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

+ **W.P.(C) 3584/2018, CM APPLs.14201/18, 35511/18 & 40631/18**

RAM UGRAH SHARMA

..... Petitioner

Through: Mr.Bharat Malhotra, Advocate with
Petitioner in person.

versus

UNION OF INDIA

..... Respondents

Through: Mr.P.S.Singh, Sr.Panel Counsel for
UOI with Mr.Rajpal Singh, Advocate.
Mr.Athar Alam,Ms. Sumbul Athar,
Mr.Azhar Alam, Mr.Shahnawaz
Alam & Ms.Payal Bahl, Advocates
for R2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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16.01.2019

1. The Petitioner has approached this Court challenging an order dated 23rd February 2018 by the Directorate General, CRPF transferring his headquarters from GC, CRPF, New Delhi to IG Southern Sector in Hyderabad.

2. When this case was listed for hearing on 16th May 2018 this Court passed the following order:

“1. On the last date of hearing at the request of the learned counsel for the respondent the matter was adjourned for today.

2. Mr. Rakesh Kr.Khanna, Senior Advocate appears for the

petitioner and states that the Department has conducted a preliminary inquiry in respect of the accusations made in FIR No.216/2017 registered against the petitioner under Section 323/376/384/485/506 IPG, wherein he was detained in police custody on 06.10.2017, for a period exceeding 48 hours. He submits that to the best of the understanding of the petitioner, the report of the preliminary inquiry is favourable to the petitioner. He further submits that the complainant in the present case, who is a practicing Advocate in Delhi, is a regular blackmailer and 37 civil and criminal cases, for and against her, have been filed in Delhi, Haryana and Bihar. He hands over a compiled list containing particulars of the said cases with a copy furnished to the learned counsel for the respondent. He states that in this background, though the petitioner has been suspended, the impugned order dated 23.02.2018, changing his place of posting during his suspension, from Delhi to Hyderabad, is uncalled for, particularly when he has to face the trial in FIR No.216/2017, wherein a charge-sheet has recently been filed before the concerned Court at Gurugram.

3. We have enquired from learned counsel for the respondent as to what is the fate of the preliminary inquiry conducted in respect of the petitioner. He states on instructions that the preliminary inquiry has indicted the petitioner by recording that he had entered into financial dealings with the complainant of the FIR without bringing the same to the notice of the Department, thereby bringing disrepute to the Organization.

4. Learned counsel for the respondent states that at the time of his suspension, the petitioner posted in Hyderabad and it was at his request that he was transferred to Delhi on the ground that he required medical treatment at the AIIMS Hospital and was also required to attend court proceedings every fortnight. He states that now that the charge-sheet has been filed against the petitioner, who is on bail, court hearings are not required every fortnight and he can always take leave to attend the dates of hearing, even if he is posted at Hyderabad.

5. Learned counsel for the petitioner states that as the petitioner is under suspension, he is not expected to discharge any duty at the place of his posting and therefore there cannot be any administrative exigency for transferring him back to Hyderabad, particularly when he is required to continue attending the hearings in the criminal case filed against him in the Gurugram court. He also relies on the decision of the Government of India in respect of Rule 10 of the CCS (CCA) Rules, 1965, issued by the DOP&T on the issue of suspension that states that the head quarters of the Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to pay any extra expenditure like grant of T.A. etc. or other complications.

6. Learned counsel submits that in the present case the respondents have not been able to demonstrate any administrative exigencies for transferring the petitioner back to Hyderabad and therefore, his case may be considered sympathetically.

7. Learned counsel for the respondents is directed to file an affidavit in response to above plea taken by the petitioner within four weeks, with a copy to the learned counsel for the petitioner.

8. Rejoinder, if any, be filed within two weeks thereafter.

9. List on 04.09.2018.

10. Till the next date of hearing, operation of the impugned posting order shall remain stayed, subject to the petitioner marking his attendance at the CRPF Ground Centre, Jharoda Kalan, as may be directed by the respondents.

DASTI.”

3. Subsequently the Respondents filed CM No. 35511 of 2018 for vacation of the interim order. That application which was listed first on 31st August 2018 was directed to be taken up with the main writ petition on 4th September 2018 on which date the Court while giving last opportunity to the Respondents to file a reply to the petition within four weeks deferred the orders on CM No.35511 of 2018. The Court directed the interim order passed on 16th May 2018 to continue.

4. The Complainant in FIR No.216 of 2017 registered at PS Gurugram i.e. the prosecutrix has filed a separate application being CM No.40631 of 2018 seeking impleadment. Along with the impleadment application, the record of the proceedings before the trial Court in the trial arising out of the aforementioned FIR has been enclosed.

5. The trial Court proceedings reveal that the examination-in-chief of the prosecutrix is complete and her cross-examination is underway. Counsel for the Petitioner on instructions from the Petitioner who is present in Court states that the next date of hearing in the trial Court is 21st January 2019.

6. In the counter-affidavit filed by the Respondents, the reason for transferring the headquarters of the Petitioner from New Delhi to the IG Southern Sector, CRPF, Hyderabad is the complaint made by the prosecutrix “regarding intimidation by the Petitioner and keeping in view the seriousness of the case and possibilities of intimidation, harassment of witnesses”. This order was passed following the suspension of the Petitioner which was made effective from the date of his arrest i.e. 6th October 2017. That suspension order continues till date.

7. The Court is informed by the counsel for the Petitioner that five prosecution witnesses have already been examined. The cross-examination of the prosecutrix is expected to continue on the next date. From the copy of the proceedings of the trial Court as produced by the prosecutrix herself with her application CM No.40631 of 2018, it does not appear that the trial Court considered it necessary to order any protection to be provided to the prosecutrix. In other words she does not appear to have made any complaint about any threat or intimidation by the Petitioner.

8. It must be noted that during this entire period the Petitioner has continued to remain in Delhi pursuant to the interim order passed by the Court and he is marking his attendance in the office of CRPF Jharoda Kalan.

9. Keeping in view the above factors, the Court directs that till the conclusion of the cross-examination of the prosecutrix in the criminal trial, the interim order passed by this Court on 16th May 2018 will continue. It will be the responsibility of the Petitioner to forthwith inform the Respondents of the above event i.e. the conclusion of the cross-examination of the Petitioner. The interim order passed by this Court will expire after the conclusion of examination of the prosecutrix. In other words the Petitioner will report at the transferred posting i.e. Southern IG, CRPF. Hyderabad on or before expiry of one week from the date of conclusion of cross-examination of the prosecutrix in the above trial.

10. It is further directed that any request made thereafter by the Petitioner for permission to attend the trial on given dates will be considered on its

merits by the Respondents in accordance with the extant rules. The writ petition and all pending applications are disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 16, 2019

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