) Cr.MP.No.84/2024 to recall the order dt.26.12.2023 passed in Cr.WP.No.14 of 2023 by this Bench to move her out of the post of Superintendent of Police, Kangra District at Dharmshala.

The State Government had not implemented the order dt.26.12.2023 *qua* Ms. Shalini Agnihotri as on date and did not move her out of the said position.

This Court directed these applications to be listed on 5.1.2024 for hearing having regard to the fact that this Court would be having a winter vacation from 13.1.2024 till 25.2.2024 and there were only 5 working days for hearing the matter and for pronouncing orders therein, and the Supreme Court had fixed two weeks time for disposal of the recall petition of Shri Sanjay Kundu.

A supplementary status report dt.4.1.2024 was filed by the Superintendent of Police, Shimla through the Advocate General,

State of Himachal Pradesh. Copy of the same was served on the counsel on record for Shri Sanjay Kundu and Ms. Shalini Agarwal on 4.1.2024 itself on the direction of this Bench. This status report has an important bearing on our decision in these applications.

Hearing on 5.1.2024

The Bench suo motu impleaded Shri Sanjay Kundu, IPS in his personal capacity as respondent no.4. Cr.MP.No.74 of 2024 filed by Ms. Shalini Agnihotri was also allowed and she was impleaded as respondent no.5 in this Cr.WP.

The recall applications Cr.MP.No.s 79 and 84 of 2024 filed by the said individuals were heard almost for the whole day by this Bench (from 11 am to 4 pm) and orders were reserved.

To avoid repetition, we shall discuss the submissions of the respective parties at the appropriate place while making appropriate observations/findings necessary for the disposal of these applications.

Consideration by the Court

At the outset Sanjay Jain, Sr.Counsel (for Shri Sanjay Kundu) and Shri Shrawan Dogra, Sr.Counsel (for Ms. Shalini Agnihotri) highlighted the brilliant academic achievements and important milestones in the careers of their respective clients and stated that their careers had been unblemished all through, but the

order dt.26.12.2023 passed by us in Cr.WP.No.14 of 2023 damages their respective reputations and careers.

Shri Sanjay Jain, Sr.Counsel stated that his client Shri Sanjay Kundu is due to retire in 3 months time and he would want to leave service with a clean image.

Shri Dogra stated that his client Ms.Shalini Agnihotri had a long career ahead of her.

Both therefore tried to impress this Court that as the order dt.26.12.2023 was passed behind the back of their respective clients, it ought to be recalled. They even offered to let the investigation into the above FIRs to be done by an outside agency such as the Central Bureau of Investigation established under the Delhi Police Establishment Act,1946.

RE: CR. MP.NO.79 OF 2024 FILED BY SHRI SANJAY KUNDU

Shri Sanjay Jain , Sr.counsel for Shri Sanjay Kundu stated that his client had been contacted on 9.10.2023 by the practicing Senior Advocate K.D.Shridhar (referred to as 'Y' in the previous order dt.26.12.2023 passed by this bench) , an old acquaintance of his, who had business dispute with Nishant Sharma, and told him that business disputes between them had taken an ugly turn and the latter had made certain scurrilous allegations against him (K.D.Shridhar) in an email dt.9.10.2023 and implored on Shri Sanjay Kundu to take action against Nishant Sharma. He

contended that in good faith and motivated by principles of *police led mediation*, Shri Sanjay Kundu, as DGP, undertook to look into the issue; and *when he got time on 27.10.2023, he had asked his private Secretary Rakesh Gupta to contact Nishant Sharma over the phone through the official land line, on the number given by the latter in his email dt.9.10.2023 sent to K.D.Shreedhar. He admitted that despite many attempts he was informed by his Private Secretary that Nishant Sharma could not be reached. (15 missed calls were admittedly made to the mobile of Nishant Sharma from the land line of office of DGP on the morning of 27.10.2023).*

He stated that around afternoon on 27.10.2023, his office received a call from Nishant Sharma. *He admitted that he requested Nishant Sharma to come to Shimla, but he refused to come saying that he was going to Malaysia with his family. Counsel stated that the conversation between Nishant Sharma and Shri Sanjay Kundu was cordial, and that thereafter Shri Sanjay Kundu neither had any meeting, nor even any telephonic contact with Nishant Sharma.*

This is strongly contested by the complainant Nishant Sharma, who appeared in person. He stated that Shri K.D.Shreedhar and his brother, by using their high connections, were trying to intimidate him through the DGP and force him to sell his and his father's shares in the pvt.company by name M/s

Shri Chamunda Laboratories and Projects Private Limited. He contended that having failed in a takeover bid by process of Company Law, they have resorted to (a) intimidation by using gangsters to attack him and his family and terrorize them so as to force a settlement and (b) also pressurize him to sell his family's shares in the said Company by having him threatened through influential people like Shri Sanjay Kundu. He alleged that during their phone conversation on 27.10.2023, Shri Sanjay Kundu spoke in a *threatening tone* and *forcefully insisted* that he should come to Shimla and talk to him.

It would be difficult for this Court to state which version is correct, but we may point out the Courts in our Country have repeatedly laid down that the police officers cannot interfere in civil disputes.

A Division bench of the Andhra Pradesh High Court held in the ***Government of Andhra Pradesh and Ors. vs. Palla Venkata Ratnam and Ors¹*** as under:

“ 56. ... The Supreme Court and this Court have repeatedly laid down that the police officers cannot interfere in civil disputes. If an allegation is made that an officer of the rank of SDPO is involved in settling civil disputes and demanded illegal gratification for the same, it is the primary duty of the immediate controlling authorities as well as DGP as the head of the police department to act promptly and take necessary action.”
(emphasis supplied)

1 Order dt. 09.07.2012 - APHC : MANU/AP/0715/2012 para 56

In *Sudershan vs. Director General of Police and Ors.*², the Andhra Pradesh High Court held:

“7. In view of the above contentions, the point that arises for consideration is:

"Whether the action of the second respondent in calling the petitioner, who is a Medical Practitioner, to the office of the second respondent without registering any crime, and asking him to produce the accounts relating to the nursing home in the process of deciding an alleged dispute between the third respondent and the petitioner, is in violation of Articles 19(1)(g) and 21 of the Constitution of India."

... ..

28. *It is also relevant to mention here that the police can only investigate into the crimes and call for any person, who can be a witness in that case, and examine the person connected with the crime or the accused, to collect evidence in the case. At the same time, the police have no power or jurisdiction to deal with civil disputes unconnected with criminal action.*

30. *In the present case, even if it is taken that the third respondent is entitled to receive the amount, without prejudice to the contention of the petitioner, the same is purely of civil nature and the remedy of the third respondent is to file a suit for the recovery of the amount. When the action to be taken by the third respondent is purely of civil nature, the second respondent has no jurisdiction to decide the claim of the third respondent as a Police Officer. It is also apposite to notice that a Police Officer's deciding a civil dispute amounts to exercising colourful authority which is not vested in him under law."*

(emphasis supplied)

This was also reiterated in *S. Ranjan Raju vs. State of Odisha*³.

The Orissa High Court observed:

2 Order dt. 07.10.1994 – AP HC : MANU/AP/0584/1994

3 Order dt.13.07.2020 – Orissa HC : MANU/OR/0156/2020.

“6. This Court is regularly witnessing a worrisome trend of increasing instances of abuse of the process of law by litigants seeking to settle civil disputes, using the criminal law machinery.

9. A general notion prevalent in the mind of an average litigant is that if a person could somehow be involved in a criminal prosecution, there are high chances of imminent settlement. Any effort to settle a civil dispute which does not involve any criminal offence, by applying pressure through criminal prosecution should be discouraged.”

(emphasis supplied)

The Superintendent of Shimla in his status report dt.15.12.2023 stated at para 5F that “involvement of high profile officers (of the Police force) and criminal gangs to settle dispute between partners by forcing one partner for the purpose with means of extortion, criminal design as alleged by the complainant, ... cannot be ruled out.”

In para 4(a) of his recall application, Shri Sanjay Kundu states:

“That the applicant has no prior relationship, acquaintance or interaction ... with Nishant Sharma..”

How a Senior Police Officer like Shri Sanjay Kundu, who ought to be aware of the legal position that his interference in a civil dispute between shareholders of a pvt.company is highly improper, thought he should intervene and mediate between K.D.Shreedhar and Nishant Sharma (with whom he had no prior acquaintance) and settle their disputes, we are unable to

comprehend. This conduct cannot be said to be within his line of duty *prima facie*.

Moreover, Shri K.D.Shreedhar is admittedly a Senior Advocate practicing in this High Court of Himachal Pradesh with considerable knowledge and experience. He is not a poor man suffering any disadvantage and can certainly avail remedies available to him at law to resolve his disputes with Nishant Sharma and his father and does not need Shri Sanjay Kundu's intervention. At request of such a person, the attempt of Shri Sanjay Kundu, IPS to attempt to settle the dispute seems to be a colourable exercise of his power and authority *prima facie*.

In his status report dt.15.12.2023, the Superintendent of Police, Shimla had stated at para 7(o) that “ *CDR analysis of Shri K.D.Shreedhar's mobile phone No.9816025857 reveals his contact with 9818153766 which is the mobile number of Shri Sanjay Kundu, the DGP according to CAF details*”. He stated at para 8(b) that there were 9 such calls in September, October and November,2023 and the longest conversation was on 25.10.2023 for 256 seconds. This was 2 days before the Mcleodganj incident alleged by Nishant Sharma.

Thus the continued interaction between Shri Sanjay Kundu and Shri K.D.Shreedhar for over 3 months suggests more than a

mere acquaintance, and possibly a longer association/friendship between them.

The Superintendent of Police, Shimla also stated in his status report dt.16.11.2023 that on 27.10.2023, the SHO, Palampur, Sandeep Sharma posted a Whatsapp message from his mobile number 82192-82766 to Nishant Sharma to call the DGP, and that the said message reads:

“ Nishant ji, Call on this land line 01772626222, DGP Sir, wants to talk to you”

The screen shot of this message is annexed as Annexure R/3-6 to his status report.

There is no reference to this Whatsapp message in the recall petition filed by Shri Sanjay Kundu.

In para 6 of his recall application, Shri Sanjay Kundu even admitted to have placed the Hotel Sai Gardens run by Nishant Sharma in September, 2023 under surveillance for alleged drug running activities.

None of these circumstances is disputed by Shri Sanjay Jain, counsel for Shri Sanjay Kundu.

He also admitted that Shri Sanjay Kundu, DGP had filed FIR No.98/2023 dt.4.11.2023 at Shimla East Police station against Nishant Sharma alleging defamation by the latter.

We had relied on all these circumstances i.e (a) that there were contacts between Shri Sanjay Kundu and Shri K.D.Shreedhar, (b) that Shri Sanjay Kundu had persistently attempted to call Shri Nishant Sharma, (c) that Shri Sanjay Kundu had placed the Hotel run by Nishant Sharma under surveillance and (d) Shri Sanjay Kundu had filed FIR No.98/2023 at Shimla East Police station against Nishant Sharma, as circumstances warranting the passing of the order dt.26.12.2023 directing the State of Himachal Pradesh to move him out of the DGP position he was holding.

In view of the above undisputed facts, this Court had no choice but to pass the order dt.26.12.2023 since the State Government did nothing in the matter.

The status report dt.4.1.2024 of the Superintendent of Police, Shimla

On 4.1.2024, a status report with annexures had been filed by the Superintendent of Police, Shimla contents of which are worthy to note:

“1. .. during the course of investigation of the case FIR No.98/2023 dt.4.11.2023 under Sections 211,469,499,500 and 505 IPC registered in Police station east, District Shimla, H.P, the Investigating Officer, Amit Thakur, Deputy Superintendent of Police(LR), Shimla has visited the office of the DGP, HP. During the course of investigation, in the office of the DGP, HP, the tone and manner of the DGP was not only intimidating but also impeding in the investigation. The DGP, Sanjay Kundu, in

a forceful manner stated that whatever you (investigating officer) have done & doing will have consequences.

2.It is pertinent to submit that the matter qua above, the report of the Investigation Officer was also brought in the knowledge of the Principal Secretary (Home) to the Government of H.P. vide letter No.115811 dt.28.12.2023.

3...

4. That it is most humbly submitted that the investigation done till date, on the basis of material evidences collected, in terms of real, physical and electronic, are sufficiently corroborating as well as point needle of suspicion strongly towards the role playing of DGP, Sanjay Kundu, DGP,HP, in the commission of the crime alleged by the complainant in the Daily dairy No.78 dt.4.12.2023 of Police Station East, Shimla, District Shimla, HP and imputations leveled in FIR No.98/2023 dt.4.11.2023....”

Ex.R1 to this status report is the detailed complaint made by the Dy.Superintendent of Police, Shimla to the Superintendent of Police, Shimla mentioning the intimidating behavior of the DGP on 14.12.2023 when he went to question him as part of his investigation in the complaint filed by the DGP against Nishant Sharma.

Ex.R2 dt.28.12.2023 to this report is the letter written by the Superintendent of Police, Shimla to the Principal Secretary, Home, HP enclosing the copy of the above complaint of the Dy.Superintendent of Police. The Superintendent of Police, Shimla in this letter stated that the investigation officer needs to be insulated from the authority and undue influence of the DGP;

that there is every apprehension that the DGP , being in the central of the command in the Police Department, may implicate or cause harm in any manner to the officers in the chain of investigation. Therefore there is need to take serious note of the matter against the erring officer mentioned above under the All India Services (Discipline and Appeal) Rules, 1969. He stated that otherwise the investigation process will not be able to reach/trace the truth.

It is probably this material, along with the order dt.26.12.2023 passed by us, which prompted the State Government to shift Shri Sanjay Kundu out of the post of DGP, HP and post him as Principal Secretary (Ayush), Govt. of Himachal Pradesh on 2.1.2024.

When we passed the previous order dt.26.12.2023, we were only concerned whether *there is a real likelihood of bias*, but when such specific instance of *intimidating* the Investigating Officer comes to light, indicating *actual interference with the process of investigation*, would it be safe to let Shri Sanjay Kundu continue to be the DGP, HP?

Should this Court, under the pretext of protecting the reputation of the officers concerned, forget it's constitutional responsibility of ensuring fair investigation in the matter?

We think not. There cannot be a fair trial without fair investigation.

In *Dharam Pal v. State of Haryana*⁴, the Supreme Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in the public at large and the investigating agency.

When the Court asked Sr. Counsel Sanjay Jain representing Shri Sanjay Kundu for his response to the material contained in the status report dt.4.1.2024 filed by the Superintendent of Police, Shimla, , he contended that the said official had *malafide* intention on account of certain infractions committed by the said official in the past year, and the DGP had written to the State Government seeking action against the said official. Some of the allegations are set out in para 7 of his recall petition. He alleged that so Superintendent of Police, Shimla twisted facts and misrepresented them to show the DGP in poor light in his status reports.

The Advocate General took strong objection to these allegations leveled against the Superintendent of Police, Shimla and pointed out that in the investigation of FIR No.98/2023 at Shimla (East) Police Station lodged by the Shri Sanjay Kundu against Nishant Sharma, the Superintendent of Police, Shimla is not the Investigating Officer. The Deputy Superintendent of

4 (2016) 4 SCC 160

Police(LR), Shimla, Shri Amit Thakur, is the Investigating officer; and that the Superintendent of Police, Shimla was merely filing status reports in the matter on the instructions issued by the Shri Amit Thakur. We find force in this contention.

The Advocate General appearing for the State of HP strenuously opposed the plea of Shri Sanjay Kundu to recall the order dt.26.12.2023 passed by this Court and stated that the allegations leveled by Shri Sanjay Kundu against the Superintendent of Police, Shimla ought not to have been made and there is no merit in his recall application.

The scope of this Writ Petition is to ensure fairness of investigation in the FIRs, and not to probe conduct of officials *unrelated* to the incidents/events alleged in the FIRs.

The material collected by the Investigating Officer cannot be scrutinized in these proceedings and opinion on the veracity thereof cannot be expressed by us.

If after conclusion of the investigation, a charge sheet is filed in a criminal court against certain accused persons (whosoever they may be—on which aspect, we refrain from speculating at this time), during trial only the said Court can go into the said material, and draw any conclusion as per law. Such accused will get full opportunity at the trial to rebut/question the validity and authenticity of the prosecution case. If we were to

express any opinion on the said material it would amount to giving an advance ruling on it, and might cause irreparable injustice.

Therefore in our opinion, no case has been made by Shri Sanjay Kundu for recall of the order dt.26.12.2023 passed by this Court.

RE: Cr.MP.No.84 of 2024 of Ms.Shalini Agnihotri

Now we shall deal with the pleas raised by Shri Shrawan Dogra appearing for Ms.Shalini Agnihotri, Superintendent of Police, Kangra (in her individual capacity). She had been impleaded as respondent no.2 in the Cr.WP in her official capacity and as respondent no.5 in her personal capacity.

In the order dt.26.12.2023, *qua* the said officer, we had noticed the following:

“The failure of respondent no.2 to act on the complaint made on 28.10.2023 immediately, register an FIR and investigate the same is not explained by respondent no.2. The FIR came to be registered belatedly on 16.11.2023 after this Court entertained the CRWP.

There is no explanation offered by respondent no.2 as to why the material mentioned in the status reports of the respondent no.3 is not being utilised to probe deeper into the issues/matter as seems to be warranted.”

Shri Shrawan Dogra , Sr.Counsel appearing for the said officer submitted that she is not directly the investigating

officer in the case relating to the FIR No.55/2023 at Police Station Mcleodganj, Kangra District.

According to him, she did not know the Nishant Sharma or the parties against whom he had filed the complaint and that to the best of her ability, she had taken her independent decision in the matter without any influence or interference from her superior officers in hierarchy. He placed reliance on a list of dates and events supplied by him (which were not furnished to any of the other parties).

We shall scrutinize her course of conduct between 28.10.2023 till 16.11.2023 to see *what* she did qua the complaint dt.28.10.2023 of Nishant Sharma (which she admittedly received through her email on that very day), and *how she did* the said actions.

(a) In the first status report dt.16.11.2023 filed by Ms.Shalini Agnihotri, as the Superintendent of Police, Kangra, she stated that on receipt of the email dt.28.10.23 from Nishant Sharma about the incident which occurred on 27.10.2023 at Mcleodganj, considering it's seriousness, she issued directions to the Incharge Security Branch for *discreet verification of the facts and ascertaining the truth of the contents of the email.*

Ex. R-2 dt.29.10.2023 is the said letter addressed by her to the said official.

The letter reveals that she had asked him to put up a brief report *within a week* to her.

Considering the plea of threat to life made by Nishant Sharma and her claim that she treated it as a serious one, why she had granted a week instead of a shorter time is not explained by her.

(b) She also enclosed Ex.R-4 to the said report which is a letter dt.31.10.2023 addressed by her to Nishant Sharma mentioning that his complaint was dt.30.10.2023 (This date given by her is wrong. He had sent it to her through an email dt.28.10.2023), that he had apprehension of threat to life and property from someone, that he had tried to meet her, but could not do so (Nishant Sharma stated that he went to the residence of SP, Kangra on 28.10.2023, but she was not available and having waited for a long time to meet her, he had returned back to his house at Palampur), and he should meet her in her office on 1.11.2023.

This letter was written by her on the *third* day after she received the complaint on 28.10.2023.

She could have asked him to meet her earlier by responding to his email dt.28.10.2023, if not on that day, atleast on the following day.

(c) She filed Ex.R-6 dt.6.11.2023 addressed by her to Station House Officer, Police station, Meleodganj asking him to check all CCTV cameras in the location of the incident at that place alleged by Nishant Sharma or in the vicinity discreetly, ascertain additional information in the matter and submit brief report to her *within a week* to her.

So *she had thus given him time till 13.11.2023* for collection of this data i.e 15 days after the date of incident on 27.10.2023. She could have asked him to collect them and send it to her sooner.

This letter dt.7.11.2023 was also issued by her almost 9 days after she received the complaint dt.28.10.2023 from Nishant Sharma and 10 days after the incident on 27.10.2023.

This action should have been taken sooner since there was a risk that CCTV footage would automatically get erased after a brief period of time of about 7-14 days.

(d) She also filed Ex.R-7 letter dt.7.11.2023 addressed by her to Sub-Divisional Police Officer, Palampur stating that since Nishant Sharma hails from Palampur, he should ensure safety and security, that he should act promptly in response to

any inputs regarding threat to him, and also keep a sharp vigil and surveillance at his Hotel Sai Gardens.

It was thereafter that a GD entry came to be made on 8.11.2023 at Police Station Palampur, but not even such entry was made at Police station, Mcleodganj within whose jurisdiction the alleged incident occurred.

Why she had not instructed the SHO, Mcleodganj to register the FIR and start investigation even then, is inexplicable.

Thus, having acknowledged the seriousness of threat to life faced by Nishant Sharma and his family from unknown persons, we find it strange that she showed no urgency in the matter and treated it in a casual manner.

Nishant Sharma, party-in-person, contended as under:

(i) inspite of his email dt.28.10.2023 to Ms.Shalini Agnihotri, the Superintendent of Kangra, he received no phone call from the Police Station at Mcleodganj under her jurisdiction for next 2 weeks and his family was petrified. This assertion is not denied by counsel for Ms.Shalini Agnihotri.

(ii) when he met her on 1.11.2023 as per her instructions, and briefed her about the details of the occurrence on 27.10.2023, Ms.Shalini Agnihotri, the Superintendent of Kangra said

“*Now what should we do?*”. He contended that this tepid reaction from her, demoralized him since she appeared to be not knowing how she should proceed even after being told the details. He denied the statement in her status report dt.16.11.2023 that he did not give such details to her.

(iii) she was mostly inaccessible inspite of several attempts made by him to contact her even through email and she had called him on phone only once on 7.11.2023.

(iv) CCTV footage of the attack made at Gurugram on 25.8.2023 were sent by him to Superintendent of Police, Kangra, the Superintendent of Police, Shimla and other high officials (referred to as para 2 (Ex.R-3/1) to his status report dt.16.11.2023 of Superintendent of Police, Shimla). But in her status report filed on same day, the Superintendent of Police, Kangra stated wrongly that CCTV footage did not indicate any attack on him at Gurugram, which is false. He stated that a misleading attempt has been made by her to show that he was making up a story, but the Judicial Magistrate First Class, Gurugram had made the Police there to register an FIR acting on his application under Section 156(3) Cr.P.C, being FIR No.350/2023 dt.27.11.2023 under sections 323,506, 34 IPC at Police Station Sector 9-A, Gurugram.

(v) that the Ram Prashad Jaswal, who is Dy. Superintendent of Police (LR) , Kangra and was the Investigation officer at Kangra summoned wife of Nishant Sharma to make statement, but there was no woman constable in the room and only 4 male constables were present when her statement was recorded.

(vi) copy of the FIR 55/2023 which was filed on 16.11.2023 was not given to him by the SHO, Police Station, Mcleodganj immediately though Section 154 (2) Cr.P.C and after he waited for 3 hours in the said Police Station on 17.10.2023, copy of the FIR was given to him.

(vii) when statements of Shri K.D.Shreedhar and others were being taken in the office of the Superintendent of Police, Kangra it was their lawyer who was answering the questions put to them and these were taken down by the police as if Shri K.D.Shreedhar or his associates were making them.

(viii) sketches of the persons who had accosted him on 27.10.2023 at Mcleodganj were asked by the Investigation officer at Kangra to be submitted by him by placing a lap top before him and asking him to draw their faces. No artist was provided by the Police to help prepare the sketch of such persons and the software in the lap top was not such that he could prepare it as it had very limited features.

(ix) Two days before every hearing which was to take place in this Court, he alleged that would be called by the Investigation Officer at Kangra, and something vague would be discussed with him to make it appear that there was an investigation being done, but everything was only on paper and there was no seriousness in approach.

(x) ineffective security was provided to him inspite of the Court orders;, that when he had to go to Gurugram to make his statement to the Police there, no security was provided to reach Gaggal Airport in Dharamshala to him to take the flight to Delhi; that he had to contact the Superintendent of Police, Shimla after reaching Delhi for such security, and then he promptly arranged it at Delhi after talking to his counterpart in Gurugram. He stated that initially only one PSO was provided for his security by the Superintendent of Police, Kangra, that the said PSO would sleep at Nishant Sharma's house till 8 am in the morning, have breakfast in his house, and treat it as a holiday. Later, on his complaint, 4 PSOs per day each having duty time of 4 hours only, have been provided. He stated that he and his family feel highly unsafe and are frightened.

The Superintendent of Police, Kangra stated in her status report filed after 5.12.2023 (which was taken on record by this Court on 14.12.2023) at para 5 that CCTV footages of 5

cameras in the vicinity were analysed but they did not show the assailants on the motorcycle in question. It is possible that the delay in collection of the CCTV footage by the Investigating Officer at Kangra caused it to get erased.

In contrast, the Investigation Officer i.e Shri Amit Thakur, the Dy.Superintendent of Police, Shimla stated in his report dt.5.11.2023 stated that a team had been sent to Dharamshala to collect CCTV footage at Mcleodganj (Ex.R-1 to the status report dt.15.12.2023 of Superintendent of Police, Shimla).

When the CCTV footage as well as call data analysis of the mobile phones of the DGP, K.D.Shreedhar and the complainant were available with the Investigation officer at Shimla, why the then Investigation Officer at Kangra investigating FIR No.55/2023 dt.16.11.2023, was not using the material for purpose of his investigation, is baffling.

Ms.Shalini Agnihotri, the Superintendent of Police, Kangra was aware that this Court was monitoring the investigation periodically and seeking status reports. She is expected to show some diligence and sensitivity to the concern of the court and ensure, as a supervising authority, proper investigation by her subordinates.

Shri Shrawan Dogra, Sr.Counsel for Ms. Agnihotri emphasized that after 28.10.2023, there were important festivals like Karwa Chauth on 1.11.2023 and Diwali on 12.11.2023 and his client was busy celebrating them !!

How a responsible police officer can take such a plea when there is serious threat to life of a citizen, we are unable to understand.

The FIR No.55/2023 was admittedly registered by the Police Station, Mcleodganj only on 16.11.2023 after this Court had entertained the Cr.WP on 9.11.2023 and it's listing on 10.11.2023, and after the Advocate General assured this Bench on 16.11.2023 that an FIR would be registered as regards the alleged incident which happened at Mcleodganj on 27.10.2023.

According to Shri Shrawan Dogra, Sr.Counsel, his client was getting done a *preliminary enquiry* into the allegations leveled by Nishant Sharma against KD Shreedhar and his brother Sachin Shreedhar , a former IPS officer (referred to X in our previous order dt.26.12.2023).

We may point out that the said FIR No.55/2023 dt.16.11.2023 mentions offence under **Section 341 IPC** apart from offences under Sections 504,506 and 34 IPC.

Section 341 IPC deals with offence of wrongfully restraining a person, which is a cognizable offence.

The Supreme Court in its Constitution Bench decision in **Lalita Kumari v. Govt. of U.P.**⁵ held that if a complaint discloses the commission of a cognizable offence, the police have no discretion or option but to *forthwith* register an FIR, send a report to the Magistrate under Section 157(1) Cr.P.C and commence investigation. It declared :

“49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

... ..

53. Investigation of offences and prosecution of offenders are the duties of the State. For “cognizable offences”, a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

5 (2014) 2 SCC 1

54. ... The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR.

55. In view of the above, the use of the word “shall” coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. ...”

“96. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure “judicial oversight”. Section 157(1) deploys the word “forthwith”. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.”(emphasis supplied)

Surely, an IPS officer having more than 10 years of service knows this legal position.

If the email dt.28.10.2023 disclosed the commission of the cognizable offence under section 341 IPC, she had no choice but to direct registration of an FIR, submit report to the Magistrate and then proceed to get it investigated. Under sub-section (3) of Section 154 Cr.P.C she has to either investigate the case herself or direct an investigation to be made by any police officer subordinate to her. Strangely she chose not to have an FIR

registered under sub-section(1) of Section 154, and proceeded to allegedly carry out a preliminary enquiry.

There is thus *prima facie* a dereliction of duty on her part in this regard. She had no authority in law to have a preliminary enquiry done in respect of information about commission of a cognizable offence contained in the complaint dt.28.10.2023 made by Nishant Sharma to her.

The above conduct of Ms. Shalini Agnihotri cannot be viewed with lenience in the facts and circumstances of the case as she has not shown the needed sensitivity, urgency and prompt action through out.

Therefore we see no reason to recall our order dt.26.12.2023 qua Ms. Ms. Shalini Agnihotri either.

Whether a CBI enquiry can be ordered

We shall now consider whether the pleas of Shri Sanjay Kundu or Ms. Shalini Agarwal to keep them in their respective jobs as DGP, HP and Superintendent of Police, Kangra respectively *and* get the FIRs investigated through the Central Bureau of Investigation, has any merit.

The Advocate General for the State of HP vehemently opposed this plea and stated that the State of HP does not agree to this course of action. He also stated that only in exceptional cases this court may direct investigation by the said agency when the State opposes it, and the instant case is not falling in

the said category. He stated that such act cannot be directed to be done to just enable the DGP to stay in power and satisfy his ego.

The Amicus Curiae also supported this view and contended that (i) failure to register an FIR with speed, (ii) provide police protection to Nishant Sharma effectively, (iii) lethargic conduct of investigation of the crime alleged in FIR No.55/2023 registered on 16.11.2023 at Police station, Mcleodganj and (iv) the offences referred to therein, by themselves may not warrant getting the investigation done by the Central Bureau of Investigation merely because the DGP of the State appears to be involved with Shri K.D.Shreedhar, the business rival of Nishant Sharma.

In *Sakiri Vasu v. State of U.P.*⁶, *CBI v. State of Rajasthan*⁷, *Himanshu Kumar and others v State of Chattisgarh and others*⁸, *Anant Thanur Karmuse v. State of Maharashtra*⁹ and *Vishal Tiwari v.Union of India and others*¹⁰, the Supreme court had emphasized that the power conferred on the High Court to transfer investigation to an outside agency like the Central Bureau of Investigation has to be exercised sparingly. In *Mithilesh Kumar Singh V. State of Rajasthan*¹¹, the Supreme Court held that investigation cannot be transferred

6 (2008) 2 SCC 409

7 (1996) 11 SCC 253

8 (2022) SCC Online SC 884

9 CrI.Appeal No.13.of 2023 dt.24.2.2023 (SC)

10 Writ Petition (c)No.162 of 2023 and others dt.3.1.2024 (SC)

11 (2015) 9 SCC 795

just for the asking nor can it be done to satisfy the ego or vindicate the prestige of a party interested in such investigation.

We agree with the contentions of the Advocate General and the learned Amicus Curiae that the instant case does not fall in the category of cases which would require investigation by the Central Bureau of investigation.

For all the aforesaid reasons, we reject the plea of Shri Sanjay Kundu and Ms. Shalini Agnihotri to recall our order dt. 26.12.2023 or to transfer the investigation to the CBI.

Consequently, CrI.MP.NO.79 and CrI.MP.NO. 84 of 2024 are dismissed.

We once again reiterate that we are not expressing any opinion on the merits of the claims of the parties since the investigation is still not complete.

The Principal Secretary (Home), State of HP and the respondent No.2 in the said Cr.WP shall ensure effective protection to Shri Nishant Sharma and family until further orders.

The State Government shall consider within one week forming of a Special Investigation Team consisting of IG level officers to coordinate the investigation in all the FIRs mentioned here and also to advise on providing adequate and effective security to Nishant Sharma and family.

List Cr.WP. on 28.2.2024.

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Fresh status reports be filed on the said date by the
respondent No.s 1 to 3.

M.S.RAMACHANDRA RAO
CHIEF JUSTICE

JYOTSNA REWAL DUA
JUDGE

09.01.2024

High Court of HP