

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 16th JANUARY, 2018

DECIDED ON : 26th FEBRUARY, 2018

+ **W.P.(CRL) 19/2015 & CrI.M.A. 56/2015 (Stay)**
INDER KUMAR Petitioner
Through: Mr. Alok Bhachawat, Advocate.

versus

STATE OF NCT OF DELHI & ANR Respondents
Through: Ms. Kamna Vohra, ASC for the State.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present writ petition has been preferred by the petitioner under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. to challenge the legality and correctness of orders dated 16.09.2014 and 03.11.2014 of learned Addl. Sessions Judge in CrI.Rev.P.No.23/2014 whereby costs ₹3,500/- imposed upon the State was ordered to be recovered from him.

2. I have heard the learned counsel for the parties and have examined the file. It is not at issue that the petitioner – Inder Kumar was posted as Addl. Public Prosecutor in the Court of learned Addl. Sessions Judge on the relevant dates. The State had filed revision petition against the order dated 17.05.2014 of learned ACMM in FIR No.453/2013 under Sections 380/411 IPC registered at PS Badarpur

against the respondents therein. On 14.07.2014 steps were directed to be taken in terms of the previous order for service of the respondents and the case was adjourned to 05.08.2014. On that day Mr.F.M.Ansari, APP had represented the revisionist / State. Since the steps were not taken for service of the respondents therein, one last and final opportunity was granted subject to costs ₹3,500/- to be deposited with DLSA. Seemingly, necessary steps were not taken by the State and finally vide order dated 16.09.2014 costs ₹3,500/- were ordered to be recovered from the salary of the present petitioner. It is relevant to note that on 16.09.2014 Mr.Sukhbeer Singh was the Addl. Public Prosecutor in the said Court. At the time of imposing costs on 05.08.2014 or subsequent thereafter, costs were not ordered to be recovered from the petitioner. Only when the State was being represented by Mr.Sukhbeer Singh, APP on 16.09.2014, the learned Addl. Sessions Judge was of the view that the delay in disposal of the petition for not taking steps was due to the petitioner's fault. No opportunity of hearing was given to the petitioner before passing the impugned order whereby ₹3,500/- imposed as cost upon the State were ordered to be recovered from him.

3. It is relevant to note that in other proceedings CrI.M.C. 358/2016, this Court by an order dated 29.01.2016 waived the costs imposed upon the petitioner. In another CrI.M.C. 2082/2015 decided on 21.07.2015 again this Court in similar circumstances set aside orders dated 15.04.2014, 30.09.2014 and 02.12.2014 to the extent of imposing and realization of cost from the salary of learned Addl. Public Prosecutor i.e. the present petitioner. The amount deducted

from the salary of the learned Addl. Public Prosecutor was ordered to be remitted back to him. Again, the said order was against the present petitioner - Inder Kumar. In the said proceedings also, the costs were imposed upon the State for not filing the process fee for service of the respondent. It was noted that the learned Judge should not have imposed costs as was done in the order dated 15.04.2014 and should not have directed the prosecution for payment of the said costs from the concerned Addl. Public Prosecutor which showed that the learned Judge became personal due to certain reasons which were not necessary to be mentioned in the said order.

4. The impugned orders whereby costs ₹3,500/- were ordered to be recovered from the petitioner cannot be sustained being unreasonable and passed without giving an opportunity of hearing to the petitioner. The petition is allowed and the impugned orders dated 16.09.2014 and 03.11.2014 are set aside.

5. Pending application also stands disposed of.

भारतमेव जयते

(S.P.GARG)
JUDGE

FEBRUARY 26, 2018 / tr