IN THE COURT OF MS. GEETANJLI GOEL
ASJ/ SPL. JUDGE (PC ACT) (CBI)-24
ROUSE AVENUE DISTRICT COURT, NEW DELHI

Criminal Revision No.02/2021
CNR No. DLCT11-000430-2021

IN THE MATTER OF:

Anshu Prakash

S/o Late Dr. Om Prakash

R/o Bungalow No.33

New Moti Bagh, Chanakyapuri

New Delhi-110023. **… Complainant/Revisionist/ Petitioner**

Versus

1. **State of NCT of Delhi**

   Through Director of Prosecution

   Govt. of NCT of Delhi.

2. **Suvashish Chaudhary**

   The then Additional Commissioner of Police, Delhi Police

   Through Commissioner of Police

   Delhi Police-PHQ, Jai Singh Road

   New Delhi.

3. **Amanatullah Khan**

S/o Late Shri Waliullah Khan

R/o A-9, Joga Bai Extension

Jamia Nagar, Okhla

Delhi-110025.

4. **Prakash Jarwal**

S/o Shri Jagdish Prasad

R/o B-148, Tigri Extension

New Delhi-110080.

5. **Arvind Kejriwal**

S/o Shri G.R. Kejriwal

R/o 06, Flag Staff Road, Civil Lines

Delhi-110054.

6. **Manish Sisodia**

S/o Capt. Dharampal Singh

R/o AB-17, Mathura Road

New Delhi-110001.

7. Rajesh Rishi

S/o Late Shri Rajender Kumar Rishi

R/o E-546, Chankaya Place

25 Futta Road, Janakpuri

Delhi-110046.

8. Nitin Tyagi

S/o Late Shri K.D. Tyagi

R/o 74 C, Pocket B

SFS Flats, Mayur Vihar

Phase-III, Delhi-110096.

9. Praveen Kumar

S/o Shri P.N. Deshmukh

R/o 2/38, Nehru Nagar

New Delhi-110065.

10. Ajay Dutt

S/o Shri Banwari Lal

R/o K-579, Dakshin Puri

Dr. Ambedkar Nagar

New Delhi-110062.

11. Sanjeev Jha

S/o Late Shri Sushil Jha

R/o H.No.93, Pepsi Road

Yash Vidya School, Burari

Delhi-110084.

12. Rituraj Govind

S/o Shri Arun Kumar

R/o H. No.B-19, Gali No.10

Pratap Vihar-III, Kirari, Delhi.

13. Rajesh Gupta

S/o Shri Damodar Prasad Gupta

R/o C-20, Ground Floor

Shakti Nagar Extension, Delhi.

14. Madan Lal

S/o Late Shri Badle Ram

R/o 47, Bapu Park, Kotla Mubarak Pur

New Delhi-110003.

15. Dinesh Mohania

S/o Shri Bhagat Singh Mohania

R/o B-14, Shiv Park, Khanpur

New Delhi-110062. …**Respondents**

Date of institution	***:***	***01.11.2021***
Order reserved on	***:***	***07.05.2022***
Date of order	***:***	***08.06.2022***

O R D E R

1. The present Revision Petition has been preferred under Section 397 read with Section 399 of Cr.P.C. against the order dated 11.08.2021 passed by the Ld. ACMM-03, Rouse Avenue District Court in Case No.02/2019 State v. Amanatullah Khan and Ors. and emanating from FIR No.54/2018, PS Civil Lines lodged by the complainant/ petitioner herein.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as extracted in the impugned order are as under:

> *"In the present case, FIR was registered upon the complaint dated 20.02.2018 of the complainant Sh. Anshu Prakash, the then Chief Secretary, Govt. of NCT of Delhi. Briefly stated the facts of the present case, as discernible from the complaint of the complainant and other*

documents/statements filed alongwith the charge-sheet, are that on 19.02.2018 at around 8.45 p.m. complainant was informed telephonically by Sh. V.K. Jain, advisor to the then Chief Minister (CM) that he had to reach at CM's residence at 12.00 midnight to discuss with Chief Minister and Deputy Chief Minister, the issue of difficulty in release of certain T.V. advertisements relating to completion of three years of current Government in Delhi; that complainant suggested that meeting could be held on 20.02.2018 in the morning, however, it was reiterated by Advisor to CM at 9.00 p.m. and again at around 10.00 p.m. that the meeting had been scheduled by CM at 12 midnight; that prior to that message from Advisor to CM, the Deputy CM had also called him at around 6.55 p.m. and informed him that if the matter of release of T.V. advertisement was not resolved by the evening, he should reach CM residence at 12.00 midnight to discuss the issue and he had already explained to Deputy CM that any advertisement to be released should not be in contravention of the guidelines of the Hon'ble Supreme Court.

2. It is further the case of prosecution that the Advisor to CM again called the complainant at around 11.20 p.m. to confirm if he had left for CM's residence for the meeting; that thereafter, complainant left his residence in his official car along with his driver HC Ashok Kumar Yadav and PSO Inspector Satbir Singh and reached CM residence at midnight; that on arrival at CM's residence, he met Sh. V.K. Jain, advisor to CM and thereafter both of them were taken to the front room where Chief Minister (Shri Arvind Kejriwal) and Deputy Chief Minister (Shri Manish Sisodia) and around 11 MLAs were present; that CM told him that the persons present in the room were MLAs and they had come to ask him about Government's publicity programme on completion of three years; that one of the MLA namely Praveen Kumar (whom complainant identified later, as transpired from his supplementary statement dated 25.04.2018) firmly shut the door of the room; that complainant was made to sit in between MLA Amanatullah Khan and another MLA namely Prakash Jarwal (whom complainant identified later, as transpired from his supplementary statement dated 20.02.2018) on a three seater sofa; that CM directed him to answer the MLAs and explain the reasons for delay in release of T.V. campaign; that complainant explained to them that the officers were bound by the guidelines laid down by the Hon'ble Supreme Court and any advertisement to be released must be in consonance with the said guidelines.

3. It is further the case of prosecution that the MLAs started shouting at complainant and abused him while blaming him and the bureaucracy for not doing enough for publicity of the Government; that one MLA namely Rituraj Govind (whom complainant identified later, as transpired from his supplementary statement dated 20.02.2018) threatened to confine him in the room for the entire night unless he agreed to release T.V. campaign; that MLA Ajay Dutt (whom complainant identified later, as transpired from his supplementary statement dated 25.04.2018) threatened to implicate him in false cases including the cases under SC/ST Act; that suddenly MLAs namely Amanatullah Khan and Prakash Jarwal, without any provocation from his side, started hitting and assaulting the complainant and hit several blows with fists on his head and temple and his spectacles fell on the ground; that he was in the state of shock; that with difficulty, complainant was able to leave the room and get into his official car and left CM residence; that MLA namely Nitin Tyagi (whom he identified later, as transpired from his supplementary statement dated 20.02.2018) used very abusive and unparliamentary language to him and when he, anyhow managed to escape from the meeting/ drawing room at the CM's residence, was even followed by Nitin Tyagi to stop him. It is further stated that at no stage, did complainant retaliate or provoke any person in the room despite confinement, criminal intimidation by extending threat to his life and assault by several MLAs while he was discharging his official duties and none of the persons present in the room made any effort to save him. The other MLAs who were present during the meeting were Dinesh Mohania, Rajesh Rishi, Sanjeev Jha, Rajesh Gupta and Madan Lal. In his complaint, complainant requested for taking action as per law as the assault was premeditated and in conspiracy of all present with intention to criminally intimidate, cause hurt with motive to deter him from discharge of his lawful duty and compel him to follow unlawful directions."

3. After completion of investigation, charge sheet was filed in the Court of the Ld. ACMM for the offences under Sections 186/353/332/323/342/504/506(ii)/120-B/109/114/34/36/149 of the IPC against thirteen accused persons namely Amanatullah Khan (A-1), Prakash Jarwal (A-2), Arvind Kejriwal (A-3), Manish Sisodia (A-4),

Rajesh Rishi (A-5), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8), Sanjeev Jha (A-9), Rituraj Govind (A-10), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13). Complaint under Section 195 Cr.P.C. was also filed on 13.08.2018. On 18.09.2018 cognizance was taken for the offences under Sections 186/332/353/342/323/506(ii) read with Sections 149 and 34 of the IPC, for criminal conspiracy under Section 120-B of IPC for commission of offences under Sections 186/332/353/342/323/506(ii) as well as for abetment under Sections 109/114 of the IPC to commit offences under Sections 186/332/353/342/323/506(ii) IPC.

4. After hearing the Ld. APP for State and the Ld. Counsels for the accused persons, vide the impugned order A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12 and A-13 were discharged and it was held that prima-facie, the offences under Sections 186/332/353/323/34 IPC were made out against the accused Amanatullah Khan (A-1) and Prakash Jarwal (A-2).

REVISION PETITION

5. Against the said order, the instant Revision Petition has been preferred averring that the Ld. Trial Court had erroneously discharged 11 accused persons of all the charges and ordered framing of charge only under Sections 186/332/353/323/34 IPC against two accused persons A-1 and A-2. It is stated that the impugned order is against the settled principles of law applied at the stage of framing of charge and a perusal of

the impugned order revealed that the Ld. Trial Court had conducted a fishing and roving enquiry into the allegations in the charge-sheet and had drawn erroneous inferences and conclusions without having the benefit of examination of prosecution witnesses and many such inferences and findings were contrary to the record. It is submitted that the Ld. Trial Court had committed an error apparent on the face of record by wrongly accepting the version set up by accused persons while ignoring and disregarding the entire case of the prosecution and the vital material collected during the course of investigation including statements of witnesses under Section 161 Cr.P.C. The Ld. Trial Court had failed to consider the case which emerged by simply juxtaposing and considering the entire sequence of relevant events and the conduct of the accused persons A-1 to A-13 prima facie made out sufficient grounds for framing of charges against the accused persons. It is averred that the Ld. Trial Court had failed to appreciate that offences under Sections 342/506(ii)/120-B/109 and 114 IPC were also made out against accused persons A-1 and A-2 based on the record including the statement of complainant/ petitioner and the medical records and charge under Section 149 IPC was also made out against all the accused persons.

6. It is averred that the Ld. Trial Court even while selectively relying on and considering the material available on record had arrived at divergent findings qua the accused persons, without any basis or justification, by applying different yardstick for different accused persons in relation to their role and involvement in the crime. It is

submitted that the impugned order stands vitiated by the Ld. Trial Court adopting an erroneous and fallacious approach wherein it had failed to appreciate, *inter alia*, that the 12:00 midnight meeting was very unusual; there was no emergency which warranted the midnight meeting; that concerned departmental officers were not called along with the petitioner, that A-3 had sufficient opportunity to discuss any issue with the petitioner during working hours of 19.02.2018; that the request of the petitioner to hold the meeting on the next day i.e. 20.02.2018 was not agreed to and the midnight meeting time was insisted by A-3 and A-4; that there was a pre-scheduled Cabinet meeting on 20.02.2018 when any important issue could have been discussed by A-3 and A-4 before or after the meeting; that 11 MLAs would also be present for the midnight meeting was not disclosed to the petitioner or to Shri V.K, Jain; that there were an entire set of antecedent events which had been ignored and that there was abundant material in the charge-sheet in support of the case of the prosecution. It is averred that the Ld. Trial Court had failed to appreciate that the petitioner had earned the ire of the Chief Minister and his party MLAs since he could not get or give the requisite certifications required for release of TV advertisements. Further, the extant DAVP rates were not being accepted by major TV channels and higher rates had not been approved and the petitioner was only discharging his duties in the highest traditions by following the guidelines laid down by the Hon’ble Supreme Court pertaining to release of such advertisements. It is submitted that the complaint was filed only after the shocking and

unheard of incident of the Chief Secretary being called for a meeting at midnight i.e. 12:00 a.m. at the residence of A-3 (Chief Minister), being confined in a small room where 13 accused persons were present, intimidated, heckled, abused, humiliated, threatened and physically assaulted without any provocation from the petitioner, under a pre-planned conspiracy hatched at the behest of A-3 and A-4. It is submitted that the accused persons i.e. A-3 and A-4 along with other MLAs of the ruling party, as per the charge-sheet filed after detailed investigation, entered into a criminal conspiracy and in a pre-meditated and pre-planned manner, under the garb of an official meeting tricked the petitioner to come to the residence of the Chief Minister at 12:00 midnight and carried out the objectives of the unlawful assembly gathered with the common intention to execute the criminal conspiracy which had its ultimate objective to compel the petitioner to have the TV advertisements released contrary to the guidelines of the Hon'ble Supreme Court. It is stated that the Ld. ACMM had gravely erred by failing to consider that the material on record established that A-3 and A-4 were architects of the entire conspiracy which was perpetrated by all accused persons including A-3 and A-4 and it was evident from the records that A-3 and A-4 had intentionally aided and abetted the criminal intimidation and physical assault on the petitioner by their instigation and also by omissions at the time of such assault.

7. It is submitted that the Ld. Trial Court had failed to appreciate the genesis of the entire case including the preceding and subsequent events of the incident wherein the

petitioner under a well-planned conspiracy was physically assaulted and intimidated as he was not giving in/agreeing to illegal directions of A-3 and A-4 to issue the TV advertisements on the occasion of AAP Government completing 3 years in violation of the guidelines of Hon'ble Supreme Court and the DAVP rates for advertisements were not being accepted by major TV channels. Further the Ld. Trial Court while upholding the version of the prosecution that the petitioner was physically assaulted by two accused persons namely A-1 and A-2, had at the same time by erroneous inferences and interpretations of the facts gravely erred in holding that such assault in an unusual and unexplained midnight meeting at the residence of A-3 was not a part of criminal conspiracy in which all the accused persons were participants. It is asserted that the Ld. Trial Court gravely erred by missing out on consideration of the nexus between the entire sequence of antecedent events and the incident at 12:00 midnight in the night of 19.02.2018 at Chief Minister's residence, where the crime was perpetrated in pursuance of the criminal conspiracy. The said antecedent events commenced broadly from 11.02.2018 with i-message of A-3 to petitioner at 12:54 p.m. regarding release of TV advertisements; meeting called by A-3 at his residence in the morning of 12.02.2018 on the issue of TV advertisements; meeting of DTTDC Board called at very short notice by A-4 on 14.02.2018 (which was a public holiday) to discuss the issue of TV advertisements and culminated in, without disclosing to the petitioner that 11 selected MLAs would also be present, tricking and compelling the petitioner to come to the

Chief Minister's residence on 19.02.2018 at midnight where the shocking incident happened resulting in the FIR.

8. It is averred that the Ld. Trial Court had allowed only the written submissions for rebuttal on behalf of the petitioner to be taken on record, and even the same were largely not considered as would be evident from a plain reading of the text of the order. It is submitted that the Ld. Trial Court had even erroneously inferred as to how the Chief Secretary/ petitioner could have recorded his views in the file relating to TV advertisements even though the Ld. Trial Court had no basis for arriving at such inference about the administrative procedure, and further the Ld. Trial Court in this regard did not even consider the statements of several senior Government Officials vis-a-vis the meeting held by A-3 in the morning of 12.02.2018 wherein the administrative issues and difficulties regarding the release of TV advertisements were highlighted by the Officers. Reference was made to the events from 11.2.2018 onwards and it was submitted that A-3 had sufficient opportunity to discuss any pressing or urgent matter with the petitioner during the office hours. It is averred that on 19.02.2018, it was evident from records that A-3 and A-4 met each other at around 5.30 p.m. at Chief Minister's residence and at around 06:54 p.m., A-4 made phone calls to the petitioner asking him to resolve the issue of TV Advertisement by the same evening. A-3 asked Shri V.K. Jain, who was Advisor to Chief Minister, to call the petitioner and inform him about the meeting scheduled at 12:00 midnight of 19.02.2018-20.02.2018 and Shri V.K.

Jain at the instance of A-3 was compelled to make repeated calls to the petitioner to secure and confirm the presence of the petitioner in the scheduled meeting at midnight of 19.02.2018–20.02.2018 at the residence of A-3. It is alleged that in furtherance of the conspiracy hatched by A-3 and A-4, they asked 11 specific MLAs to come to the Chief Minister's residence one hour prior to the midnight meeting (that is by 11:00 p.m.) with Chief Secretary which message was conveyed to the MLAs through Shri Vivek Yadav, a trusted and close associate of A-3. Accordingly, the said MLAs assembled and met A-3 and A-4 and thereafter, were also present in the midnight meeting wherein the petitioner was physically assaulted, intimidated etc. The fact that the said 11 MLAs along with A-3 and A-4 would also be present for the meeting with the petitioner at 12:00 midnight was neither informed to Shri V.K. Jain, nor was it made known to the petitioner. It is averred that it was apparent that in the said prior meeting of A-3 and A-4 with selected 11 MLAs, the conspiracy was given its final shape and executed at the midnight meeting. It is submitted that A-3 to A-13 under a well-planned and well-designed conspiracy physically assaulted, humiliated and criminally intimidated the petitioner because he was not agreeing to the illegal directions of A-3 and A-4 to issue the TV advertisements in violation of the guidelines of the Hon’ble Supreme Court and there were other issues in relation to the rates of such advertisements.

9. It is averred that on 20.02.2018, a written complaint was made to DCP North, Delhi Police by the petitioner on the basis of which FIR No.54/2018, PS Civil Lines

was registered. After the charge-sheet was filed, on 13.09.2018, the petitioner filed an application under Section 302 Cr.P.C. seeking directions that the prosecution of the case be handed over to Delhi Police through Counsels nominated by them and not through prosecutors belonging to the cadre of Government Prosecutors under the Home Department of GNCTD or from those empanelled by GNCTD. On 18.09.2018, cognizance was taken by the Ld. Trial Court and it was held that there were sufficient grounds to proceed against all the accused persons. On 22.10.2018, the Ld. Trial Court allowed the application under Section 302 Cr.P.C. filed by the petitioner and entrusted the prosecution to an officer of Delhi Police and Shri Siddharth Aggarwal and Shri V. Madhukar, Advocates were permitted to conduct the prosecution on behalf of the officer of Delhi Police appointed in that regard. On 25.10.2018, in compliance of the order dated 22.10.2018, Delhi Police appointed Shri Suvashish Chaudhary-Additional CP to conduct the prosecution of the case under Section 302 Cr.P.C. On 20.11.2018, a Writ Petition was filed in the Hon'ble High Court of Delhi by A-3 and A-4 challenging the order dated 22.10.2018 passed by the Ld. Trial Court. On 14.03.2019, the Hon'ble High Court of Delhi stayed the arguments on charge but allowed the proceedings to continue before the Ld. Trial Court to the extent that the proceedings as far as the stage of Section 207 Cr.P.C. was concerned, would continue. It is submitted that as there was a substantial delay in the progress of the matter before the Ld. Trial Court, in and around 19.08.2020, the petitioner was constrained to prefer an application before the Hon'ble

High Court of Delhi praying that interim order dated 14.03.2019 passed by the Hon'ble High Court of Delhi be vacated, as in order to expedite the Ld. Trial Court proceedings, the petitioner had no objection if at the stage of considering the arguments on charge, the case was prosecuted by the appointed Public Prosecutor.

10. It is stated that on 24.08.2020, in view of the concession made by the petitioner the Hon'ble High Court was pleased to modify the order dated 14.03.2019 and directed the Ld. Trial Court to proceed with the matter and hear the concerned parties on the point of charge. The petitioner moved an application for clarification of the order dated 24.08.2020 of the Hon'ble High Court and on 12.10.2020, the Hon'ble High Court of Delhi was pleased to clarify that the order dated 24.08.2020 did not in any manner deal with the issue whether the petitioner was entitled to address the arguments or make submissions before the Ld. ACMM at that stage of the proceedings. On 18.03.2021, the petitioner filed an application in the Ld. Trial Court under Section 302 Cr.P.C. to make oral arguments to rebut the arguments made on behalf of the accused persons and to file written submissions highlighting the key aspects i.e. conspiracy with other offences, which were not addressed by the Ld. APP of the State during his arguments. On 06.08.2021, the arguments on point of charge were heard and completed and the Ld. Trial Court partly allowed the application of the petitioner and only took the written submissions in rebuttal filed by the petitioner on record. It is submitted that on 11.08.2021, the Ld. Trial Court erroneously passed the impugned order in utter

disregard of the settled law on the point of framing of charge and completely ignoring the extensive material placed on record against all the accused persons and the Ld. Trial Court made erroneous inferences, ignored and did not consider the entire antecedent events and vital portions of the Section 161 Cr.P.C. statement dated 22.2.2018 of Shri V.K. Jain and Section 161 Cr.P.C. statements of Senior Government officers.

11. It is averred that the impugned order suffers from non-application of mind and has been passed against the settled principles of law and suffers from patent illegality, incorrectness and impropriety; that the Ld. Trial Court had gravely erred in basing the impugned order on erroneous inferences drawn from selective perusal of material on record and without having the benefit of examining the relevant witnesses; that the impugned order was in the nature of final judgment and the Ld. Trial Court had exceeded its jurisdiction at the stage of framing of charges instead of applying the test that whether the material on record was sufficient to frame charges or not; that the Ld. Trial Court unconscionably and selectively applied the yardsticks laid down by the Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal** AIR 1979 SC 366 in that the impugned order demonstrated that inferences and analysis by the Ld. Trial Court had been based on a selective consideration of the material and by assuming facts and conducting a fishing and roving inquiry whereas the said judgment directed the Trial Courts to abstain from conducting any fishing and roving inquiry at that stage; that the Ld. Trial Court had erroneously placed reliance on the judgment in **Kanshi**

Ram v. **State** 2000 SCC Online Del 385 as the facts of that case had no application to the present matter; that it was evident from the impugned order that barring statements of Shri V.K. Jain and of the petitioner, and a few other witnesses, the Ld. Trial Court had not looked into and considered the Section 161 Cr.P.C. statements of all the witnesses, let alone the entire material on record and the Ld. Trial Court on the basis of erroneous inferences and surmises and without proper consideration of the material on record could not have arrived at conclusions regarding almost being certain that there was no prospect of the case ending in conviction.

12. It is averred that para 39 of the impugned order demonstrated the preconceived mindset with which the Ld. ACMM had proceeded in the entire matter and it demonstrated that the Ld. Trial Court had already made up its mind even prior to analysing, considering and dealing with the material on record to discharge the accused persons and to dilute the charge against A-1 and A-2; that the Ld. Trial Court had gravely erred as despite there being no finding or observation in the impugned order to hold that any part of the prosecution case was false or not being the gospel truth, the Ld. Trial Court had arbitrarily proceeded to discharge A-3 to A-13; that the erroneous and preconceived approach of the Ld. ACMM was evident from the chronology of events as no events prior to 19.02.2018 even though relied upon by the prosecution had been taken into consideration which fortified the plea that the Ld. ACMM had not even considered the submissions of the petitioner and the material on record; that the Ld.

Trial Court had misapplied the ratio by usage of selective extract of the judgment in **Noor Mohd**. v. **State of Maharashtra** (1970) 1 SCC 696 to negate the arguments on conspiracy; that the impugned order while accepting the case of the accused persons failed to even consider the critical material on record supporting the case of the prosecution and establishing a well-planned conspiracy hatched by A-3 and A-4, and executed along with other accused MLAs against the petitioner and had failed to appreciate that the petitioner was the victim of the conspiracy of the accused persons as he did not comply with the illegal directions of A-3 and A-4 to release the TV advertisements in contravention of the guidelines of the Hon'ble Supreme Court and the said directions also suffered from other procedural infirmities.

13. It is asserted that the Ld. Trial Court had failed to consider that at the stage of framing of charge the Court does not have to meticulously weigh the material on record, if there is grave suspicion which leads the Court to think that there is ground for presuming that the accused had committed an offence then the Court would proceed to frame charges against the accused persons and the standard test of proof of beyond reasonable doubt is not exactly to be applied at the stage of framing of charge. It is submitted that the Ld. ACMM ought to have considered the test under Section 239 and Section 240 Cr.P.C. that whether the charge was groundless or there was a ground for presuming that the accused had committed an offence but the Ld. ACMM had not applied the said tests and had instead arrived at conclusions as if the material available

before him had already undergone the test of cross-examination. Moreover, the Ld. Trial Court had failed to consider that there were two set of evidences, that is of the injured eye witness and the antecedents events and surrounding circumstances but the Ld. Trial Court had passed the impugned order against the settled principles of law wherein the testimonial value of the injured eye witness was at a higher pedestal than any other facts and circumstances of the matter. It is submitted that the Hon'ble Supreme Court and Hon'ble High Courts had settled the legal position that where the testimony of the eyewitness was clear, it ought not to be casually disbelieved even at the stage of final judgment and at the stage of charge where the unrebutted material was to be considered, the Ld. Trial Court had erred in casting a doubt on clear and unrebutted version of the petitioner, who was an injured eye witness and his version was corroborated by the antecedents events and supporting circumstances and had caused miscarriage of justice by virtually not believing the account of injured eye-witness i.e. the petitioner and instead selectively relying upon portions of the statement of Shri V.K. Jain to demolish the case of the petitioner which was erroneous and should not have been done and the same resulted in misconstruing and misreading parts of the said statements to obliquely support the case of the discharged accused persons.

14. It is averred that the reliance placed on para 11 of the judgment in **Common Cause** v. **Union of India** (2015) 7 SCC 1 was completely misplaced as the question was whether the advertisements could be released in violation of the guidelines of Hon'ble

Supreme Court as also without certification of factual accuracy of the contents and without approval of the rates of advertisements and not whether advertisements could be issued on completion of certain period of governance highlighting the tasks accomplished and achievements. It is averred that the Ld. Trial Court miserably failed to appreciate and consider the guidelines and had gravely erred in not appreciating and understanding the issue even though the complaint itself and the Section 161 Cr.P.C. statements of Senior Officers mentioned about difficulties in release of TV advertisements. Further, the Ld. Trial Court had erroneously relied upon the judgment in **Manik Taneja** v. **State of Karnataka** (2015) 7 SCC 423 as the entire gravamen of the matter in the said case was the applicability of Section 506 IPC in relation to accusation of misbehaviour by posting comments on Facebook page and the same could not be applied to the present matter as in the present case there was an abundance of material available to show that the petitioner was confined in a small room, criminally intimidated and physically assaulted in pursuance of the criminal conspiracy and the said judgment could not be used to discharge the accused persons under Section 506 (ii) IPC. It is submitted that the Ld. Magistrate had gravely erred in holding that no inference could be drawn of any unlawful assembly or conspiracy and he failed to consider that 11 MLAs especially selected by A-3 and A-4 were called to be present for the midnight meeting at the residence of A-3 for which the petitioner was called and the presence of 11 MLAs was deliberately not informed to the petitioner, who was tricked

into coming for the meeting under conspiracy by making him believe that only A-3 and A-4 would be present and even Shri V.K. Jain was not made aware of the participation of the MLAs in the meeting. Further the petitioner was called in the meeting alone and he was not accompanied by his colleague officers dealing with the matter and it was apparent that the meeting was called to pressurize and intimidate the petitioner to make him succumb to the release of TV advertisements even though the same were in violation of guidelines of Hon'ble Supreme Court and also faced impediments regarding rates and hence the meeting was illegitimate/ illegal. Further, even if it assumed that it is the case of accused persons that there was no premeditation about the said assembly being unlawful, the subsequent events which unfolded sufficiently showed that the assembly became unlawful and it was squarely covered under the explanation to Section 141 IPC. It is averred that the Ld. Trial Court had failed to consider that the accused persons were not innocent bystanders who just happened to be there in the midnight meeting but were especially chosen by A-3 and A-4 called one hour prior to the 12:00 midnight meeting time with the petitioner and Shri V.K. Jain was not allowed to enter the room, when A-3 and A-4 were finalising the conspiracy with other accused MLAs. The presence of the MLAs in the meeting was not disclosed to Shri V.K. Jain to ensure that the petitioner was not alerted or alarmed as then he may not have come for the meeting and none of the MLAs nor A-3 and A-4 made any attempt or tried to stop A-1 and A-2 from physically assaulting the petitioner, which shows their prior meeting of

minds and participation in the conspiracy and their conduct after the incident showed that they had no remorse regarding the incident.

15. It is averred that the Ld. Trial Court erred by not considering that in the days after the incident, two of the accused persons made false complaints in an attempt to implicate the petitioner in false cases and the threats which were hurled at the petitioner during the midnight meeting were also mentioned in the FIR; that the accused persons vehemently denied the incident at the midnight meeting and tried to build a false narrative about the intent and purport of the said meeting which showed that all the accused persons were party to the conspiracy and their conduct post the midnight incident, reflected their common intention and conspiracy but the said aspect had been ignored or not duly considered in the impugned order. Further the Ld. Trial Court had gravely erred in assuming that the precedent and antecedents events especially brought out by the prosecution and the material on record were irrelevant, innocuous, innocent and inadvertent, as evident from the impugned order, whereas the said events were certainly conscious acts pertaining to a certain criminal objective pursued by the accused persons and the same should have been duly considered by the Ld. Trial Court. The Ld. Trial Court also failed to consider the decision of the Hon'ble Supreme Court in the case **K. Madhavan** v. **Majeed** (2017) 5 SCC 568 wherein the Hon'ble Supreme Court laid down the test to analyse the presence of accused persons as part of an unlawful assembly. It is also submitted that the Ld. Trial Court had made erroneous

inferences and interpretations (as detailed in ground W of the revision petition) which were contrary to the material available on record and could only have been possible after completion of the examination of the witnesses. These included holding that there was no conspiracy as A-3 asked Shri Vivek Yadav to call the selected MLAs at 11 p.m. to the residence of A-3 on 19.02.2018 instead of calling the MLAs by A-3 himself and the Ld. Trial Court had taken a fallacious stand that why would A-3 create a witness against himself whereas the said defence was not even taken by A-3 in his submissions as recorded by the Ld. Trial Court and the Ld. Trial Court had gravely erred in supplanting its views on behalf of A-3 and not in appreciating the established norm and practice where the public functionaries such as Chief Minister use their political assistants or staff to call the MLAs and ignored the basic fact that Shri Vivek Yadav as per his 161 Cr.P.C. statement had stated that his job included conveying messages to MLAs; he was a party worker and a faithful and reliable associate of A-3 and such erroneous inference and conclusion demonstrated the misconceived mindset with which the Ld. Trial Court had proceeded while deciding the issue of framing of charge.

16. It is also averred that the Ld. Trial Court had drawn an erroneous inference that there was no secrecy for the meeting on 19.02.2018 midnight, hence no conspiracy was hatched by the accused persons but it was abundantly clear from the records that secrecy was maintained at every step- the meeting was scheduled at midnight 12:00 a.m.; the venue was a small room without CCTV cameras; only specifically chosen

MLAs were called for the meeting; and if as per the case of the accused persons the meeting was to discuss Civil Supplies issues, the Secretary/Minister of the Civil Supplies Department were specifically omitted; Shri V.K. Jain was deliberately not told that 11 MLAs would also be present; the petitioner was also not informed about their presence and was called alone; A-3 was anxious to ensure the presence of the petitioner at the meeting as reflected by the repeated phone calls made by Shri V.K. Jain at the instance of A-3 to the petitioner; and even without any emergency or compelling circumstances, the meeting was insisted upon at midnight in the month of winter; after the petitioner entered the room, the door of the meeting room was firmly shut and as such the conduct of the accused persons portrayed secrecy with which the conspiracy was hatched and executed by the accused persons but the Ld. Trial Court had failed to consider the same. It is stated that the Ld. Trial Court had miserably failed to appreciate that by merely being elected by the public did not grant immunity or prevent the elected representatives from indulging in unlawful and criminal activities in holding that no inference could be drawn of any unlawful assembly or conspiracy being hatched by the accused persons as the meeting was called by the Chief Minister where elected representatives and Chief Secretary were present.

17. It is submitted that the Ld. Trial Court had erroneously added words/ meaning to the 164 Cr.P.C. statement of Shri V.K. Jain to negate the arguments of conspiracy, solely based on the arguments made by A-3 and A-4 and added the words “unruly behaviour”

whereas the said words did not find mention in the 164 Cr.P.C. statement of Shri V.K. Jain. Moreover, the Ld. Trial Court had erroneously held that the petitioner was informed about the midnight meeting well in advance telephonically by Shri V.K. Jain in the course of the day whereas, it was amply clear from the Section 164 Cr.P.C. statement of Shri V.K. Jain that he called the petitioner only around 08:45 p.m. to inform about the meeting, that is well after office hours, for a meeting at midnight 12:00 a.m., which could not be termed as informing the petitioner well in advance and in the course of the day. Even as regards the role of the petitioner and procedure of release of TV advertisements, the order reflected erroneous understanding of the procedure for the same overlooking the material available on record and the petitioner had categorically stated that there were difficulties in releasing such advertisements. The issue was not whether the Chief Minister could overrule the objections by bureaucracy or whether, per se, A-3 and A-4 could release the advertisements on completion of 3 years of Government but it was that the advertisements were sought to be issued in violation of guidelines of Hon'ble Supreme Court and the DAVP rates were also not accepted by major TV channels and budget availability had also to be seen. It is averred that the statements of Senior Government Officers under Section 161 Cr.P.C. who attended the meeting for release of TV advertisements chaired by A-3 on 12.02.2018 had not been considered by the Ld. Trial Court.

18. It is further stated that in holding that as per the supplementary statement of the petitioner dated 18.04.2018, he attended a meeting in the same room on 12.02.2018, where he was later allegedly assaulted in the night of 19.02.2018 so it was not unusual to hold the midnight meeting in the said small room at the residence of A-3, the Ld. Trial Court had failed to consider the material on record which showed that the said small room was used for meetings when the number of participants was less i.e. 5-6 and on 12.02.2018, there were only 5-6 participants whereas there were 15 participants for the 19.02.2018 midnight meeting and the Ld. Trial Court had erred in ignoring and failing to consider the statement of Shri Pravesh Ranjan Jha (Joint Secretary to Chief Minister) recorded under Section 161 Cr.P.C. dated 01.03.2018, who had stated that the meetings whenever convened at the Chief Minister residence were mostly held in Camp office and rarely, he had seen any meeting being held in the drawing room of the Chief Minister when the number of participants was more than 5 to 6 and as such the Ld. Trial Court had arrived at an erroneous inference.

19. Reference was made to the antecedents events in ground ‘X’ which it was submitted that the Ld. Trial Court had failed to consider including the message dated 11.02.2018 sent by A-3 to the petitioner whereafter the petitioner was directed the same evening to attend a meeting scheduled on the next day i.e. 12.02.2018 at 8.30 a.m. at the residence of A-3 in relation to the release of TV advertisements and it was submitted that A-3 had chaired meeting on 12.02.2018, which was attended by several persons

whose statements showed that A-3 had used extremely hostile language and was very aggressive towards the petitioner for not being able to release the TV advertisements, even though the difficulties were explained to A-3 by the petitioner and other officers but A-3 remained adamant to get the TV advertisements released come what may by the next day. A DTTDC Board meeting was scheduled on the issue of TV advertisements on 14.02.2018, a public holiday by A-4 on extremely short notice without circulating any agenda by A-4 and A-4, who chaired the meeting himself introduced the agenda of the meeting for release of TV advertisements but due to objections raised by Shri Shurbir Singh, Managing Director, DTTDC, no consensus was reached in the said meeting; when the antecedent events did not achieve the desired results, A-3 and A-4 went a step further to hatch and implement a well- designed conspiracy to physically assault and criminally intimidate the petitioner so as to force and compel him to have the said TV advertisements released and A-3 and A-4 called the petitioner for the meeting in the midnight of 19.02.2018-20.02.2018 without letting him know that 11 selected MLAs were also being called and meeting was fixed in a small room without CCTV camera with intention to criminally intimidate, threaten and physically assault in a bid to teach the petitioner a lesson and force him to succumb to undertake illegal acts. It is averred that the meeting time was purposely insisted upon by A-3 and A-4 to be midnight, even though A-3 had ample opportunity to discuss any issue with the petitioner on 19.02.2018 during working hours or on the next day but the Ld. Trial

Court had shockingly missed that there were no compelling or emergent circumstances to hold such midnight meeting and had wrongly tried to justify the time of the meeting by arriving at a totally unwarranted and illogical conclusion that there was nothing unusual in holding the meeting at midnight.

20. Moreover, specific MLAs were chosen for the execution of conspiracy and it was made sure that there was a difference of 01 hour between the timing of arrival of MLAs and the petitioner to avoid raising any alarm or suspicion to the petitioner and even Shri V.K. Jain was kept in the dark about the presence of 11 MLAs accused persons at the midnight meeting. It is asserted that the material available on record clearly established that it was A-3 who handpicked certain MLAs and decided to hold the meeting in a room which was not covered by CCTV cameras rather than holding the same in the Camp Office, which was covered by CCTV cameras despite the fact that around 15 persons were to be present. Moreover, the seating plan was specifically designed in the meeting room, wherein the petitioner was made to sit between A-1 and A-2 on a three-seater sofa, who both have a criminal history as there are many criminal cases pending against them in different courts as the same was a part of a well-planned conspiracy. It is submitted that the petitioner/ Chief Secretary would not have come for a midnight meeting with A-3 and A-4 and 11 MLAs without the assistance of his colleague officers but the Ld. Trial Court had failed to consider that A-3 and A-4 and 11 MLAs tricked the petitioner to come alone for the midnight meeting with intention to coerce for the

release of advertisement in violation of the guidelines of the Hon'ble Supreme Court.

21. It is contended that A-3 and A-4 had deliberately and knowingly called for the presence of the petitioner only and the other officers dealing with the release of advertisements were not called, which included Secretary Information and Publicity, Secretary Tourism, Principal Secretary Finance and Managing Director, DTTDC, which was done in pursuance of the conspiracy which was apparent from the subsequent happening at the midnight meeting. It is averred that the Ld. Trial Court had completely ignored the call detail records and failed to appreciate that repeated calls were made to the petitioner to secure his presence at the midnight meeting at the residence of A-3 as part of the conspiracy. Moreover, the Ld. Trial Court had failed to consider that in terms of Section 8 of Evidence Act, both prior and subsequent conduct of the accused persons was relevant and had failed to consider that the conduct of A-3 itself amplified his key role in the entire conspiracy. After the petitioner left the meeting, A-3 asked Shri Bibhav Kumar to call Shri V.K. Jain back to the Chief Minister residence and when Shri V.K. Jain reached the residence, A-3 acted as if he was unhappy about the conduct of the MLAs to portray before Shri V.K. Jain that he was not a part of the conspiracy. But A-3 did not take any action against any of the MLAs and no complaint was made by him for their illegal acts including criminal intimidation, physical assault etc. Rather, A-3 denied that any incident involving the Chief Secretary had taken place and he also tried to change the narrative of the midnight meeting. It is submitted that if A-3 was actually

unhappy with the conduct of MLAs there was no reason why there was no complaint made or action taken by him against the concerned MLAs despite being at the helm of affairs and presiding over the meeting wherein the entire incident took place.

22. Moreover, the Ld. Trial Court had shockingly failed to consider why immediately after the incident, when the petitioner had with difficulty managed to leave the room, A-3 or A-4 did not express any remorse or anger or displeasure at the MLAs and the statements of Shri V.K. Jain, who was present at that time did not reflect any such remorse or emotion by A-3 or A-4 and it should have occurred to the judicial mind as to why expressing of unhappiness on the part of A-3, that also in isolation, transpired only after a substantial time lag. It is stated that the Ld. Trial Court failed to consider that two false and frivolous complaints relating to the midnight meeting were made by Prakash Jarwal and Ajay Dutt against the petitioner on the next two days of the incident, which action of the MLAs was not objected to by A-3 despite the fact that A-3 chaired the said midnight meeting which resulted in the said frivolous and false complaints, which showed that how efforts were made to somehow or the other intimidate the petitioner so that he did not pursue the present case. It is contended that the Ld. Trial Court had failed to consider that A-4 subsequently ordered that the draft minutes of DTTDC Board meeting held on 14.02.2018 be amended on the basis that no agenda had been circulated and therefore no final decision was taken on the issue and it was evident that he ordered the amendment belatedly, much after the day of incident, and at the time when the

present case was under investigation.

23. It is averred that the Ld. Trial Court had failed to consider that it was a matter of record that on the day of the incident, the petitioner had attended two meetings with A-3 regarding Budget Estimate and Delhi-Haryana water issue at 11:30 a.m. and 12:15 p.m. respectively but there was no discussion regarding the issue of TV advertisement or even on civil supply issues, which demonstrated that there was no urgency for a meeting to be kept at midnight on the same day i.e. 19.02.2018 and for not agreeing to shift the time of the meeting to the next day despite requests for the same by the petitioner. It is averred that the Ld. Trial Court had failed to consider and examine as to why A-3 did not agree to hold the meeting in the morning next day even though on earlier occasions, the petitioner was called for a meeting with A-3 along with other Senior Officers at 08:30 a.m, which reflected the pre-conceived mindset, biased and selective perception of the Ld. Trial Court in arriving at certain inferences favouring the accused persons regarding the room being used and the timing of the meeting of 12.02.2018 which was ignored by the Ld. Trial Court leading to not even considering as to why A-3 did not shift 19.02.2018 midnight meeting to 08:30 a.m. on 20.02.2018 and the Ld. Trial Court failed to consider why A-3 could not have discussed the relevant issue with the petitioner before or after the pre-scheduled Cabinet Meeting on 20.02.2018 and why the specific request of the petitioner to shift the midnight meeting to the next day was not agreed to by A-3 and A-4.

24. It is submitted that the Ld. Trial Court had without any basis held that the meeting was not a public meeting so it could be called even at midnight but such an inference was without any merit and exhibited the bias of the Ld. Trial Court to justify the conduct of the accused persons without considering that the petitioner had already met A-3 and A-4 during the course of the day on 19.02.2018 and there were no compelling circumstances which warranted the midnight meeting and the Ld. Trial Court had also failed to consider that in the midnight there was only a bare minimum staff and as such no visitors and other third persons at the Chief Minister residence and it was for such reasons that the time of 12:00 a.m. at midnight was chosen by A-3 and A-4. It is asserted that the Ld. Trial Court had taken divergent views on the statements of Shri V.K. Jain and selectively applied portions of statements of Shri V.K. Jain to discharge A-3 to A-13 while at the same time making the same statements a basis for framing of charges against A-1 and A-2. The statement of Shri V.K. Jain under Section 164 Cr.P.C. was considered sufficient for framing charges against A-1 and A-2 holding that such a statement stood on a higher pedestal than a statement made under Section 161 Cr.P.C. but the same statement qua A-3 to A-13, and in particular for A-3 had been read with selective portions of the 161 Cr.P.C. statement to suit the accused persons. It is contended that the Ld. Trial Court had gravely erred in ignoring the most vital part of the statement of Shri V.K Jain under Section 161 Cr.P.C. dated 22.02.2018 in support of the case of the prosecution and had shockingly picked up only those portions of the

statement, which suited the case of the accused persons. Moreover, the Ld. Trial Court had gravely erred by disregarding or demolishing the version of the petitioner based on so called discrepancies between the statement of the petitioner and the statements of Shri V.K. Jain under Section 161 and Section 164 Cr.P.C. and had completely exceeded its jurisdiction at the stage of framing of charges and even if it was assumed that there were inconsistencies in the statements, the same would be answered by the witness only at the stage of trial.

25. It is contended that it appeared that the Ld. ACMM had entered the mind of A-3 so as to draw inferences regarding the purpose of the action taken by A-3 and thereafter interpreted the material on record in favour of A-3 without examining the witnesses and giving the prosecution a chance of explaining the circumstances and had evidently exceeded the jurisdiction vested upon it by statute at the stage of framing of charge and had failed to consider that the medical examination report of the petitioner, corroborated the version of the petitioner and the allegations contained in the complaint as well as in the statement under Section 161 Cr.P.C. of the petitioner were in consonance with the medical examination report. It is submitted that the analysis of the Ld. ACMM appeared to be premised on the purported defence of A-3 and A-4 which was not to be considered at this stage and the analysis of the material on record in favour of A-3 and A-4 was wholly irregular and inexplicable and the Ld. Trial Court had failed to consider and give weight to a well accepted proposition that “a man may lie but circumstances do not” by

ignoring the antecedent and sequence of events which clearly brought out the culpability of the accused persons. It is submitted that the conduct of the accused persons clearly established that A-3 and A-4 were the kingpins of the conspiracy and all requisite steps were taken by them to execute the conspiracy and the conduct of the accused persons after the incident showed how steps were taken to cover up the conspiracy and how they remained silent on key aspects with an intention to save themselves and other MLAs from the clutches of law.

26. It is also stated that the Ld. Trial Court did not consider the individual roles and erred in holding that the allegation against A-6 that he followed the petitioner to stop him found no support from the material available on record, whereas Shri Bibhav Kumar in his statement recorded under Section 161 Cr.P.C. dated 19.04.2018 clearly stated that A-6 followed the petitioner till the gate of Chief Minister residence and the available CCTV footage of the crime scene also confirmed the said fact and hence, the finding of the Ld. Trial Court was contrary to the material available on record. Further, Nitin Tyagi was the MLA who abused the petitioner during the meeting and used unparliamentary language with him. It is submitted that the Ld. Trial Court had erroneously held that no offence of wrongful confinement was made out, whereas the material available clearly showed that A-7 firmly shut the door of the meeting room as soon as the petitioner entered the room and during the entire time, the petitioner was confined in the said room and could only leave with great difficulty after the incident

took place. Moreover, the Ld. Trial Court committed an error in holding that no offence was made out against Rituraj Govind (A-10), whereas the material on record clearly established that A-10 threatened to confine the petitioner in the room for the entire night if he did not agree to release the TV advertisement. The Ld. Trial Court had also erroneously held that no offence was made out against the accused Ajay Dutt (A-8), whereas, the available material clearly showed that he threatened the petitioner to falsely implicate him in false SC/ST cases, and acting upon his threats he actually filed a false and frivolous complaint under SC/ST Act against the petitioner. It is submitted that the written submissions of the petitioner were not considered by the Ld. Trial Court as the specific roles were assigned to each of the accused as per the material available on record and a chart was also given delineating the alleged role of the accused persons. It is, thus, prayed that the order dated 11.08.2021 passed by the Ld. Trial Court be set aside and the Ld. Trial Court be directed to order framing of charges against A-3 to A-13 and against A-1 and A-2 under Sections 342, 506 (ii), 120-B, 109 and 114 IPC.

27. Notice of the revision petition was issued to the respondents on 01.11.2021 on which date certain additional documents were also filed. It may be mentioned that on 23.11.2021, it was submitted by the Ld. Senior Counsel appearing for respondents No.5 and 6 (A-3 and A-4) that respondent No.2 Suvashish Chaudhary could not be a party before the Court and he had referred to the orders of the Hon'ble High Court dated 22.11.2018 and 14.03.2019 and 24.08.2020. Thereafter, it was submitted on behalf of

respondent No.2 that they had written to GNCT for representation. In the order dated 11.03.2022, it was observed that Inspector Krishan Kumar, Legal Cell/ PHQ had submitted that Delhi Police be substituted in place of respondent No.2 but in view of the order dated 24.08.2020 of the Hon'ble High Court wherein it was clarified that at the stage of arguments on charge, the matter would be prosecuted on behalf of the State by the Public Prosecutor as consented by the complainant (petitioner herein) and the present being a revision petition against the order on charge, the same position would prevail and the matter had to be prosecuted on behalf of the State by the Public Prosecutor and simply because respondent No.2 had been joined as a respondent, there could not be any separate representation.

ARGUMENTS ON BEHALF OF THE PARTIES

28. I have heard arguments from Shri Sidharth Luthra, Ld. Senior Counsel for the petitioner along with Shri Kumar Vaibhav, Ms. Adya R. Luthra, Shri Krishna Dutta Multani, Shri Bharat Monga and Shri Mohd. Ahsaab, Ld. Counsels for the petitioner; Shri Manoj Garg, Ld. Additional PP for State/ respondent No.1; Shri Saleem Ahmed, Shri Amit and Shri Ajay Pratap Singh, Ld. Counsels for respondent No.3 (A-1); Ms. Rebecca John, Ld. Senior Counsel along with Shri Mohd. Irshad, Ld. Counsel for respondent No.4 (A-2); Shri N. Hariharan, Ld. Senior Counsel for respondent No.5 (A-3) along with Shri Mohd. Irshad, Shri Siddharth S. Yadav Ld. Counsels; Shri Dayan

Krishnan, Ld. Senior Counsel for respondent No.6 (A-4) along with Shri Mohd. Irshad, Ld. Counsel; Shri Badar Mahmood, Ms. Sheenu Priya, Ld. Counsels for respondent No.7 (A-5); Shri Bhavook Chauhan, Shri Harish Kumar and Shri Tushar Yadav, Ld. Counsels for respondent No.8 (A-6); Shri Mujeeb Ahmed and Shri Rishikesh Kumar, Ld. Counsels for respondent No.9 (A-7); Shri S.P.S. Yadav and Ms. Priyanka Singh, Ld. Counsels for respondent No.10 (A-8); Shri Rahul Ranjan, Shri Murari Kumar and Ms. Lisha Saha; Ld. Counsels for respondent No.11 (A-9); Shri S.P. Kaushal and Shri Dhananjay Kaushal, Ld. Counsels for respondent No.12 (A-10), Shri Vikas Nagwan, Ld. Counsel for respondent No.13 (A-11); Shri Ramesh Gupta, Ld. Senior Counsel along with Shri Vijay S. Bishnoi, Ld. Counsel for respondent No.14 (A-12); Shri Anil Tomar, Ld. Counsel for respondent No.15 (A-13) (also through CISCO Webex). Inspector Gyaneshwar Singh, SHO, PS Civil Lines, Inspector Karan Singh Rana IO also remained present as also Inspector Krishan Kumar, Legal Cell/ PHQ. A note on the alleged perversities in the impugned order was filed on behalf of the petitioner as also submissions in rebuttal to the arguments advanced on behalf of the respondents and written submissions on behalf of respondent No.6 (A-4) and an analysis of the CDR. Written submissions were filed on behalf of respondent No.6 (A-4) and respondent No.13 (A-11). I have also perused the Trial Court record.

ARGUMENTS ON BEHALF OF THE PETITIONER

29. The Ld. Sr. Advocate for the petitioner had reiterated the averments made in the revision petition. It was submitted that the matter may be considered in two parts in that charges had been framed against A-1 and A-2 for offences under Sections 186, 332, 353, 323 and 34 IPC and the petitioner was seeking enhancement of charges against them while the other accused persons/ respondents had been discharged and the petitioner was seeking framing of charges against them. It was submitted that the question in controversy centered around certain advertisements that respondent No.5 and 6 (A-3 and A-4) wanted to be released, which according to the bureaucracy was not legitimate as per judgements of Hon'ble Supreme Court on how the advertisements were to be released. Reliance was placed on the judgment of Hon'ble Supreme Court in **Common Cause** v. **Union of India** 2015 7 SCC 1 and in 2016 SCC 639 in this regard. It was submitted that the Government was in power since 2015 and wanted to celebrate the third anniversary of being in power and for that purpose it wanted advertisements to be released to highlight its achievements. However, the DAVP rates were not accepted by major news channels. DTTDC of which A-4 was the Chairman was of the view that the advertisements could not be issued and government money could not be used to promote the activities of the Government. On 11.02.2018, the file relating to the proposed TV advertisements was moved. On 19.02.2018, the incident took place where A-1 onwards were present at the residence of A-3 from midnight. The petitioner was

made to sit between two MLAs who had a criminal record and who admittedly assaulted the petitioner and if assault was there, the antecedent events showed criminal conspiracy. It was argued that the Ld. Trial Court could not go into hypothesis proposed by the accused persons and it had to be seen if Section 149 IPC was made out.

30. The Ld. Sr. Counsel had contended that the impugned order was based on surmises and conjectures and the Ld. ACMM only considered the events of 20.02.2018 and not the antecedent events. Reference was made to the impugned order and also to the ingredients of Sections 149 IPC and 141 IPC. It was submitted that an assembly which was lawful may subsequently become an unlawful assembly which aspect was ignored by the Ld. ACMM in the impugned order and in fact the Ld. Trial Court only looked at the punishing Section 149 IPC as reflected in para 46 of the impugned order. It was submitted that there was an inversion of the principles to be followed at the stage of charge as was reflected in para 39 of the impugned order and the Ld. ACMM had observed that even at the initial stage, the material of the prosecution could not be accepted as gospel truth which was an inversion of the body of law on charge. The Ld. Trial Court could sift but not analyze the material and could not say that a doubt was created on the material. It was argued that the case did not pertain only to Section 149 IPC and there was perversity in the reasoning of the Ld. ACMM who misapplied the test and it was a clear case of conspiracy. Reference was made to the events of 11.02.2018 and the WhatsApp message from the mobile of A-3. On 12.02.2018, A-3

called a meeting at his residence which was attended by the petitioner, Ms. Varsha Joshi, Shri Shurbir Singh, Shri V.K. Jain, Shri S.N. Sahai and others which lasted for 15 minutes. The Chief Minister had entered the room and stated something about the petitioner. Reference was made to the statement of Ms. Varsha Joshi, who had stated that no agenda of the meeting was circulated, as also to the statements under Section 161 Cr.P.C. of Shri Shurbir Singh and Shri S.N. Sahai.

31. It was argued that guidelines were laid down by the Hon'ble Supreme Court regarding issuance of advertisements and the same were in addition to and not in derogation of the guidelines already laid down and were equally applicable to the State Government and had to be observed in letter and spirit. A legitimate and legal concern was raised by the then Chief Secretary i.e. the petitioner for which he was humiliated and it was claimed that he was doing insubordination that was ignored by the impugned order. It was contended that there was no explanation as to why the meeting was called at midnight and the same showed the mindset of the individuals concerned. The appointments list of the Chief Minister showed that he had meeting with Chief Secretary at 01:15 p.m. on 19.02.2018 and he could have discussed the matter in issue with the petitioner at that time and there was no rationale in letting the Chief Secretary go home and then calling him and the entire mindset was to teach him a lesson. On 19.02.2018, the Chief Minister had attended a reception at 07:00 p.m. and did not have any meeting after that. On 20.02.2018, there was a meeting of Cabinet at 03:00 p.m at

the office and there was no meeting beyond 05:30 p.m. Reference was also made to the schedule of the Deputy Chief Minister and it was submitted that on 19.02.2018, he had a meeting at 05:30 p.m. at the residence of Chief Minister and no meeting at midnight. Reference was then made to the meeting schedule of the petitioner and that on 19.02.2018, he was called at 11:30 a.m. and then at 12:15 p.m. to discuss budget estimate and water issues. Later on, he was called by the accused persons for a meeting and A-3 had called selected MLAs for the same an hour prior to the meeting with the petitioner and Shri V.K. Jain was not allowed to be present. The petitioner was taken to a room for the meeting where there were no CCTVs and which was not ordinarily used for meetings and this was reflected in the statement of Yadav. The object was to heckle the petitioner and assault him in a pre-planned manner and clearly conspiracy was shown, in the alternate Section 149 IPC was attracted. It was submitted that the Ld. Trial Court had held that one should not accept all that the prosecution states as gospel truth but had then read the statement of Shri V. K. Jain separately and tried to nullify the effect of the messages. There were meetings on the next day and there were no reason why the issue could not be discussed in the office.

32. It was asserted that the meeting was deliberately called in the midnight and there were 11 MLAs shortlisted by A-3 and A-4 and the petitioner was not informed about the presence of MLAs in advance. The MLAs were invited an hour prior to the meeting to discuss how the proceeding would take place. Shri V.K. Jain told the petitioner that he

had to come for the meeting on which the petitioner had stated that the meeting could be called the next morning. The other bureaucrats were not called who infact had to explain the legal issues as to why advertisements could not be issued. The petitioner was made to sit squeezed in between two MLAs and it could not be a case of lack of space; both the said MLAs had a colourful background; the door of the room was shut once the petitioner entered the room and the room was without CCTV cameras. The petitioner was then subjected to physical assault, intimidation, wrongful confinement, which was the sum total of the events of that night. Reference was made to the statements of the petitioner namely the statement on the basis of which the FIR was registered and to the multiple calls of Shri V.K. Jain to the petitioner. It was also submitted that the petitioner was threatened that cases would be filed against him under the SC/ST Act and thereafter A-2 and A-8 had also filed cases under SC/ST Act against the petitioner. It was submitted that it was deeply disturbing that the Chief Minister and Deputy Chief Minister had created an environment, where a high ranking bureaucrat was assaulted and no effort was made by them to prevent the assault and to save him. Reference was made to the statement of Shri Vivek Yadav, who had stated that the meeting of 11 MLAs was called an hour prior. Reference was then made to the statement of Inspector Satbir, who was the PSO of the petitioner, who had stated that Nitin Tyagi had followed the petitioner. He had also stated that the petitioner had left the premises walking and his hair were in disarray and he was distressed. Nitin Tyagi

used unparliamentary language and he followed the petitioner and tried to detain him but as police officials were present so he backed off. Reliance was placed on the CDR and that the entries of 19.02.2018 demonstrated the presence of Chief Minister at the spot as also phone calls by Shri V.K. Jain were corroborated. The same confirmed repeated calls in the night insisting that the petitioner should reach the residence of the Chief Minister. Reference was also made to the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. and that it reflected the insistence on having the meeting at 12:00 that night. The petitioner and Shri V.K. Jain did not know that the MLAs would be present. Shri V.K. Jain had left the meeting to get fresh and he stated that he had left as he felt that there were no minutes to be drawn up and there was no agenda and no notice of the meeting was given and the said meeting was not added to the schedule, which all indicated conspiracy. It was argued that the statement of Shri V.K. Jain under Section 161 Cr.P.C. showed that the Chief Minister was desperate to call the Chief Secretary at his house at midnight and he was asked to sit in between A-1 and A-2. A-3 and A-4 saw this happening and participated in it by their ominous silence. Nobody stopped the MLAs while they were physically assaulting the Chief Secretary and it clearly showed that it was a pre-planned meeting yet in the impugned order, it was observed that no conspiracy was made out nor Section 149 IPC was attracted.

33. Reference was then made to the statement of Pravesh and it was submitted that it showed that it was rare that any meeting with more than 5-6 persons was called in the

drawing room of the residence of the Chief Minister and it reflected that there was a meeting of 13 people in a small room where ordinary meetings did not take place but the meeting was held in that room as there was no CCTV there. So, no video recording could take place. The fact that cases had been filed against the petitioner under SC/ST Act showed that there was no question of any remorse by A-3 and A-4. In another statement under Section 161 Cr.P.C., Pravesh had stated about the meeting in the drawing room and again it showed that the meeting was consciously held there as there were no cameras. Shri V.K. Jain had stated that they had talked about other issues as well. Reference was then made to the charge-sheet and the conduct of A-3 and A-4 three months after the incident. It was argued that as of 14.02.2018 it was clear that the release of advertisements was getting stuck whereas the defence version was that the meeting was in relation to civil supplies but there was no explanation why the officials of Civil Supplies Department were not called and only the Chief Secretary was called at midnight. The statement of Bibhav Kumar reflected that the Chief Minister only decided who would participate in the meeting and the choice of venue was not an innocent choice but a conscious choice of A-3 and the Chief Minister himself had stated that the meeting would be in the drawing room. The MLAs had already been made to sit in the drawing room. Bibhav Kumar was employed in the office of Chief Minister and was Personal Secretary to the Chief Minister.

34. It was further submitted that several statements of the petitioner were recorded. He was got medically examined and the petitioner had named some MLAs and also those who used filthy and unparliamentary language and the statement showed wrongful restraint and confinement. It also showed that the minutes of the previous meeting were modified and the accused persons had tried to cover up the incident by saying that the agenda also included civil supplies and tried to build up a defence. It was argued that the Ld. Trial Court had gone beyond the material on record and assumed things. The orders of Hon'ble High Court were there but the written submissions made by the petitioner were not considered or looked into by the Ld. ACMM and were not dealt with in the impugned order. It was submitted that the findings in the impugned order were contrary to the statements of witnesses and there were meetings during the day but the petitioner was not told about the agenda and Shri V.K. Jain confirmed that there was no agenda for the meeting in the night and no agenda had ever seen the light of day. No minutes of the meeting were drawn up and even of the meeting of 14.02.2018, the minutes were changed. It was contended that the Ld. Trial Court had mixed up unlawful object, common object, unlawful assembly and conspiracy. The petitioner knew of the meeting but he did not know who would be present. There was no agenda. He did not know that he would be made to sit in a room without CCTV and would be assaulted. It was submitted that the Ld. Trial Court could not have drawn its own inferences and the same had to be based on the material on record.

35. It was contended that the Ld. Trial Court had dissected the statements though no evidence was led at present. The Chief Minister had ensured that the petitioner was present in the meeting by making Shri V.K. Jain call him again and again. In his statements, the petitioner had stated that he was pushed around and assaulted and the findings of the Ld. ACMM were incorrect as even at the stage of trial, minor variations were not material and the variations were not such as would dilute the issue of physical assault. The calling of the meeting at midnight and insistence on the presence of the petitioner in the meeting was a circumstance in favour of the petitioner whereas the same was read in favour of the accused persons. It was not a question of insistence or use of force but that by way of conspiracy the petitioner was called and made to a sit at a designated place so that he would be assaulted and A-3 and A-4 had taken no steps to stop the assault. It was argued that there was no way that the MLAs would have known that the Chief Minister had a discussion on the advertisements unless the Chief Minister had himself communicated the same to them. The fact that the meeting was called in a room where only 5-6 people could sit and the petitioner was assaulted and the incident was carried out in a manner so as to hide the incident showed conspiracy and also what was to be achieved by having the meeting at 12:00 midnight. The observation of the Ld. ACMM that functioning of the Government would be hampered was misplaced and if there was any urgency, there was no reason why the same could not be discussed in office but the meeting was called by using subterfuge in the night.

36. It was argued that the findings in the impugned order were in contrast to the FIR. It was submitted that the Ld. Judge had dealt with how the Chief Minister and Deputy Chief Minister could be taken out of the matter whereas the presence of MLAs who had nothing to do with issue could not be regarded as natural. None of the MLAs had ever written to the Chief Secretary regarding the advertisements not being issued and in the meeting they heckled and harassed the petitioner. The petitioner had stated in the FIR that no one did anything to save him and the same was affirmed by Shri V.K. Jain and it was only in the statement under Section 164 Cr.P.C. that Shri V.K Jain had stated that the Chief Minister had chastised but he did not say that the Chief Minister got up and tried to stop the assault. Reference was made to the individual roles of the accused persons and it was submitted that the petitioner had made his statement at the first instance that the accused persons had threatened him and the accused persons had not denied their presence so TIP was not relevant also as the petitioner knew all of them. It was submitted that the Ld. ACMM had referred to the judgment in **Manik Taneja** v. **State of Karnataka (supra)** but the same referred to a Facebook post. It was argued that according to the accused persons, as the petitioner was given permission to leave so there was no confinement but the question whether there was confinement had to be seen in light of that when the petitioner was assaulted and heckled, the door was locked.

37. It was submitted that the petitioner was put to trial without the trial commencing. Witnesses react differently to different situations and the present was a case of a senior

bureaucrat who was put to this situation for the first time and he could not be expected to behave as per what anyone else considered as appropriate. It was submitted that the Ld. Trial Court could not test the evidentiary value at the stage of charge and if it was stated that there were discrepancies and variations in the statements under Section 161 Cr.P.C. and 164 Cr.P.C. it would not deduct from the material to frame charge against the accused persons and different tests could not be applied to charge some accused persons and discharge other accused persons. Reference was made to the various judgements on locus standi and it was submitted that the petitioner had filed the revision petition being the first informant and the complainant and a discharge order was revisable. It was submitted that the rights of a victim had been acknowledged by amendments to Cr.P.C. It was asserted that the Ld. ACMM had gone beyond the material for consideration into the realm of hypothesis. It was argued that the statement of the petitioner that he had been harmed which the other witnesses had supported had to be given weight and the testimony of the petitioner had come as reliable. His statement was clear as to who had assaulted and heckled him and he had not stated that everyone had hit him and rather he had stated who sat silently enjoying the spectacle that also enjoined the offence under Section 149 IPC. It was submitted that as per Section 149 IPC the conduct of A-3 and A-4 had to be seen and even when they came to know of the object, they made no attempt to stop the assembly from pursuing the object and mere participation of the accused persons in such an assault would be inculpatory.

It was submitted that the probative value of the material could not be gone into at the stage of charge whereas the Ld. Trial Court had gone into an analysis of the evidence and tested the statements of the witnesses under Sections 161 Cr.P.C. and 164 Cr.P.C. and gone into the pros and cons of the statements given by the witnesses. The test was that if the accused might have committed the offence then charge was liable to be framed and the material adduced by the prosecution at that stage had to be accepted to be true. It was submitted that in the impugned order on the basis of the fact that the meeting was called by the Chief Minister and the participants were elected representatives and because of the stature of the participants, it was held that the crime could not have been committed by them.

38. The Ld. Sr. Counsel for the petitioner further submitted that the Ld. Trial Court had looked at the issue as if there was sudden provocation and had not factored in the antecedents events and the motive and the antecedent events had to be looked into at the stage of charge. It was argued that the present was not a case of posting comments on FB or writing an article but the case of a bureaucrat being called late in night and in the FIR, the petitioner had stated that there was threat to his life and threat of cases being filed and eventually cases were filed against him. The question of alarm was to be determined at the stage of trial and not cut short at the stage of charge. It was submitted that as per the settled law, the statements under Section 161 Cr.PC could not be assessed. It was argued that A-3 and A-4 had seen the petitioner being heckled but they

did not do anything. They had taken an oath on the Constitution to uphold the Constitution but despite seeing the law being broken, they did not fulfil their duties to ensure that the laws were upheld and they could not have participated in a conspiracy to a person being assaulted in the privacy of their chamber by calling MLAs, who had nothing to do with the said issues. It was argued that it was for the accused persons to bring their defence and the matter could not be put beyond reasonable doubt at the stage of framing of charge. It was asserted that there was ill will on the part of the accused persons looking to how the accused persons had behaved. It was asserted that the Ld. Trial Court could not have failed to consider Section 120 B IPC since the conspiracy in the present case was hatched in private and it was not possible for the petitioner to get hold of the conversations which led to the conspiracy but it was apparent that A-3 and A-4 had not taken steps to stop the event. The statement made by the petitioner was not delayed and even Shri V.K. Jain had stated in his statement under Section 164 Cr.P.C. that he had seen the petitioner being pushed and physically touched and his specs fell. The Chief Minister had asked them not to do so but he did not get up and stop them from doing so and the Deputy Chief Minister sat silently and did not even say as much. It was submitted that the Ld. Trial Court had committed material error by discharging the accused persons against whom there was material evidence including the statement of the injured witness.

39. A short note was also submitted on behalf of the petitioner on the illustrative perversity and illegality in the impugned order passed by the Ld. Trial Court. It was submitted that in para 54 of the impugned order the Ld. Trial Court had quoted para 11 of the judgment of the Hon'ble Supreme Court in **Common Cause** v. **Union of India** (**supra***)* but the Ld. Trial Court had placed reliance on a wrong paragraph of the judgment, which was not pertinent to the present matter. It was not the case of the prosecution that the State Government was not authorized to issue advertisement, however, the release of advertisements was getting stuck/ being delayed because of non-compliance of DAVP rates and issue of certification of content of the advertisements as mentioned in para 6 of the judgement of the Hon'ble Supreme Court and it was apparent that the Ld. Trial Court had proceeded to pass the impugned order without appreciating the germane issue involved in the matter. It was then submitted that in para 56 of the impugned order the Ld. Trial Court had observed that the petitioner was informed telephonically well in advance by Shri V.K. Jain during the course of day about the midnight meeting and was also aware of the agenda whereas Shri V.K. Jain had submitted in his statements under Section 164 Cr.P.C. and Section 161 Cr.P.C. that no agenda was drawn for the midnight meeting and he informed the petitioner only at 08:45 p.m. about the meeting at 12:00 midnight and as such the observation of the Ld. ACMM was erroneous and neither Shri V.K. Jain nor the petitioner were informed about the presence of other MLAs. Even the message to the petitioner by the Deputy

Chief Minister to resolve the T.V. advertisement issue or come to the Chief Minister residence was given late in the evening without informing him of the presence of other MLAs.

40. It was further stated that in para 58 the Ld. Trial Court had observed that the meeting was between MLAs, Deputy Chief Minister and the Chief Minister about discussing various issues and thus no unlawful object or conspiracy could be attributed to the meeting and in para 67 it was observed that the plea of the petitioner that specific MLAs were chosen by the Chief Minister and Deputy Chief Minister for the purpose of meeting at midnight who had no official role to play in the meeting was again without any merits and all the persons present in the meeting were MLAs who were elected representative of the people and not criminals, who all gathered there as per the directions of Chief Minister. It was submitted that the Ld. Trial Court had erroneously proceeded with the finding that MLAs, Chief Minister and Deputy Chief Minister being public representatives could not form unlawful assembly. The petitioner had no knowledge of the presence of MLAs. Further, no communication/ grievance/ representation of any kind related to the delivery of ration etc. was ever made by the selected 11 MLAs to the petitioner before the midnight meeting with the petitioner and it showed that the MLAs were only called to heckle and assault the petitioner under conspiracy. The Ld. Trial Court has ignored that the MLAs had no role to play in the midnight meeting; the MLAs presence was not disclosed to the petitioner and Shri V. K.

Jain and the MLAs were specifically called one hour prior to the midnight meeting to fine tune the conspiracy; no agenda was to be made for the midnight meeting; seating arrangement was pre-decided where the petitioner was made to sit between A-1 and A-2, while Shri V.K. Jain was seated in the corner of the room; and Shri V. K. Jain was asked to wait in the waiting room and was allowed to enter the meeting room only with the petitioner.

41. It was submitted that in para 61 of the impugned order, it was observed that Shri Vivek Yadav was asked to communicate about the meeting to MLAs, who also told about the same to Shri Bibhav Kumar, thus, conspirators or persons with criminal bent of mind would prefer to execute their unlawful design in secrecy, without its knowledge being shared to third persons and they would not create witnesses against themselves but the Ld. Trial Court has erroneously inferred that conspirators/ criminals act in a certain manner. The secrecy regarding the midnight meeting was maintained at every step; Shri Vivek Yadav was the close confidante of A-3 and A-4, who was associated with the Party since its inception, hence, he was tasked to call the MLAs in the midnight meeting; Bibhav Kumar was not present in the meeting room. It was submitted that the Ld. Trial Court proceeded only on a surmise that in a case of conspiracy, the accused is not expected to create witnesses against himself. Further in para 62 it was observed that in the meeting room at the Chief Minister's residence, the complainant (petitioner) was not alone, rather he was accompanied by Shri V.K. Jain, who stated in his statement

under Section 164 Cr.P.C. that MLAs present there started questioning the complainant/ petitioner (the then Chief Secretary) on several topics. It was submitted that Shri V.K. Jain was working in the capacity of the Advisor to the Chief Minister and was not handling day-to-day functions of the concerned department of which issues were allegedly raised in the meeting. Hence, not calling the concerned departmental secretaries or even the concerned department Ministers itself showed that the entire meeting was called under a conspiracy, wherein secrecy was maintained at every step.

42. Further reference was made to the observations in para 62 of the impugned order and it was submitted that even admittedly no actual effort was made to stop the physical assault by any of the participants of the meeting including A-3 and A-4. It was contended that at the stage of framing of charge, the Ld. Trial Court had without any basis come to the conclusion that the assault by A-1 and A-2 was sudden and was not part of the conspiracy while the Ld. Trial Court had ignored that A-3 chose the venue of the meeting in the drawing room with no CCTV cameras; the time of the meeting was specifically chosen and insisted upon by A-3 and A-4 as 12:00 a.m. (midnight), without urgency; the time of MLAs was specifically kept at 11:00 p.m. (one hour prior to fine tune the conspiracy); repeated calls were made to secure the presence of the petitioner which was corroborated by the CDRs; even A-3 (Chief Minister) himself checked with Shri V.K. Jain by calling at around 11.30 p.m. to check if the petitioner would be present or not; request to shift the meeting to the next day by the petitioner was denied, despite

there being pre-scheduled cabinet meeting the next day and the petitioner was made to sit between A-1 and A-2 who had criminal antecedents. Further the post meeting conduct was also relevant in that an on the table agenda in relation to Ration Delivery by Chief Minster himself in the 20.02.2018 Cabinet meeting to build the narrative that midnight meeting of 19.02.2018 was to discuss civil supplies was brought; no cabinet note was circulated, concerned minister was unaware of agenda and Secretary, Civil Supplies was not even present in the Cabinet Meeting; the Minutes of Meeting of 14.02.2018 were changed by the Dy. Chief Minister on 01.06.2018; false complaints under SC/ST Act were filed by Prakash Jarwal and Ajay Dutt to which there was no objection by A-3 and A-4 and no action was taken by A-3 and A-4 against A-1 and A-2 or any other MLAs.

43. It was further submitted that in para 63, the Ld. Trial Court had observed that the complainant (petitioner) sat on the sofa in between accused Amanatullah Khan and Prakash Jarwal, without being insisted or forced by anyone and the very allegation that the petitioner, under a pre-planned conspiracy, was made to sit on the sofa in between accused Amanatullah Khan and Prakash Jarwal, in order to assault and intimidate him, did not survive. However, the petitioner clearly specified in his Complaint as well as subsequent statement that he was made to sit between A-1 and A-2, which was corroborated by Shri V.K. Jain in his 161 Cr.P.C. statement. In para 64, the Ld. Trial Court had erroneously observed that as per the supplementary statement of the

complainant (petitioner) dated 18.04.2018, he also attended a meeting in the same room on 12.02.2018, where he was later allegedly assaulted in the night of 19.02.2018, hence, it was clear that it was not uncommon to hold the meetings in the said room at Chief Minster's residence whereas there were only around 5 participants in the meeting on 12.02.2018, which was why the said meeting was held in the drawing room. Further, P.R. Jha in his 161 Cr.P.C. and 164 Cr.P.C. statements specifically stated that the Meeting Hall was used when there were more than 5-6 participants. It was pointed out that there were around 15 participants for the midnight meeting, still the drawing room was used, thus, the Ld. Trial Court instead of prima facie believing the story of the petitioner, had tried to find discrepancy in the case of the prosecution.

44. As regards para 66 of the impugned order, the Ld. Trial Court had held that.. "*It was not a public meeting which should have been called only in a daylight*" and that nothing would have prevented the accused persons to do in a meeting, which would have been called in daylight, which they wanted to do or achieve in a meeting at midnight. It was stated that the entire inference was erroneous as the Ld. Trial Court had not considered the manner in which, place at which the meeting was convened which showed palpable departure from the usual meeting of the Chief Minster/ Deputy Chief Minster with the petitioner. Additionally, the timing of the meeting (despite the fact that the Chief Minster and the Deputy Chief Minister had already met the petitioner during the course of the day on 19.02.2018 itself showed that the midnight meeting was called

(outside of public glare) to assault the petitioner under a conspiracy. In para 96, the Ld. Trial Court had observed that it was well settled that statement of a witness recorded under section 164 Cr.P.C. during investigation had higher value than the statement recorded under Section 161 Cr.P.C. by the police, since statement under Section 164 Cr.P.C was recorded by a Magistrate; moreover, it was only during the trial, a witness could have an opportunity to explain any inconsistencies as appearing in his previous statements and such statements could be used during the course of trial, in accordance with law. It was submitted that the Ld. Trial Court had selectively used the statements of Shri V.K. Jain and in para 63 had read the inconsistency in the statements of Shri V.K. Jain in favour of the accused persons.

45. The Ld. Sr. Counsel for the petitioner had argued that even though the petitioner herein was a private party, he would have a right to maintain the revision petition since he was the first informant or the complainant in the present matter. Reliance was placed on various judgments i.e. **Municipal Corporation of Delhi** v. **Girdharilal Sapru & Ors.** (1981) 2 SCC 758; **Sheetala Prasad** v. **Sri Kant** (2010) 2 SCC 190; **Kalyani** v. **State of Maharashtra** 2011 SCC Online Bom 1528; **Pandharinath Tukaram Raut** v. **Manohar Sadashiv Thorve** 2014 SCC OnLine Bom 1550; **Prakash C. Seth** v. **State of Maharashtra & Anr**. Order dated 14.02.2020 (Bom HC) in Crl. WP No. 3705 of 2018; **Krishnan** v. **Krishnaveni** (1997) 4 SCC 241; **Emperor** v. **N.G Chatterji**, ILR 1946 All 553; **Alay Ahmed** v. **Emperor** 1911 SCC OnLine All 26 and **Shiv Kumar** v.

Hukum Chand (1999) 7 SCC 467. Reliance was also placed on several judgments on what would be the test for framing of charge i.e. **State of Maharashtra** v. **Som Nath Thappa** (1996) 4 SCC 659; **Soma Chakravarty** v. **State** (2007) 5 SCC 403; **Akbar Hussain** v. **State of Jammu & Kashmir & Anr.** (2018) 16 SCC 85; and **Bhawna Bai** v. **Ghanshyam & Ors.** (2020) 2 SCC; on the point that the statement of the injured witness could not be discarded- **Abdul Sayed** v. **State of Maharashtra** (2010) 10 SCC 259. As regards what would be an unlawful assembly, reliance was placed on **K. Madhavan** v. **Majeed** (2017) 5 SCC 568; **Brathi @Sukhdev Singh** v. **State of Punjab** (1991) 1 SCC 519; **Yunis @ Kariya** v. **State of MP** (2003) 1 SCC 425. The Ld. Sr. Advocate had relied upon the judgment in **State** v. **Usman Gani** 1964 CriLJ 254 (Raj HC) on the ingredients of Section 353 IPC. The Ld. Sr. Advocate had also relied upon the judgment in **Asian Resurfacing of Road Agency Pvt. Ltd.** v. **CBI** (2018) 16 SCC 299 (3J) on the point that the revision petition was maintainable against order on charge; as regards the ingredients of offence under Section 342 IPC reliance was placed on the judgments in **Raju Pandurang Mahale** v. **State of Maharashtra and Ors.** (2004) 4 SCC 371 (SC); **Piyush Chamaria** v. **Hemanta Jitani and Ors**. 2012 CriLJ 2306 (Gauhati HC) and **Bhagwat and Ors.** v. **State** 1971 CriLJ 1222 (Allahabad HC, LB); regarding ingredients of Section 506 IPC reference was made to the judgment in **Manik Taneja** v. **State of Karnataka** 2015 CriLJ 1483 (SC) and **Narendra Kumar and Ors.** v. **State and Ors**. 2004 CriLJ 2594 (Delhi HC).

46. It was also submitted that the statements under Section 161 Cr.P.C. were inadmissible and reliance was placed on **Rajeev Kourav** v. **Baisahab & Ors.** (2020) 3 SCC 317. It was submitted that the veracity of the witnesses could be tested only in trial and reliance was placed in this regard on **Nallapareddy** v. **State of AP** (2020) 12 SCC 467; **State** v. **J. Doraiswamy** (2019) 4 SCC 149; **Abhishek Tanwar** v. **State (NCT of Delhi)** 2019 SCC OnLine Del 9652; **Sushila** v. **State (Govt.) NCT of Delhi**, 2019 SCC OnLine Del 11477. It was also submitted that it was not necessary that conspirators should participate in the conspiracy from the inception till its end and reliance was placed on **Mohmed Amin** v. **CBI** (2008) 15 SCC 49; **Yash Pal Mittal** v. **State of Punjab** (1977) 4 SCC 540 and **Hari Ram** v. **State of UP** (2004) 8 SCC 146; that the state of mind could be inferred from the conduct of the accused as held in **State of Rajasthan** v. **Shobha Ram** (2013) 14 SCC 732; that circumstances before and after the conspiracy were relevant and reliance was placed on **Pratapbhai** v. **State of Gujarat** (2013) 1 SCC 613 and on **Palani** v. **State of Tamil Nadu** (2020) 16 SCC 401 on the point that delay in FIR, if explained would not be fatal to the case.

ARGUMENTS ON BEHALF OF RESPONDENT No.5 (A-3)

47. The Ld. Sr. Advocate for respondent No.5 (A-3) had submitted that there was no infirmity, perversity in the impugned order and the Ld. Trial Court had dealt with all the issues as they should be dealt with. Reliance was placed on the judgment of the Hon’ble

Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra)**. It was submitted that at the stage of charge, the Court had a limited purpose to see if a prima facie case was made out and in the present case as well the Ld. Trial Court had indulged in the same only and had not appreciated the evidence as is done at the stage of trial. The sifting of the material on record was also only for the said purpose and had relied upon the statements which were relied upon by the prosecution and not on what the defence would bring. It was submitted that the question was whether the material on record created grave suspicion and the Ld. Trial Court had adhered to the principles which had been laid down and had considered only the broad probability of the case from para 57 onwards. The Ld. Trial Court had considered the factual conspectus and looked into the infirmities in the case of the prosecution. It was argued that the petitioner, who was the highest functionary in terms of the administrative set up had claimed a certain incident but it took him 12 hours to lodge a complaint and there was no explanation why he took such a long time whereas he could have lodged the complaint in 20 minutes. The petitioner had even gone to meet the Hon'ble Lieutenant Governor but the Hon'ble Lieutenant Governor was not examined. The Hon'ble Lieutenant Governor had not observed any injuries on the person of the petitioner and no proceedings were initiated by the PSO of the petitioner and the other person who was with him. The medical had also taken place after 12-13 hours of the incident and the Court had only noticed the said basic infirmities at the first instance.

48. The Ld. Sr. Counsel had further submitted that the first statement on the basis of which the proceeding was set into motion culled out that no offence could be made out against A-3 on a bare reading of it. The complaint was made after a gap of 12 hours. It was argued that if the case was that there was a conspiracy to cause forced injuries to the petitioner, the Chief Minister would not have told Shri V.K. Jain who was also a bureaucrat to accompany the petitioner and create a witness against himself. It was asserted that public servants who are elected have a duty vested in them to ask the bureaucrats if the task is performed or not and there was no illegal purpose for the said meeting and it was called for a purpose. The shutting of the room did not bring it within illegal confinement as all the persons were there and the door was shut only to have privacy but it was not locked. Shri V.K. Jain during the course of meeting got up and went out and thereafter he came back so the ingress and egress of anyone was not stopped. It was submitted that the act of accused Prakash Jarwal and Amanatullah Khan was an individual act on a spur of the moment and in the complaint itself the word 'suddenly' was used which militated against the concept of conspiracy or common intention. Nobody prevented the petitioner from moving out of the room so there could be no wrongful restraint.

49. It was argued that the Ld. Trial Court had duly noticed that the first statement of the petitioner did not disclose commission of any offence qua A-3 as it was a sudden act in relation to two persons and there was no participation of A-3 and there was no

conspiracy afoot. In order to even presume existence of conspiracy, there should be a meeting of minds and two or more persons should share information; even mere sharing of information was not a conspiracy but the intention should develop, there should be agreement and two persons should agree to do an act. First stage is that of only knowledge from amongst those sharing the information, some may agree or some may not agree and those who form the intention may be called conspirators whereas the others would not be so called. It was submitted that the statement of the petitioner was pregnant with meaning and he used the word 'suddenly' so there was no evidence that knowledge was shared of such acts being committed. Shri V.K. Jain had stated that the Chief Minister had objected to the behavior of said two MLAs. The antecedent events also did not show that any knowledge of hitting was shared and the only information that was shared was that meeting would be held to discuss certain public issues. The statement of the petitioner was corroborated by that of Shri V.K. Jain who also stated that the purpose was not only to discuss the advertisements but also to discuss public issues. It was pointed out that the prosecution chose to record the statement of Shri V.K. Jain on 21.02.2018 but deliberately did not produce the same in Court and was directed by the Hon’ble High Court to produce the same and then the order was upheld by the Hon’ble Supreme Court that the said statement be considered at the stage of charge. It was contended that the prosecution had tried to suppress the fact that the statement of Shri V.K. Jain was recorded on 21.02.2018 itself and the Hon’ble Supreme Court had

dismissed the SLP holding that the said statement be provided to the accused persons. The Ld. Trial Court noticed the said infirmity that the prosecution had tried to suppress the material which material exonerated A-3 and others. In the statement dated 21.02.2018 Shri V.K. Jain had not stated about witnessing any assault.

50. It was further submitted that the prosecution had relied upon the statements made thereafter which were completely contradictory. Shri V.K. Jain was a bureaucrat and was not a part of the MLA set up. Further, it was evident that the petitioner was taken to the front room where the meeting was to be held and he had himself sat between the two MLAs and it was not that he was made to sit between them and Shri V.K. Jain also sat with the MLAs. Moreover, there was no one specific issue and the MLAs wanted to ask specific issues so it was not in relation to the advertisements only, which ruled out any conspiracy. It was a general meeting which the Chief Minister was entitled to call. No incident was narrated by Shri V.K. Jain and grave suspicion was ruled out as the said statement was suppressed. Reference was made to Section 114 (g) of the Indian Evidence Act and it was submitted that the presumption under the said Section came into operation as to why the said statement was suppressed. It was public business which was being carried out. Section 114 (g) of the Indian Evidence Act answered all the parameters and the statement was withheld though it was a part of the investigation and eventually the parties had to go to Hon’ble Supreme Court as the said statement went to the root of the case. In contradiction was the statement under Section 164

Cr.P.C. where a different version was sought to be brought to light. It was recorded on 22.02.2018, a day after the earlier statement and it again confirmed that the petitioner had sat on his own and again that the meeting was not only in relation to the advertisements. However, the version changed as to on what Shri V.K. Jain had seen when he came back from the washroom. He also stated that the Chief Minister told the MLAs not to do so which would not be said by anyone who was a part of the conspiracy. The statement spoke of things which were not there in the earlier statement so grave suspicion was ruled out. Further, the Chief Minister had given permission to the petitioner to leave and in those circumstances it could not be said that any offence was made out against him. The same was the statement of the petitioner himself.

51. It was argued that even if the statement under Section 164 Cr.P.C. of Shri V.K. Jain was considered, no offence was made out and there was no conspiracy and no meeting of minds and instigation but it was an individual act of two persons. There was no consensus ad idem so no offence was made out against others except Prakash Jarwal and Amanatullah Khan against whom charge had been framed. Further, in the statement of Shri V.K. Jain recorded on 22.02.2018, he had stated that some MLAs had greeted the Chief Secretary so it could not be said that there was any conspiracy or that they came with a particular purpose to do something. Here also the version had changed and it was stated that Prakash Jarwal and Amanatullah Khan had asked the petitioner to sit between them so improvement had been brought in. Shri V.K. Jain had consistently

stated that the petitioner had voluntarily sat on the sofa and the act that had taken place was sudden in nature and the Chief Minister had also reprimanded them and let the petitioner leave so no offence was made out against A-3. This was coupled with a 12 hour delay in making the complaint and the delay was significant as the person involved was the highest functionary and he had gone to meet the Head of the State, i.e. the Hon’ble Lieutenant Governor immediately after the incident but there was no proceeding emanating from the Hon’ble Lieutenant Governor. In fact the petitioner had not mentioned about going to the Office of the Hon’ble Lieutenant Governor in the rukka or his first statement and the same came in the statement of the PSO which was recorded belatedly on 03.04.2018. Reference was made to the statement of Inspector Satbir Singh wherein first reference of going to the house of the Hon'ble Lieutenant Governor was made and the petitioner had not stated so himself in his statements recorded till then. In the next statement of the petitioner which was recorded he had referred to the same. Inspector Satbir Singh had also not stated about noticing any injury on the petitioner and no MLC was done immediately. The Hon’ble Lieutenant Governor had also not made any complaint and the petitioner had not even told his PSO about the assault otherwise the FIR would come at his instance. The said basic infirmities were noticed in the case of prosecution by the Ld. Trial Court specially qua A-3 and A-4 and the others who had no role other than asking questions on public issues. It was argued that even individual acts were rendered doubtful by the said

conduct of the petitioner.

52. The Ld. Sr. Advocate had further argued that there was no meeting of minds between the accused persons and from the statements of witnesses, it was pointed out that the action of the two MLAs of allegedly heckling the petitioner was sudden. Shri V.K. Jain, who was summoned along with the Chief Secretary i.e. the petitioner was also a public official and A-3 would not create evidence against himself. It was submitted that though the purpose of the statement under Section 164 Cr.P.C. is the same as of the statement under Section 161 Cr.P.C., however, it stood on a higher pedestal and from the said statement of Shri V.K. Jain, it was clear that the petitioner himself had taken seat and there was no conspiracy that he was forcibly made to sit between two persons. The statement also pointed out that A-3 had objected to the conduct of the two MLAs and then the petitioner had asked for permission to leave and A-3 had allowed him to leave. Reference was made to the third supplementary statement of Shri V.K. Jain as per which he was called through Bibhav Kumar by A-3 and he stated that A-3 was disturbed and expressed the feeling that what had happened was not correct and the same was corroborated by the statement of Bibhav Kumar. A-3 was not at peace, and if there was common intention that would not have been so, and the said aspect had been duly dealt in the impugned order, and in these circumstances the meeting could not be termed as an unlawful assembly. It was submitted that A-3 had called the meeting at his residence and notice of the meeting was given through Yadav

to the MLAs and their consent was sought, which was shown from the statement of Vivek Yadav and then Bibhav Kumar was informed and then the meeting was called. So, there was no question of pre-concert, otherwise A-3 would have known that the MLAs would come and he would not have called them. It was submitted that all the (accused persons) respondents were public functionaries and even if the agenda was to ask the petitioner regarding the ad-campaign in relation to the performance of the government in three years, it could not be regarded as unlawful, so, there was nothing to show any unlawful purpose. There was no pre-meditation and it was a normal and formal meeting.

53. The Ld. Sr. Counsel referred to the judgment of the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** as per which the government was within its right to put ads to highlight its performance and A-3 was within his right to ask the petitioner, who was the Chief Secretary, what was the fate of the advertisements and the same could not be called an unlawful purpose. It was contended that there had been directions by A-3 on two earlier occasions to issue the advertisements but the petitioner was not coming forward with an answer and A-3, being the Chief Minister was entitled to call a meeting. The other respondents (accused persons) being MLAs also had a stake as they were answerable in their constituency, and it could not be regarded as unlawful purpose. It was pointed out that if the petitioner had any problem or had difference of opinion, he would have made a note on record but there was no noting that the

petitioner had objected to or that the advertisements were not as per the norms as ultimately, it was for the Ministry of Information and Broadcasting to decide, there was no written dissent by the petitioner anywhere and it was so rightly observed by the Ld. ACMM. It was submitted that as regards the contention that a lawful assembly could become an unlawful assembly at any stage the moment there was an unlawful act, the circumstances had to be seen and the act of the two MLAs was sudden as per the case of the petitioner himself in his first statement and the others were not in a position to react. A-3 had deprecated what was happening so it could be gathered from the circumstances that there was no common object and when two persons act independently, no common object could be gathered.

54. It was submitted that both the preceding and later acts had to be seen as also the sequence of events and all of a sudden two persons had reacted. Everyone was stunned and the act of the said persons was severable and constituted a distinct offence for which they had been charged. For conspiracy to be made out, there had to be some material independently before the Court could come to the conclusion that the accused persons (respondents) had acted in conspiracy and they had acted together and meeting of minds could be inferred whereas in the present case, the circumstances went against the case of the prosecution and there was nothing to show meeting of minds. There was an agenda concerning public and issues of the public were being addressed. Even as regards the choice of the room where there were no CCTVs, it was submitted that as per

the case of the petitioner himself, for the purpose of advertisements, a few days prior, a meeting was held in that very room. So, there could be no design in holding the meeting in question in the said room. Reference was made to the statement of Ms. Varsha Joshi, Shri S.N. Sahai and Shri Shurbir Singh and they had also stated that the meeting was held in the same room. It was submitted that A-3 had called the petitioner and the others to his own residence and if there was any evil intent, he would not call the people to his residence and also bring Shri V.K. Jain to create a witness against himself. It was contended that the question of CCTV was not brought out initially, but had been raised belatedly by way of statement of Pravesh recorded on 01.03.2018 and Bibhav Kumar recorded on 19.04.2018 and it was introduced deliberately that the meeting was called in the said room. It was submitted that all the dimensions for seeing if the charge needed to be framed were duly considered by the Ld. ACMM and the judgment of the Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra)** was duly applied and consistently followed. It was submitted that for the limited purpose whether charge was made out, evidence could be sifted and it was not the case that the Ld. ACMM had looked into the defence of the accused persons and he had looked at only the documents of the prosecution.

55. The Ld. Sr. Counsel had asserted that the conduct of the petitioner also had to be seen who did not call the PCR at the first instance, did not inform the Security Guard and went to meet the Hon'ble Lieutenant Governor but there was no complaint

emanating even from the office of the Hon'ble Lieutenant Governor. As such no grave suspicion was generated and even the fact that the Deputy Chief Minister had called twice for the meeting would not show any concert. Reference was made to the appointment schedule of A-3 and A-4 and it was submitted that the same showed that the two had to go to attend a wedding together so there was occasion for the Deputy Chief Minister to be present there. It was submitted that Section 149 IPC was in the nature of an exception to criminal law that one person could be held liable for the act of someone else. But for that, it was necessary to show that the act was manifestation of agreement or concert which had to be shown independently and then the act of one person could be read against the other. Reliance was placed on the judgment in **Natwarlal Shankarlal Mody** v. **State of Bombay** Vol. LXV-1963 Bombay Law Reported 660 decided on 19.01.1961. It was submitted that Section 10 of the Evidence Act and Section 34 IPC were rules of evidence and did not create offences by themselves and it was a question of common intention developing or pre-concert which was not there in the present case and there was nothing to show meeting of minds. It was submitted that the conduct of A-3 prior to the incident and post the incident showed that there was no meeting of minds, which had several stages and in the instant case there was nothing to show that there was any conspiracy or unlawful assembly and there was no common object. It was a lawful meeting and except for the persons to whom specific acts were attributed nothing had been made out.

ARGUMENTS ON BEHALF OF RESPONDENT No.6 (A-4)

56. The Ld. Sr. Advocate for A-4 Manish Sisodia (R-6) had argued that the foundational fact of the controversy according to the charge sheet was that the petitioner who was the Chief Secretary was being asked to do something which was contrary to the guidelines of the Hon'ble Supreme Court. Reference was made to the charge-sheet and that as per the case of the prosecution, 19.02.2018 was the date on which the conspiracy was hatched and it was done to force the petitioner to do something legally which he was not bound to do; a specific room was chosen which did not have CCTV; and the common object was to pressurize the petitioner as he was not doing their bidding. It was submitted that the judgment of the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** specifically allowed the government to highlight its achievements and para 6 thereof referred to the guidelines on content regulation and specifically referred to the nature of content and also the government financial procedure had to be followed. As per para 11 of the said judgment, the government was permitted to release advertisements to celebrate completion of a fixed period in tenure and reference was also made to the subsequent order reported as (2016) 13 SCC 639 (**supra)** and that the same led to the conclusion that advertisements of government with political hue with the photo of the Chief Minister were permitted. As such, the guidelines laid down by the Hon'ble Supreme Court did not come in the way of highlighting the achievements of the government whereas it was fundamentally the

effort of the prosecution to show that the meeting was held as an attempt to force someone to do something which was contrary to law.

57. It was submitted that the antecedent events of 12/14 February, 2018 were documented in the statements of Ms. Varsha Joshi who stated that the meeting on 12.02.2018 was held in the drawing room of A-3 and the meeting was called at 8:30 a.m. and this became important as the emphasis of the case of prosecution was on working hours whereas the said meeting was also before the working hours. As per the said statement, a difference of opinion arose between the Chief Minister and the petitioner and the Chief Minister asked the petitioner to put it in writing as the files of the government are always in writing, though there was no file noting in the present case showing the objections. If a bureaucrat wanted to place dissent, it had to be on the file. Even if the Chief Minister lost temper, it meant nothing as losing temper with a colleague cannot be an offence. In the meeting of 14.02.2018, the petitioner was not there and there was a difference of opinion between the bureaucrats and A-4 and it was a consistent case of all the witnesses that the said meeting remained inconclusive so no inference could be drawn from it. Shri S.N. Sahai and Shri Shurbir Singh had also stated the same thing and it showed that the meeting was in the same room where according to the police meeting should not have been held. If the petitioner had any dissent in terms of the judgment of the Hon’ble Supreme Court there was no such noting.

58. It was submitted that what the petitioner wanted the Court to do was to take another view and substitute its own view from that taken by the Ld. ACMM, which was not the jurisdiction of the Revisional Court as the view taken by Ld. Trial Court was not palpably perverse and there was no reason why the accused persons (respondents) would hatch a conspiracy to intimidate a man who had not yet taken a stand. It was submitted that the question was why the meeting was called and as per the case of the prosecution in the charge-sheet, the specific agenda of the meeting was to deal with advertisements. Reference was made to the three statements of Shri V.K. Jain and it was submitted that the prosecution had tried to hide one of the said statements. Shri V.K. Jain had stated that there was no agenda for the meeting and as he did not have to draw the minutes so he had left. However, he had also stated that there were various things to discuss with the petitioner, such as supply of ration, slow moving of the files and release of funds which was consistent across his three statements and the prosecution case itself did not show that the meeting was called only to discuss advertisements. It was submitted that as per the case of the petitioner 11 MLAs were handpicked to intimidate the petitioner and two of them were colorful personalities and they had been charged already. It was submitted that would it be a conspiracy if only the said two persons had been called and would it make it more suspicious if all the 67 MLAs were called. The other nine MLAs did not have any colour to them. It was submitted that a stray sentence here and there could not lead to a criminal charge. It was a meeting of the

representatives of the people with the bureaucrat and there was no suspicious circumstance. As per the prosecution, the same had to be read with the time at which the meeting was called. However, the MLAs discussed various issues and in fact, by 19.02.2018, the issue of advertisement had become irrelevant as the government had completed its three years term on 14.02.2018 and the message of the Chief Minister had been to release the advertisements on 14.02.2018 itself. It was submitted that the finding of the Ld. Trial Court regarding the timing of the meeting could not be called perverse and again the question arose whether if only the Chief Secretary was called, would it be suspicious. It was submitted that the records showed that the bureaucrat and people's representatives worked beyond the working hours and even before the Courts, matters had been argued at midnight, but that would not make it a suspicious circumstance and the circumstances had to be seen in terms of the material on record. Reference was made to the schedule of social engagements of that day of the Chief Minister and the Deputy Chief Minister and it was not the case of the prosecution that the Deputy Chief Minister should have cancelled the said agenda to facilitate the meeting with the Chief Secretary and it was not a case that the meeting should have been held at 10:00 p.m. rather than midnight because even then it would not be within the working hours. And the question was, would it make it less suspicious then. It was contended that it was not a crime to work late or to work hard and the highest echelons of the government worked very late of which judicial notice could be taken.

59. The Ld. Sr. Counsel further argued that regarding the meeting of 12th February, 2018, there was no CCTV footage. Reference was made to the fact that as per the statement of Shri V.K. Jain, the petitioner was not forced to sit at a particular place but he himself went and sat there. It was contended that there was nothing to show conspiracy. The Chief Secretary was asked to put in writing but he did not do so. It was clear that it was not a meeting with a fixed agenda, but to discuss various issues plaguing the public. The alleged suspicious circumstances were nothing but a figment of imagination and it was open to the representatives of the people to ask the bureaucrat various questions. According to the charge-sheet, the Chief Minister and the Deputy Chief Minister were the kingpins of the conspiracy but no suspicion could be found in the Deputy Chief Minister calling a bureaucrat at 06:55 p.m. and telling him to attend the meeting at midnight. The Deputy Chief Minister was at the residence of the Chief Minister when he made the call but it was not suspicious for the Deputy Chief Minister to be at the residence of the Chief Minister who also had a residential office. It could not be that whenever the Deputy Chief Minister went to the residence of the Chief Minister, it was suspicious and such an inference could not be drawn by any Court and it also could not be contended that the moment they came back from the wedding, they should have called the meeting. Even if the meeting was called early in the morning, it would not be working hours and if that was the contention then even the meeting on the 12th at 9:30 a.m. would be beyond the working hours. It was submitted that the mere fact that

the meeting was held late could not be a cause of suspicion and the Ld. Trial Court had rightly reasoned that if the accused persons wanted to pressurize the petitioner they could have done so during the day. The meeting in the instant case was an official meeting at the residence of the Chief Minister.

60. The Ld. Sr. Counsel had also referred to the statements of Shri V.K. Jain who had stated about the conduct of the Chief Minister that the Chief Minister had stopped the MLAs from doing such an act and he let the petitioner leave whereas if there was any conspiracy he should have not allowed him to leave and he would have ensured that the petitioner was beaten. Further, the Chief Minister had called back Shri V.K. Jain and expressed his displeasure. It was submitted that the Courts have to be careful while looking into conspiracy charges and reference was made to the judgment in **State** v. **Nalini** (1999) 5 SCC 253. It was submitted that for framing of charge for conspiracy, the Court has to be careful and has to see whether people were brought in for the sake of being joined and it could not be a clearer case than this. It was also submitted that when the convenor of the meeting i.e. the Chief Minister had already admonished the MLAs who had allegedly heckled the complainant/ petitioner, it was not necessary for everyone to admonish them and the mere fact that the Chief Minister had admonished the MLAs and Shri Manish Sisodia did not do so did not mean that he acknowledged their acts as legal. It was argued that nothing was attributed to A-4 at all and it was a classic case of bystanders to an event which happened off the cuff. As regards the

contention of the petitioner regarding change of minutes at the instance of A-4, it was submitted that as per the witnesses, the meeting of 14.02.2018 was inconclusive. The conspiracy began and ended on 19.02.2018 as per the case of the prosecution and it was not possible to go outside the conspiracy to look at aspect of change of minutes as doing that would be taking Section 10 of the Evidence Act to a different line. It was submitted that all the witnesses i.e. Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai had stated that the meeting of 14.02.2018 was inconclusive and change of Minutes was well-beyond the conspiracy and achievement of its objects and the events beyond the alleged conspiracy could not be looked at.

61. The Ld. Sr. Advocate for A-4 Manish Sisodia had relied upon the judgment of Hon'ble Supreme Court in **Hydru** v. **State of Kerala** (2004) 13 SCC 374 on the scope of a revision petition and it was submitted that a Revisional Court could interfere only if there was any procedural irregularity or material evidence had been overlooked or misread by the subordinate Court and even if two views are possible, it was not permissible for the Court to interfere with the same in a revision. Reliance was also placed on the judgment in **Amit Kapoor** v. **Ramesh Chander** (2012) 9 SCC 460 again on the powers of a Revisional Court as also on the judgment in **Taron Mohan** v. **State and Another** 2021 SCC Online Del 312. It was contended that the petitioner wanted to draw the accused persons and the Court into a trap as if the present was an appeal.

62. The Ld. Sr. Advocate for A-4 had submitted that the Government or bureaucrat speaks through the file whereas there were no notings on the file to show that the petitioner had raised any objection regarding the issuance of advertisements. Even the minutes, which were relied upon by the petitioner did not indicate any protest of any kind and it only showed that the Chief Secretary had stated that the matter be sent to the Finance and no inference could be drawn from any other file notings, which were not part of the charge-sheet. As regards the contention of the petitioner that draft minutes were changed in June, 2018, it was argued that there were no inconsistency in the minutes as they were inconclusive. It was argued that the charge-sheet itself fixed the period of conspiracy and the events beyond that could not be looked at. As regards the contention that 11 MLAs were called, it was argued that there was nothing suspicious about 11 MLAs being present and it was submitted would it be less suspicious if all 67 were present. It was submitted that there was nothing suspicious if people's representatives were present and they were asking about the governance. Shri V.K. Jain had repeatedly stated that other issues were also discussed and that destroyed the case of the prosecution that only the issue of advertisements was taken up and it enured to the benefit of the accused persons.

63. Written submissions were also filed on behalf of A-4 submitting that the jurisdiction that was exercisable by the Court was very limited and while exercising jurisdiction under Section 397 of the Cr.P.C., the Court could not interfere unless there

was a palpable error apparent on the face of the record and in any event, the Court could not supplement the view of the Ld. Trial Court merely because another view was possible. It was further submitted that the Ld. Trial Court had passed a reasoned and detailed order and the impugned order warranted no interference whatsoever, given the scope of the limited jurisdiction available. Even otherwise the revision was misconceived and ill advised. It was contended that the judgments of the Hon'ble Supreme Court in **Common Cause** v. **Union of India** (2015) 7 SCC 1 and (2016) 13 SCC 639 did not prohibit the issuance of advertisements as alleged by the prosecution and the petitioner. The charge sheet alleged that the Hon'ble Supreme Court in the said cases had issued guidelines which were not being followed in the instant case for release of advertisements and it was stated by the Investigating Authority, after considering the evidence, including antecedent events that on 19.02.2018, A-3 and A-4 hatched a plan to pressure the Chief Secretary in relation to release of TV advertisements to highlight the achievements of the Delhi Government after the completion of 3 years. The conspiracy entailed orchestrating a meeting to discuss the issue of advertisements to humiliate, intimidate and assault the Chief Secretary. It was submitted that the case of the prosecution was that as the judgments of the Hon'ble Supreme Court prohibited release of advertisements, which prohibition was also cited by the petitioner, a conspiracy was hatched to pressurize/punish the petitioner to do what he was not legally bound to do. However, in the judgment of the Hon’ble Supreme

Court, there was an express authorization for release of advertisements after the completion of a fixed tenure, to give publicity to the achievements of the government and that was admittedly the nature of the advertisements proposed to be issued and para 6 of the judgment in **Common Cause** v. **Union of India (supra)** only referred to content regulation. As such, the prosecution case that the release of the advertisements was being objected to on the ground of the judgment of the Hon'ble Supreme Court was contrary to the record and fact. It was argued that the Chief Secretary at no point, had officially refused the issue of advertisements and there was accordingly no motive for the hatching of any conspiracy as claimed by the prosecution. At no point, the Chief Secretary had reduced his objection to the release of advertisements in writing though, the prosecution witnesses themselves had stated that A-3 had instructed that if the Chief Secretary had any complaint or objection, he may reduce the same to writing. Reference was made to the statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai, all of whom had stated that the meeting on 12.02.2018 was in the drawing room of residence of the Chief Minister; the Chief Minister said put it in writing and the meeting on 14.02.2018 for DTTDC remained inconclusive.

64. It was submitted that confronted with this lacuna, the petitioner had raised an argument in rejoinder that the minutes of the meeting dated 14.02.2018 showed that the Chief Secretary had objected to the issue of the advertisements. But read as a whole, the minutes did not reflect that the Chief Secretary had any opposition to the release of the

advertisements as they were contrary to the judgments in the case of **Common Cause (supra).** Even if that were so, the file notings of the Chief Secretary were not part of the charge sheet and the Court could not be asked to speculate as to the contents of the note sheet, when the prosecution had not seen it fit to rely upon them. It was argued that as per the petitioner, de hors the charge sheet or the prosecution case, the fact that the minutes were changed subsequently on 01.06.2018 was a matter of suspicion that confirmed the theory of a conspiracy. However, the prosecution case as reflected in the charge-sheet made it clear that the conspiracy was hatched and achieved on 19.02.2018 itself. The revision of the minutes took place later on 01.06.2018 and there was no temporal link whatsoever. It was argued that it was a settled proposition of law that events subsequent to the conspiracy having ended could not be the basis of inferring that there existed a conspiracy and reliance was placed on **State of NCT of Delhi** v. **Navjot Sandhu** (2005) 11 SCC 600. Moreover, the meeting remained inconclusive, which was an admitted position as evident from the statements of the witnesses and the revised minutes reflected the said position and were consistent with everybody's understanding of the meeting. It was submitted that the Ld. Trial Court had noted correctly that the Chief Secretary i.e. the petitioner had chosen not to reduce his dissent in writing and to that extent, the question of a conspiracy to intimidate a man who himself had not made his stance clear, would not arise.

65. It was argued that the meeting called on 19.02.2018, was a routine meeting to

discuss various administrative issues and there was no aspect of the same which was suspicious or which warranted the charge of a conspiracy. The case of the petitioner as recorded in his Section 161 Cr.P.C. statement dated 18.04.2018 was that the meeting was called on the specific subject of difficulties in release of certain T.V. advertisements related to completion of three years of current government in Delhi, which was also the case in the complaint. However, the star witness of the prosecution i.e. Shri V.K. Jain, Advisor to the Chief Minister in his statement under Section 164 Cr.P.C. had contradicted this and stated that numerous issues affecting the public were the subject matter of the meeting, which clearly indicated that not only was there no meeting of minds but there was also no conspiracy afoot. Shri V.K. Jain was consistent on this aspect in his statements under Section 161 Cr.P.C. dated 21.02.2018 and 22.02.2018. It was contended that much had been made about the presence of MLAs but the presence of MLAs was consistent with the said statement, for each of them had issues relating to the people to discuss with the Chief Secretary. If the conspiracy theory was right there was no reason to have 11 MLAs, the petitioner had insisted that two of the MLAs had a colourful past and the intimidation would have been all that much more with just two of them in the room and it could not be said that it would be less suspicious if all 67 MLAs or only 2 MLAs were present and the question would be as to what would be the right number of MLAs to call. It was argued that the Ld. Trial Court had correctly dealt with the said aspect and noted that there was nothing suspicious in elected officials

interacting with a bureaucrat.

66. It was argued that three circumstances were urged in order to suggest that there was a conspiracy in the calling of the meeting and that there were suspicious circumstances surrounding it i.e. timing and it was a constant refrain of the petitioner as to why the meeting was called late at night at 12:00 a.m. Admittedly, in relation to the self-same issue a meeting was also conducted at 08:30 a.m. and then it may be argued why was the meeting so early? It was argued that matters of governance are to be dealt with expeditiously and with a sense of urgency. That apart, it was admitted that A-3 and A-4 had gone for a wedding and A-4 had other engagements thereafter and it could not be argued that they should have cancelled that for the convenience of the Chief Secretary. Reference was also made to the findings of the Ld. Trial Court in this regard. It had been argued that it was a matter of suspicion that the meeting was conducted in a room where there was no CCTV. Admittedly, a meeting on the self-same issue, on the morning of 12.02.2018 was conducted in the same room. It was not as if the room was never used. The petitioner had stated that he was forced to sit between two colourful MLAs but it was clear from the Section 164 statement of Shri V. K. Jain on 22.02.2018, that it was the Chief Secretary, who chose to sit between them. This was also there in the Section 161 statement of 21.02.2018 which was suppressed and had been directed to be considered by the Hon'ble High Court of Delhi vide judgement dated 21.10.2020. As regards the role of A-4, the prosecution had described him as an ostensible kingpin and

the charge-sheet delineated his role. The case of the petitioner was that A-4 called him on 19.2.2018 at 6:55 p.m. but there was nothing unusual about a Deputy Chief Minister calling the Chief Secretary. Further, A-4 had told him to attend the meeting at the Chief Minister's house at 12 midnight but it was not criminal to work late. The other allegation in the "Results of Investigation" was that when the phone call was made, A-4 was at the residence of A-3. But there was nothing unusual about that and the record itself demonstrated the specific reason for A-4 to be present there as both of them were invited to and went to attend the same wedding reception, scheduled at 7:00 p.m. at Rajokri.

67. It was submitted that it was clear from the statements of Shri V.K. Jain, that the co-conspirator of A-4, i.e. A-3 had clearly stopped the incident and expressed his displeasure. In the statement dated 09.05.2018 as well, he had stated that the Chief Minister called him to come back and when he came back, the Chief Minister expressed his displeasure. It was submitted that once that was the case, there was no meeting of minds or unlawful assembly as it was clear that the conspirators had attempted to stop the assembly and disassociated themselves. Reliance was placed on the judgement of the Hon'ble Supreme Court in **K. Madhavan** v. **Majeed (supra)**. It was submitted that the Ld. Trial Court had analyzed the individual role of the accused and considered the statements and documents, threadbare and had arrived at the conclusion that there was no reason for a charge to be framed and as such the revision deserved to be dismissed as

there were no grounds to interfere with the reasoned and detailed order dated 11.08.2021 especially, given the limited scope of interference.

ARGUMENTS ON BEHALF OF RESPONDENT No.3 (A-1)

68. The Ld. Counsel for A-1 Amanatullah Khan (R-3) had submitted that initially A-1 had filed a revision petition against the order on charge but the same was withdrawn. It was argued that the petitioner had sought that A-1 be charged with additional offences of conspiracy and under Section 109 IPC but there was no evidence of abetment of any offence or to make out offence under Section 506 IPC. There was no allegation against A-1 either in the statement of Shri V.K. Jain or of the petitioner and the only allegation was regarding assault. It was submitted that even the order on charge which was directed to be framed against A-1 was incorrect and prayer for additional charge was not substantiated by any evidence. Reliance was placed on the judgments in **Kanshi Ram** v. **State (supra)** and **Manik Taneja** v. **State of Karnataka (supra)** on the question of ingredients of Section 506 IPC.

ARGUMENTS ON BEHALF OF RESPONDENT No.4 (A-2)

69. The Ld. Sr. Advocate for A-2 Prakash Jarwal (R-4) had submitted that A-2 had not challenged the order of framing of charge. Reference was made to the prayer made in the Revision Petition qua A-2 and it was submitted that qua A-2, the prayer was limited to addition of Sections 342/ 506 (ii) / 120-B/109/114 IPC. Reference was made

to the impugned order regarding the charges framed against A-1 and A-2 and it was submitted that the offences under Sections 342/ 506 (ii) IPC were not made out against A-2. It was submitted that Shri V.K. Jain had in his very first statement which the prosecution had tried to hide had stated that he was not there at the time of the alleged incident so he had not seen anything. It was submitted that there was the very first version of Shri V.K. Jain and then there were improved versions and reference was also made to the other statements. It was pointed out that as per his own statement, the Chief Secretary had sat voluntarily and no kind of restraint or force was shown and in the statement under Section 164 Cr.P.C., Shri V.K. Jain had stated that when he came back, he saw physical contact between the petitioner and A-1 and A-2 and as regards that, the charge had not been contested. The petitioner sat voluntarily on the sofa and when he left he sought permission of the Chief Minister and left so the ingredients of wrongful restraint could not be made out. It was submitted that as regards the allegation of closing of door, it was not an ingredient of wrongful restraint, which would arise only if there was resistance to the petitioner leaving the room and then there would be wrongful restraint. Even if the petitioner was asked to sit at a particular spot, it would not be suggestive of wrongful restraint and the Court had already charged A-2 for the other offences. Further the supporting witness had not stated anything about intimidation.

70. It was submitted that the petitioner had taken several hours to make his first statement and in the first complaint by the petitioner, he may have used words or

language of the Section but that by itself did not mean that the Section could be invoked. The usage of language as per the well settled law, did not further the case and the ingredients of the offences had to be laid out and it had to be shown how the offences were made out. Reference was made to the supplementary statement dated 20.02.2018 and that it was after several hours that the petitioner had identified A-2 from the photographs from the Legislative Assembly and reference was made to the last supplementary statement of the petitioner recorded on 25.04.2018. It was submitted that there was much jurisprudence on what constituted criminal intimidation and reference was made to the judgment of Hon'ble High Court of Delhi in **Kanshi Ram** v. **State (supra)** wherein the FIR was quashed by the Hon'ble High Court. It was argued that mere threat was no offence and it should have caused alarm and as such there had to be a threat and also it must cause an alarm. It was submitted that the same squarely applied to the facts of the present case and the complaint not having made out the ingredients of Section 506 (ii) IPC, the said section could not be invoked. Even Section 342 IPC was not made out which was predicated on Section 340 IPC and in the facts of the case, it could not be said that there was any restraint. It was argued that there was no occasion for the petitioner to seek invocation of Sections 342/ 506 (ii) IPC against A-2.

71. As regards the question of conspiracy, reference was made to the impugned order and that conspiracy was discussed in chronological sequence and it was held by the Ld. ACMM that there was no evidence of prior concert. It was contended that conspiracy

even though hatched in secrecy, there must be some evidence and it cannot be based on surmises and conjectures. Some actions may have been culpable but on that basis it could not be said that there was a conspiracy and the Ld. Trial Court had rightly held that no conspiracy was made out in the present case. As regards Sections 109 and 114 IPC, it was submitted that A-2 had been charged substantively for committing some offences with the aid of Section 34 IPC and when the allegation was that A-2 had committed the act, there was no question of abetting anything when he was the performer, in fact if Sections 114 and 109 IPC were invoked it would contradict the substantive charges. It was submitted that no case was made out by the petitioner in the facts and circumstances to invoke the additional offences and there were no reasons stated in the Revision Petition why the said sections should be invoked in the present case. It was submitted that the Court under Section 397 Cr.P.C. was to only see if there was any illegality, impropriety and perversity in the order and if anyone should have challenged the order it was A-2. It was asserted that the present was luxury litigation to invoke additional charges, which were not made out. Reliance was placed on the judgements in **Deepa Bajwa** v. **State & Ors.** 2004 SCC OnLine Del 961; **M.S. Gayatri @ Apurna Singh** v. **State & Anr** 2017 SCC OnLine Del 8942; **Manoj Bajpai** v. **State of Delhi** 2015 SCC OnLine Del 9751; **Kanshi Ram** v. **State (supra)**; **Neelu Chopra & Anr** v. **Bharti** (2009) 10 SCC 184; **Puran Chandra** v. **State of Uttaranchal** MANU/UC/0207/2004; **State of Andhra Pradesh** v. **M. Madhusudan Rao** (2008) 15

SCC 582; **Dilawar Balu Kurane** v. **State of Maharashtra** (2002) 2 SCC 135; **Arvind Kejriwal** v. **State (NCT of Delhi)** Crl .MC 1867/2020 dated 21.10.2020.

ARGUMENTS ON BEHALF OF RESPONDENT No.7 (A-5)

72. The Ld. Counsel for A-5 Rajesh Rishi (R-7) had submitted that A-5 had not been named in the FIR and his name was only included in the supplementary statement but no specific role was assigned to him. The Ld. APP before the Ld. Trial had argued that specific role of the said accused had been stated but in the statement under Section 161 Cr.P.C. no specific role was attributed to A-5 and there was no iota of evidence against him or any statement that A-5 had done anything or even spoken to the Chief Secretary. Even in the second supplementary statement, no role was ascribed to A-5 in any manner. Though the name of A-5 was there but no role was attributed to him. The Ld. Trial Court had considered the same and even in the Revision Petition no role of A-5 was stated nor that he was involved in any conspiracy or in assault or in confinement. It was submitted that besides the presence of A-5, there was no allegation against him and he had been joined as an accused only based on his presence.

ARGUMENTS ON BEHALF OF RESPONDENT No.8 (A-6)

73. The Ld. Counsel for A-6 Nitin Tyagi (R-8) had, while adopting the submissions made on behalf of the other accused persons argued that the record showed that the incident was of 20.02.2018 at about 12:15 a.m. while the FIR was got registered only at

01:10 in the afternoon, which showed that there was a delay of 12 hours. There was no allegation in the first complaint of the petitioner against A-6 and no specific role was assigned to him and he was not even named. The petitioner had portrayed as if he was surrounded by mafia persons and when an official of the rank of Chief Secretary made such allegations, that had to be viewed seriously but when the allegations were made against persons of the level of Chief Minister and Deputy Chief Minister, the veracity had to be considered whether the allegations would hold water or not. It was submitted that the record showed that Shri V.K. Jain had accompanied the petitioner to the meeting and if Shri V.K. Jain had seen everything, then there was no reason why he did not intervene. The first statement of Shri V.K. Jain recorded on 21.02.2018 was purposely concealed by the prosecution and by the order of Hon'ble Supreme Court it was taken into consideration and the said statement did not support the case of the prosecution at all. The said statement was silent about Nitin Tyagi. Moreover, Shri V.K. Jain had stated that he had gone to the washroom and nothing transpired in his presence. It was submitted that even if Shri V.K. Jain was absent and the MLAs were shouting, considering that it was the dead of the night, Shri V.K. Jain would have heard the noises but he did not state so. It was for the prosecution to show from the record that all the transactions had taken place when Shri V.K. Jain had gone out of the room but the petitioner had not stated so. It was contended that the case of the prosecution was not supported by material evidence. Even in the first supplementary statement, Shri V.K.

Jain had not attributed any role or act to Nitin Tyagi. There were improvements in the supplementary statement over the previous statement, wherein allegations were made against two MLAs, who had been charged but Shri V.K. Jain still did not state that he saw the MLAs abusing or shouting or using unparliamentary language or saw any threat to life being extended to the petitioner or that he was wrongfully confined so he did not support the case of the petitioner.

74. It was further submitted that the statement under Section 164 Cr.P.C. of Shri V.K. Jain also did not support the allegations made by the petitioner against the MLAs as there was nothing about threat or confinement or shouting or using unparliamentary language in the same. In the statement under Section 161 Cr.P.C. of the petitioner recorded on 20.02.2018, the name of Nitin Tyagi was added for the first time and a specific role was assigned to him after the petitioner had checked the photos and as per the same, Nitin Tyagi had used abusive and unparliamentary language and also followed the petitioner. The petitioner had stated that anything could have happened to him, including death, meaning thereby that things were so serious. The petitioner had mainly emphasized that he was being pressurized to release the advertisements whereas Shri V.K. Jain had stated about other issues and concerns of MLAs as well. It was pointed out that the MLAs were answerable to the persons in their constituency with respect to various projects, they wanted a discussion on those issues but the said issues were deliberately suppressed by the petitioner in his complaint and he did not talk about other

issues as that would have diluted the allegations and severity of the allegations. It was asserted that the petitioner had made improvements in his statements about the allegations against the MLAs but he did not talk about other aspects of the meeting and suppressed the other issues deliberately. Qua Nitin Tyagi, there were two allegations that he used abusive and unparliamentary language and being a sitting MLA, he was not supposed to abuse or use the said language. It was argued that even if the said allegations were assumed to be true, per se use of abusive language or unparliamentary language did not make out any offence under the IPC.

75. It was further submitted that the petitioner had stated that he had somehow escaped and was followed by Nitin Tyagi to stop him. Apart from the fact that the said allegation was vague, the impression sought to be given by the petitioner was that the way in which Nitin Tyagi was trying to stop him was of a nature that there was immediate threat to the life of the petitioner but the veracity of the said allegation had to be tested from the conduct of the petitioner and other witnesses and their statements. Further the petitioner went to the house of the Hon'ble Lieutenant Governor and left from there at around 01:30 a.m. then he went home, slept over the whole incident and then went to the PS in the afternoon and made the complaint, which showed there was no immediacy of threat to life. The veracity of the allegation was further clear from the statement of Insp. Satbir Singh, who was the PSO of the Chief Secretary. The incident was of 20.02.2018 but the statement of such a material witness who could have

corroborated the version of the petitioner was recorded only on 03.04.2018 and there was no explanation for the delay of one and a half months in recording his statement. Insp. Satbir in his statement had merely stated about one person following the Chief Secretary and asking him to stop. Insp. Satbir after 1 ½ month had stated that when the Chief Secretary came out, his hair were disheveled but he could have said the same on the day of the incident. The PSO always accompanied the Chief Secretary but there was delay in recording his statement which was not explained. Insp. Satbir had stated that Nitin Tyagi had asked the petitioner to stop but he did not say that Nitin Tyagi was threatening the petitioner or he was being physical with him. It was submitted that the CCTV footage of the incident was played on behalf of the accused persons at the time of arguments on charge and it showed what had transpired. It showed the petitioner walking at a normal pace and the accused Nitin Tyagi had come out and there was no aggression in him and he made a request to the Chief Secretary but the Chief Secretary keep walking straight ignoring what was said by Nitin Tyagi. Insp. Satbir was standing there and the Chief Secretary at no point asked the PSO to protect him from Nitin Tyagi. The petitioner had stated that he could have died that day so the first thing he should have done was to ask the PSO to protect him which was the only job of the PSO and the whole police machinery was at the disposal of the Chief Secretary but the Chief Secretary did not even bother to take the help of his PSO, which showed that there was no threat to the life of the Chief Secretary and he was not scared of any MLA much less

of Nitin Tyagi and the same was taken into consideration by the Ld. ACMM in the impugned order and he duly applied his mind to the allegations qua Nitin Tyagi.

76. It was submitted that the subsequent statements made by witnesses, which were improvements on the previous statements in material particulars could not be considered as reliable even at the stage of framing of charge. It was argued that from the statements of the witnesses, it could be seen that there was no threat to the life of the petitioner and even the PSO was standing comfortably next to him. The Ld. Counsel for A-6 Nitin Tyagi (R-8) had relied upon the judgment of Hon'ble Supreme Court in **Onkar Nath Mishra** v. **State (NCT of Delhi)** (2008) 2 SCC 561 and **State of Karnataka** v. **L. Muniswamy & Ors.** AIR 1977 SC 1489 as to what considerations should be kept in mind at the stage of framing of charge and for the observation that if there was no whisper of allegations in the complaint and the same appeared in a subsequent statement, the same would be discarded as after-thought and not bonafide. As regards the ingredients of offence under Section 506 IPC, the Ld. Counsel had relied upon the judgment of the Hon'ble Supreme Court in **Vikram Johar** v. **The State of U.P. & Anr.** Criminal Appeal No.759 of 2019 arising out of SLP (Crl.) No.4820/2017 decided on 26.04.2019: AIR 2019 SC 2109 wherein reference was made to the judgment of Hon'ble Supreme Court in **Manik Taneja** v. **State of Karnataka & Another** (2015) 7 SCC 423; reliance was also placed on the judgment in **Kuldeep Raj Gupta** v. **State of J&K and Others** MANU/JK/0198/2017.

ARGUMENTS ON BEHALF OF RESPONDENT No.9 (A-7)

77. The Ld. Counsel for A-7 Praveen Kumar (R-9) had argued that there were no specific allegations against A-7 in the FIR or in the subsequent statements recorded day after of the petitioner but it was only in the statement of the petitioner recorded after two months of the alleged incident i.e. the statement dated 25.04.2018 that the name of A-7 cropped up. The written complaint was submitted on 20.02.2018 but there was nothing about A-7 in it. The petitioner had stated that he had tried to identify other MLAs through the CCTV footage but there was no mention as to which CCTV footage he was talking about when the entire case of the prosecution was that there was no CCTV inside the room and the incident had taken place in the room. The allegation against A-7 was that he had firmly shut the door, which allegation was made after a gap of two months. None of the initial multiple statements recorded the name of A-7 and it was submitted that the name of A-7 was deliberately inserted to fill the lacunae in the case of the prosecution. Further, the statement of the petitioner dated 25.04.2018 was different from the version of Shri V.K. Jain which nullified the case against A-7. Reference was made to the statement of Shri V.K. Jain under Section 164 Cr.P.C. wherein there was mention of entry in the room at about 12:00 in the night and exit but there was no mention of shutting the door or of any restraint or confinement and then after two months the name of A-7 popped up. As per the case of the prosecution, the presence of accused Praveen Kumar was established through CCTV footage, which

meant that till 25.04.2018, there was nothing to show the presence of Praveen Kumar and there was no CCTV footage produced of inside the room as it would have falsified the case of the prosecution and it was never played during the arguments on charge. It was submitted that A-7 joined the investigation when he received notice and it was a case where the IO first figured out who was to be implicated and then A-7 was named. In the complaint, it was stated that one person had shut the door but the name was not stated and the same was subsequently filled up. It was argued that no prima facie case was made out against A-7 and the Ld. Trial Court had considered the same and that there was no evidence to show even a prima facie case and A-7 had been rightly discharged by the Ld. Trial Court. It was submitted that the Ld. Trial Court had noted that the name of A-7 had been taken after two months and held that no case of confinement was made out against Praveen Kumar and there was also nothing to show that he was involved in any conspiracy and he was deliberately made an accused in the present case.

ARGUMENTS ON BEHALF OF RESPONDENT No.10 (A-8)

78. The Ld. Counsel for A-8 Ajay Dutt (R-10) had submitted that there was a delay in lodging the FIR though as per the FIR, there was no delay but the record showed that there was considerable delay for which there was no explanation. There were four statements of the petitioner apart from the rukka. But in the first four statements, the

name of A-8 was not there. Even when the petitioner made the statement on 20.02.2018 after identifying some persons on the basis of internet photographs, he had still not identified A-8 and had stated the name of A-8 for the first time on 25.04.2018 after more than two months and it was only by way of an improvement that the name of A-8 was added. It was submitted that the only allegation against A-8 was that he had threatened to implicate the petitioner in false cases under SC/ ST Act but that would not make out any case and the same was introduced after 2 months. Shri V. K. Jain in his statement on 22.02.2018 given on a plain paper which was hit by Section 172 Cr.P.C. (as pages of the Case Diary have to be in a volume and paginated) mentioned the name of A-8 and in the statement under Section 164 Cr.P.C., he had named A-8 but no act was attributed to him. Shri V.K. Jain had only stated about the presence of A-8 and not corroborated the statement of the petitioner about A-8 giving any threat. It was submitted that the MLC of the petitioner was of 20.02.2018 which showed bruises, tenderness but the other documents relating to the medical were given on 08.03.2018 and also referred to the earlier treatment and problems of the petitioner. In the supplementary statement of Shri V.K. Jain dated 09.05.2018, he had referred to the statement of 21.02.2018 which had been allowed to be referred to by order of Hon'ble Supreme Court but not to the statement dated 22.02.2018 in which A-8 was named for the first time. It was thus submitted that A-8 had been rightly discharged by the Ld. Trial Court.

ARGUMENTS ON BEHALF OF RESPONDENT No.11 (A-9)

79. The Ld. Counsel for A-9 Sanjeev Jha (R-11) had argued that the only allegations against A-9 were that he was present in the meeting and there was no other allegation against him. It was submitted that the Ld. Trial Court had also adverted to the same and no overt act had been imputed to A-9 but only on fictitious ground he had been falsely implicated and no ingredients of the alleged offences were shown qua A-9. No witness was able to show a prime facie case or complicity of A-9 in the case, so, he was rightly discharged by the Ld. Trial Court.

ARGUMENTS ON BEHALF OF RESPONDENT No.12 (A-10)

80. The Ld. Counsel for A-10 Rituraj Govind (R-12) had relied on the judgment of the Hon'ble Supreme Court in **State Tr. Insp. Of Police** v. **A. Arun Kumar & Anr.** 2014 SCC OnLine SC 1018 and on the judgment in **Krishna Lal Chawla and Others** v. **State of Uttar Pradesh & Anr.** (2021) 5 SCC 435: (2021) 2 SCC (Cri) 601: 2021 SCC OnLine SC 191. It was submitted that in the present case, from the material which was produced, at the most only suspicion arose and no grave suspicion arose to direct framing of charge. It was submitted that the Ld. ACMM was conscious of the facts and he did his duty sincerely, honestly and judiciously and abuse of process could not be allowed. There was no evidence at all against A-10 and there was ample delay in reporting the matter and the essential ingredients of the offence did not exist. It was

submitted that the Ld. Court had duly applied its mind and analysed the material and gone through the documents and passed a valid order discharging the accused.

ARGUMENTS ON BEHALF OF RESPONDENT No.13 (A-11)

81. The Ld. Counsel for A-11 Rajesh Gupta (R-13) had argued that the Revision Petition was not maintainable once the petitioner through his counsel had given consent for the arguments to be advanced by the Ld. Additional Public Prosecutor on behalf of prosecution and the petitioner was trying to do indirectly what he could not do directly. It was submitted that A-11 was not named in the FIR and the first time when his name was included, it was not on the basis of any disclosure but after four months of the alleged incident. It was submitted that Shri V.K. Jain was sitting on the sofa with A-11 and in none of the statements of the prosecution witnesses or of the petitioner, it was said that A-11 had any role in the alleged threats or abuses or wrongful confinement or assault of the petitioner. It was contended that A-11 was implicated merely on the basis of his presence and not otherwise. There was no specific allegation against A-11 and no overt act was alleged against him so he could not be covered in the ambit of Section 34 IPC for which some overt act or abetment were necessary. Further, conspiracy had to be seen from the conduct of the accused persons but there was nothing to show the same in the present case.

82. The Ld. Counsel had also argued that offences under Sections 186, 332 and 353 IPC could not be made out as when the charge-sheet was submitted, the complaint under Section 195 Cr.P.C. was not there. Cognizance was taken on the charge-sheet and not on the complaint under Section 195 Cr.P.C. and as all the offences were part of the same transaction, the other offences could not be separated from the bar of Section 195 Cr.P.C. It was also submitted that discharge was a valuable right and there was an order in favour of A-11, he had been discharged by the Ld. Trial Court and attempt was being made by the petitioner to again implicate him in the same trial on the same facts which should be stopped. It was reiterated that A-11 was not named in the FIR and it was only in the supplementary statement that his name was mentioned by the petitioner after making improvements and such later statements were hit by the judgment of Hon'ble High Court of Delhi in **Manoj Bajpai** v. **State of Delhi (supra)**. It was also submitted that the complaint must show the essential ingredients of the offence and the lacunae could not be filled by taking supplementary statements. The Court was not bound by the prosecution case and was not a post office or a mouth piece of the prosecution and discretion had been given to the Court at every stage. Even there was nothing to show any meeting of minds and no overt act was alleged against A-11. The petitioner had come to the room where many persons were sitting and he was neither restrained when he was leaving the room nor there was any allegation that A-11 abetted the other accused persons or he was in talk with the other accused persons and it could not be said

at that juncture that he had any role in any offence. Further, the petitioner was a bureaucrat and had access to the legal machinery and it was not a case that he was so threatened that he could not have gone to the police but still there was unexplained delay in lodging the FIR so there was a possibility that the complaint was an after-thought. It was submitted that as per the settled law, if two views were possible, the view favouring the accused was to be preferred and there was a presumption in favour of the accused right throughout the trial. It was submitted that based on the statements of the witnesses and the law, A-11 had been rightly discharged by the Ld. Trial Court and there was no illegality or infirmity in the impugned order.

83. The Ld. Counsel for A-11 Rajesh Gupta (R-13) had also relied upon the judgments in **Union of India** v. **Prafulla Kumar Samal (supra)**, **Dilawar Balu Kurane** v. **State of Maharastra** 2002 SCC (Cri) 310 and **Sachin & Ors.** v. **State of NCT of Delhi** 2019, LawSuite (Del) 1901. Written submissions were also filed on behalf of A-11 submitting that there was no illegality or infirmity in the order dated 11.08.2021 passed by the Ld. ACMM. It was submitted that the Hon'ble High Court Delhi in W.P.(Crl) 3559/2018 vide order 24.08.2020 directed that the matter would be prosecuted on behalf of the State by the Public Prosecutor as consented for by the complainant (petitioner) and also clarified vide order dated 12.10.2020 that the petitioner may put forward submissions that he thinks necessary though the Ld. APP and not separately as that would lead to a parallel proceedings. It was submitted that by

implication of the consecutive orders passed by the Hon'ble High Court of Delhi, the petitioner had been refrained from addressing the arguments on charge before the Ld. Trial Court and the petitioner had filed the Revision Petition addressing the same arguments on the point of charge which revisionist had been refrained by virtue of the orders passed by the Hon'ble High Court. Reliance was placed on the doctrine of "*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*", which means "you cannot do indirectly what you cannot do directly". It was also submitted that as regards the role of A-11, he was not named in the FIR and no overt act had been attributed to him in the FIR. It was not the case of the prosecution that A-11 had participated in the alleged commission of the offence. Shri V.K. Jain, who was allegedly stated to be the witness was sitting with A-11 that too across the room and nowhere A-11 was alleged to be in the near vicinity of the petitioner. It was submitted that the name of A-11 had been firstly mentioned by the petitioner that too after a considerable period of time to fill the lacuna in the previous statement. There was a considerable period of time which had not been explained by the petitioner regarding the delay in lodging the FIR.

84. It was submitted that as regards the offence under Sections 186/353 IPC, the Hon'ble High Court of Delhi in **Sachin & Ors.** v. **State of NCT of Delhi (supra)** had held that "No Court could take cognizance of an offence under Section 186 IPC unless a complaint was made by the proper officer in the proper format as prescribed under Section 195 Cr.P.C." Reliance was placed on the judgment in **Saloni Arora** v. **State**

Govt of NCT of Delhi, 2017 3 SCC 286 and **Mohan Kukreja** v. **State Govt of NCT of Delhi**, 2019 SCCOnLine (Del) 6398. It was submitted that even Section 353 IPC was an extension of Section 186 IPC and the Court could not have taken cognizance without complaint under Section 195 Cr.P.C. Reliance was also placed on the judgments in **Nayan Harishbhai Kanakhara** v. **State of Gujarat**, R/CR.MA/ 23009/2015 and **State of U.P.** v. **Suresh Chandra Srivastava and Others** AIR 1984 SC 1108. It was stated that it was not permissible for the Court to split up three offences i.e. Sections 186, 332 and 353 of IPC Code because all the three offences could be said to have been committed in the course of one transaction and the law being well settled, the prosecution must fail. Reference was also made to the definition of complaint under Section 2 (d) of Cr.P.C.

85. It was submitted that the revision petition was not maintainable in view of the law laid down by the Hon'ble Telangana High Court in **Srilakshmi Yerra** v. **State of Telangana** Criminal Petition No.6534 of 2020. Reliance was also placed on the judgments in **State of Bihar** v. **Ramesh Singh** 1977 LawSuit(SC) 249 and in **State by Superintendent of Police through the SPE CBI** v. **Uttamchand Bohra** [Criminal Appeal No. 1590 of 2021@ Special Leave Petition (Crl.) No. 9608 Of 2021 @ SLP (Crl.) Diary No. 42589 of 2018] decided on 09.12.2021; and **Sanjay Kumar Rai** v. **State of Uttar Pradesh & Anr.** 2021 LawSuit(SC) 311**.** It was also submitted that there was nothing to prove the offence of conspiracy by A-11 specifically in view of the

law laid down by Hon'ble Supreme Court in **Yogesh @ Sachin Jagdish Joshi** v. **State of Maharashtra** 2008 LawSuit(SC) 1926 and the presumption of innocence was the most paramount consideration in any criminal proceedings.

ARGUMENTS ON BEHALF OF RESPONDENT No.14 (A-12)

86. The Ld. Sr. Advocate for A-12 Madan Lal (R-14) had argued that A-12 was present in the meeting and he had kept silent throughout the incident till the petitioner left and there was no other role ascribed to him. It was submitted that while exercising revisional powers, this Court had limited jurisdiction under Section 397 Cr.P.C. There was no allegation or averment by the petitioner that the procedure followed by the Ld. ACMM was not regular and in fact, there was no irregularity in that even the petitioner/complainant was allowed to address arguments. Further, the Ld. Trial Court had the power to discharge the accused persons and as such there was no illegality in the order. It was submitted that in a revision petition, the Revisional Court would have jurisdiction only if there was illegality or impropriety in the impugned order or the Judge had not considered the material, he should have considered or had considered material, which he should not have considered. The accused persons had not put any defence which was considered by the Ld. Trial Court. Reference was made to the first statement of Shri V. K. Jain, which was concealed by the prosecution and which was considered after the order of the Hon'ble Supreme Court. Reliance was placed on the

judgment in **Taron Mohan** v. **State and Another (supra)** wherein it was held that the Revisional Court could not substitute its views. It was submitted that it was not the case that the impugned order was without application of mind. Reliance was placed on the judgments in **Sanjaysinh Ramrao Chavan** v. **Dattatray Gulabrao Phalke** MANU/SC/0040/2015 and **Amit Kapoor** v. **Ramesh Chander & Ors. (supra)**. It was submitted that the Ld. ACMM had beautifully summarized the law on charge and it was not the case that the same was done wrongly.

87. The Ld. Sr. Counsel referred to the statements of Shri V.K. Jain under Section 161 Cr.P.C. and 164 Cr.P.C. as also to the statements of the petitioner and it was submitted that as the said statements were relied upon by both the sides, the Court had no option but to marshal the evidence, to look at the contradictions and to that extent to sift the evidence. It was submitted that in the present case only one view was possible, which was the one which had been taken by the Ld. ACMM. It was contended that holding a meeting at 12:00 midnight was not unusual and the schedules of the Chief Minister and Deputy Chief Minister showed that they had gone for a wedding and it could not be expected that they would cancel the same and hold a meeting earlier. In the site plan, it was not shown who sat where and only the seating plan was shown. There was a three seater sofa on the right side, one seat was vacant on which the petitioner sat and there was no other chair which was empty. It was submitted that as per the statements of the witnesses, some of the MLAs had welcomed the Chief Secretary so

Section 120-B IPC could not be inferred. The meeting was also for several things and not only for advertisement as the petitioner had sought to contend. Further, the Chief Minister had admonished the MLAs, which again was contrary to any conspiracy or meeting of minds. It was submitted that A-12 had no active or passive role. It was argued that if it was the case of the petitioner that all had conspired, then even Shri V.K. Jain, who was present should have been joined as an accused and charged and there is nothing to show how the role of A-12 was different from that of Shri V.K. Jain. Further, the petitioner had used the word suddenly, which showed that the act of A-1 and A-2 was sudden. Moreover, it was only after 12 hours that the FIR was got registered and MLC also did not show any fresh injury. The petitioner remained with the Hon'ble LG for one hour 10 minutes which had been revealed for the first time in the statement of the PSO, but during that time he did not need any medical and even when the complaint was made, he told the IO that he would go for the MLC in the evening, which showed that he did not get any medical done till then. It was submitted that as per the arguments of the petitioner, the Ld. Trial Court had ignored the MLC but the MLC would at the most show simple blunt injury.

88. It was argued that there was no explanation why the prosecution had concealed the first statement of Shri V.K. Jain and as per the settled law, the IO was duty bound to fairly investigate the matter and bring out the truth but here the conduct of the IO was shown by the concealment of the first statement of Shri V.K. Jain. The IO himself had

written the said statement and there was no mention therein of any assault and the said statement of Shri V.K. Jain had to be considered when the Hon'ble Supreme Court had so directed. The Ld. Trial Court would have to come to a conclusion on seeing all the statements. Moreover, the statement under Section 164 Cr.P.C. had greater value, which was also a correct observation as per the settled law. It was submitted that noise was natural when the MLAs were agitated and if two MLAs hit and touched the petitioner then maximum it would be a case of assault. The Chief Minister told them not to do so and if the Chief Minister had objected and stated so, there was no reason why A-12 should have also intervened. As per the statement of Bibhav Kumar, the Chief Minister had called Shri V.K. Jain again and said to him that what had happened was not correct and he had even let the Chief Secretary go, which showed that there was no wrongful confinement. The petitioner was not stopped from going in any specific direction. It was submitted that the Court was bound to read all the statements and the statement of the petitioner could not be regarded as the gospel truth. It was submitted that even the MLAs were called for the meeting in the manner in which the Chief Secretary had been called. It was contended that it was rightly held by the Ld. ACMM that if the meeting was held pursuant to any conspiracy, the Chief Minister would not have called the meeting at his own house. The acts of A-1 and A-2 were individual acts on the spur of the movement. Section 34 IPC had been discussed in detail in the impugned order. It was also submitted that even if the Chief Secretary was made to sit on the sofa, it was

out of respect as he could not be made to sit on a chair and he was given due respect. It was submitted that as the supplementary statements were contradictory, they could not be relied upon and in the present case Section 120-B IPC was not attracted as the presence of the other MLAs was just like the presence of Shri V.K. Jain. It was submitted that the order passed by the Ld. ACMM was legal and justified and there was no grave error in the same, which had to be examined in exercise of revisional jurisdiction.

89. The Ld. Sr. Advocate had also relied upon the judgments in **Niranjan Singh Karam Singh Punjabi & Ors.** v. **Jitendra Bhimraj Bijja & Ors.** AIR 1990 SC 1961; **Union of India** v. **Prafulla Kumar Samal (supra); Yogesh** v. **State of Maharashtra** AIR 2008 SC 2991; **Prashant Bhaskar** v. **State (Govt. of NCT of Delhi)** 2014 (1) JCC 750; **Shri Ram** v. **State of U.P.** 1975 (3) SCC 495 on as to what constitutes abetment; **Suresh & Ors.** v. **State of U.P.** AIR 2001 SC 1344 on what would constitute common intention; **Sunny Maan** v. **State** Crl. Rev. P. 494/2010 wherein it was observed that the statement made before the Court under Section 164 Cr.P.C. bears more value than the statement made before the police and in **Satpal** v. **State of NCT of Delhi** Bail Appln. 65/2008 to similar effect**.**

ARGUMENTS ON BEHALF OF RESPONDENT No.15 (A-13)

90. The Ld. Counsel for A-13 Dinesh Mohania (R-15) had argued that there was no

allegation directly or indirectly against A-13. His name was reflected only in the disclosure statement that he was present. Reference was made to the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. and that he had not stated anything about the role of A-13 but only that he was present. It was further submitted that the FIR was got registered after 12 hours of the alleged incident and even the medical was got done after several hours. Even as per the conclusions in the charge-sheet, there were no allegations against A-13. It was submitted that the word MLA was used but there was no specific allegation or even a specific allegation against A-13 and he was rightly discharged by the Ld. Trial Court and there was no ground for interference with the said order.

ARGUMENTS ON BEHALF OF RESPONDENT No.1

91. The Ld. Additional PP for the State had submitted that the Ld. ACMM had passed a detailed and reasoned order and every aspect had been considered and there was no illegality in the said order which warranted interference by the Revisional Court and the Revision Petition be disposed off.

92. Insp. Krishan Kumar, Legal Cell/PHQ had submitted that Delhi Police be substituted in place of respondent No.2 in the present case. However, the State is already being represented by the Ld. Additional PP for State.

ARGUMENTS IN REBUTTAL ON BEHALF OF THE PETITIONER

93. Written submissions were filed in rebuttal on behalf of the petitioner to the arguments advanced on behalf of the respondents reiterating the averments made in the revision petition and the arguments advanced on behalf of the petitioner. The Ld. Sr. Counsel for the petitioner had argued that before the Ld. Trial Court, the accused persons had argued that the case did not pass muster for framing of charge whereas in the present petition, it was argued that only two of them were responsible and others were not responsible and that Sections 149/120-B were not attracted and A-1 and A-2 had been thrown under the bridge. It was argued that the accused persons/ respondents were seeking to take advantage of the findings of the Ld. Trial Court which were without understanding the factual position. The Ld. Sr. Advocate had submitted that the petitioner was a senior bureaucrat of the rank of the then Chief Secretary and he had been in service for 30 years who was called late in night to the residence of the Chief Minister and he reached the residence where he was assaulted, abused, intimidated and restrained. It was argued that the subsequent and antecedents events did not justify discharge and there were several factors which lead to the culpability of the accused persons, who had been discharged. The background showed that the petitioner had expressed a legitimate concern on the issuance of advertisements in terms of the judgment of Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** but the Ld. Trial Court only quoted para 11 of the said judgment and ignored para 6. The

fact that the advertisements could be issued by the Government was not in controversy but what was in controversy was the manner in which they could be published and who could publish them. Reference was made to the guidelines contained in the judgment in **Common Cause** v. **Union of India (supra)** and it was submitted that as per clause 7 of the said guidelines, the Chief Secretary i.e. the petitioner was the Head of the Department so he had to ensure compliance with the said guidelines. It was argued that it was a case where the petitioner was not being obstructive but was trying to find a way out and the Minutes of the Meeting dated 14.02.2018 reflected the same and it was not the case that the petitioner/ the complainant was on trial. Moreover, the Minutes of Meeting dated 14.02.2018 showed that notings were duly there and in fact it was the Chief Minister and Deputy Chief Minister, who wanted everything in oral but now they were arguing that there was no noting by the petitioner listing his objections to the issuance of advertisements. In fact based on the noting of the petitioner, DTTDC had gone for legal opinion which was also on record and reference was made to the statement of Ms. Varsha Joshi which corroborated the version of the noting. It was submitted that the petitioner was governed by the Conduct Rules of All India Services and as a Bureaucrat he had to be sensitive to the financial norms that applied to all Government Departments and failure to comply with the illegal demands had led to the events of 19.02.2018, which were preceded by the incidents from 06.02.2018 onwards. The call detail records as also lodging of false SC/ST complaints against the petitioner

showed that clearly it was an attempt to browbeat the petitioner and to pressurize him to do something which he could not do.

94. Reference was made to Sections 149/32/36/141 of the IPC. It was submitted that the controversy was over the DAVP rates at which the T.V. channels were not willing to accept the advertisements and were asking for higher rates but the Government did not want to give higher rates as that would have reflected badly on them so they wanted to use the route of PSUs such as DSIDC, DTTDC but the problem was that the PSUs could talk of what they had done but not about what the government had done. It was argued that the question of issuance of advertisements was a vexed issue for a while because the Government wanted it done in a certain fashion in which it could not be legally done but still there was no action by the petitioner despite the language that was used against him. Even on 19.02.2018, the petitioner had more than one meeting with the Chief Minister and nowhere it was raised that he would be called for a meeting in the night. It was not the case that the Chief Minister had no time that day or the next day so there was no justification for calling the meeting at midnight which was attended by persons who were not part of the government's Executive. Prior to that day, the MLAs had not reached out to the petitioner and some of them had a colourful past and the petitioner was not even told that they would be present and they were called one hour prior. Reference was made to the analysis of the call detail records, which showed the calls prior to the incident and subsequent to the incident. It was argued that the calls

were all linked and it demolished the arguments by the accused persons that it was a sudden event and that barring A-1 and A-2, the others could not know what would transpire. Reliance was placed on the statement of Shri V.K. Jain that the Chief Minister was upset, which statement, it was submitted had been misread by the Ld. Trial Court and the contention that the Chief Minister had tried to stop them was misplaced as also the reliance on the statement of Shri V.K. Jain to contend that the petitioner was not restrained. It was submitted that the findings in the impugned order looked as if it was a finding on evidence and not at the stage of charge and there was misreading of the statements of Shri V.K. Jain and hence the findings were incorrect.

95. It was submitted that the accused persons had during the course of their arguments made various erroneous and misleading submissions and had not addressed the relevant events prior to the commission of the cognizable offence on the night of 19.02.2018 and antecedents events and conduct of the accused persons demonstrated conspiracy and though the same found mention in the charge-sheet, the Ld. Trial Court in the impugned order gravely erred by not considering them. During the course of arguments by the accused persons, there was an oblique attempt to absolve all the accused persons except A-1 and A-2 who were stated, as part of a concerted strategy to be responsible for the offences committed on 19.02.2018. As regards the question of maintainability it was submitted that the judgment in **Vipul Gupta and S.P. Gupta** v. **State and Another** 2021 SCC OnLine Del 3917 was not applicable as the issue in

consideration in the said judgment was whether a Revisional Court while dealing with a Revision Petition preferred by an accused person in a State prosecution, could direct the de facto Complainant to be made a Respondent and whether the complainant would fall under the ambit of the words "Other Person" used in Section 401 (2) of Cr.P.C. and it was submitted that the said judgment had no bearing in the present matter as under Section 399/ 401 Cr.P.C., the Sessions Court and the Hon'ble High Court had been vested with wide powers to correct any illegality in an order when such illegality came to its knowledge. It was submitted that the Hon'ble High Court had also not noted the case of **Municipal Corporation of Delhi** v. **Girdhari Lal Sapru (supra)**. It was submitted that there was no bar on the Court exercising its revisional powers if illegalities in the order under challenge were brought to the notice of the Court. Moreover, in **Vipul Gupta and S.P. Gupta** v. **State and Another (supra)**, the Hon'ble High Court had not considered the settled position of law in relation to the rights of a private complainant and reference was made to **Shiv Kumar** v. **Hukum Chand (supra)**. It was submitted that the Ld. Trial Court had not dealt with the contentions raised in the written submissions of arguments furnished by the petitioner at the stage of arguments on charge in the impugned order, which led to material illegalities and perversities in the impugned order.

96. As regards the argument by the respondents that the petitioner was not asked by the Chief Minister/ Deputy Chief Minister to do anything illegal as the guidelines laid

down by the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** permitted anniversary advertisements by State Governments, it was submitted that para 11 of the judgment was not relevant in the instant matter. But, the relevant para for consideration was para 6, which governed the manner and content of publication of the advertisements and it was the requirements stipulated in the said para, which were an impediment to the release of proposed TV advertisements. Reference was made to the statements of Ms. Varsha Joshi, Shri Shurbir Singh, Shri S.N. Sahai, and the petitioner under Section 161 Cr.P.C., who had attended the meeting with the Chief Minister at his residence on 12.02.2018 along with the petitioner and it was submitted that the said statements had not been considered by the Ld. Trial Court. It was submitted that there was no objection by the petitioner on the anniversary advertisements per se or on the timing of the advertisements but on the content of the advertisements that A-3 and A-4 were desiring to publish and on the rates of such TV advertisements since DAVP rates were not being accepted by the major TV channels. It was contended that the admission by the respondents that the controversy was regarding the issuance of T.V. advertisements fortified the case of the petitioner that there was a motive for the conspiracy which resulted in the incident of 19.02.2018 and demonstrated the culpability of A-3 and A-4 and the meeting on 19.02.2018 was called by the Chief Minister to coerce the petitioner to have T.V. advertisements released in violation of the guidelines of the Hon'ble Supreme Court as the content was not being certified by the

Head of Department and without approval of higher rates for release of TV Ads. The advice of the Senior Officers to the Chief Minister to seek Cabinet Approval for release of proposed T.V. Advertisements at higher rates than DAVP rates was not agreed to by the Chief Minister. It was submitted that the Ld. Trial Court had gravely erred in quoting and citing para 11 of **Common Cause** v. **Union of India (supra)** and the question was whether the advertisements could be so released without certification of factual accuracy of the contents of the advertisements by the concerned Head of the Department and without approval of rates higher than DAVP rates.

97. It was submitted that the records demonstrated that the petitioner was called for the meeting on midnight of 19.02.2018-20.02.2018 at the residence of A-3 without letting him know that 11 selected MLAs were also being called and the meeting was fixed in a small room without CCTV camera with the intention to criminally intimidate, threaten and physically assault the petitioner in a bid to teach him a lesson and force him to succumb to undertake the illegal acts. It was commonly known that a recovery notice of Rs.97 crores was issued by Directorate of Information and Publicity, GNCTD on 30.03.2017 to Aam Aadmi Party for release of advertisements on behalf of GNCTD in contravention of Guidelines of the Hon’ble Supreme Court, which matter was pending adjudication before the Hon'ble High Court of Delhi. It was submitted that the Ld. Trial Court had proceeded on the premise that the advertisements could be issued so there being no controversy, there could be no coercion.

98. As regards the contention that the petitioner could have given his dissent about T.V. advertisements in writing to the Chief Minister and that there was no file noting recording his dissent, it was submitted that a perusal of the statements of Senior Officials such as Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai recorded under Section 161 Cr.P.C. would show that during the meeting at Chief Minister's residence on 12.02.2018, the Chief Minister had taunted and rebuked the petitioner. The Ld. Trial Court had picked up a portion of the statement of Ms. Varsha Joshi and interpreted it as per the submissions of the accused persons and failed to appreciate that the context and emphasis of the Chief Minister was to make the petitioner to give in writing that he was a failure and on the basis of fallacious interpretation, the Ld. Trial Court gravely erred in holding that since there was no file noting of the petitioner recording his objections, the plea of the petitioner that his not agreeing to the directions of the Chief Minister qua release of advertisements led to hatching of conspiracy to physically assault him was not sustainable. It was submitted that the Ld. Trial Court had actually proceeded to conduct a mini trial which was not permissible at the stage of consideration of charge resulting in perversity in the findings of the Ld. Trial Court. In the meeting of 12.02.2018, the Chief Minister was advised by Senior Officers to seek Cabinet Approval but the Chief Minister decided that the advertisements be released through State PSUs so there was no occasion or requirement for the petitioner to record his objection in writing and in pursuance of the decision of the Chief Minister, meeting

of DTTDC was called by the Deputy Chief Minister on 14.02.2018. The petitioner had sent a note to MD, DTTDC on 12.02.2018 to direct that with reference to the meeting chaired by the Chief Minister on 12.02.2018, DTTDC Board would decide/take further action. The petitioner vide noting dated 13.02.2018 directed MD, DTTDC to take up the matter with Principal Secretary Finance/ concerned HODs and to decide in the DTTDC Board Meeting which was reflected in the draft minutes of DTTDC Board Meeting which were purposely changed by the Deputy Chief Minister on 01.06.2018 during the investigation of the present case so as to suppress the true facts. It was submitted that even otherwise, the ground that the petitioner did not give his dissent in writing for release of the advertisements could not be a justification for conspiring to physically assault the petitioner and hence the findings of the Ld. Trial Court were perverse and suffered from material irregularity. Moreover, the guidelines laid down by the Hon'ble Supreme Court could not be ignored and the episodes of 12.02.2018, 13.02.2018 and notings of 14.02.2018 were all part of the record.

99. As regards the argument that there was no bar on a midnight meeting by the Chief Minister and the timing was not indicative of any conspiracy, it was submitted that the Chief Minister had met the petitioner twice during the day in the Secretariat on 19.02.2018 and there were ample opportunities for the Chief Minister to discuss any issue with the petitioner. The petitioner specifically requested Shri V.K. Jain for re-scheduling the meeting for the next day i.e. 20.02.2018 and the Chief Minister had no

engagement before 10:00 a.m. the next day, hence, the meeting could have been rescheduled. Further, a Cabinet Meeting was already fixed for the next day at 03:00 p.m. but the request of the petitioner was rejected by the Deputy Chief Minister/ Chief Minister who as per the records were together at that time. Moreover, the Chief Minister had never in the previous three years fixed a meeting at 12 midnight. It was submitted that the accused persons had also failed to show any urgent/ emergent reason that required a midnight meeting. Further, Shri V.K. Jain had stated in his statements on 21.02.2018 and 22.02.2018 that there was no fixed agenda for the midnight meeting and discussion on various issues started and it was not conceivable that a meeting at midnight could be called without any specific agenda, which itself showed conspiracy to deceive the petitioner into coming for a meeting so as to physically assault him. It was submitted that the Ld. Trial Court failed to consider that the planning of meeting at midnight was a fact, which was a link in the chain of circumstances showing conspiracy and the Ld. Trial Court had arrived at an erroneous inference, without any basis that the midnight meeting was a closed door meeting and not a public meeting as the latter should have been called only in daylight and the Ld. Trial Court had wrongly inferred that the accused persons could have done the same acts whether the meeting was in day light or in midnight.

100. As regards the argument that presence of MLAs at midnight meeting was not unusual and they were a part of the Government, it was contended that the MLAs were

not a part of the Government but of the Legislative Assembly and reference was made to Article 239 AA (6) of the Constitution as also to Rule 4 (2) of the Transaction of Business Rules framed under GNCTD Act which made each Minister responsible for his Department. It was submitted that as such the petitioner was not directly responsible to the individual MLAs and there was no justification for the Chief Minister/ Deputy Chief Minister accosting the petitioner with the MLAs at the midnight meeting to answer the questions. Moreover, the presence of MLAs was kept secret from both the petitioner and Shri V.K. Jain and the petitioner was informed that the meeting was only with the Chief Minister and Deputy Chief Minister and the statements of Shri V.K. Jain stated that the presence of the MLAs in the meeting was not disclosed to him. In furtherance of the conspiracy, the MLAs were summoned on the directions of the Chief Minister so that they could be present one hour prior to the midnight meeting of the petitioner with A-3 and A-4 and A-3 and A-4 had not been able to rebut the same or explain as to why the MLAs were to assemble one hour prior to the midnight meeting and they were also not able to rebut as to why the presence of MLAs was kept secret and the petitioner or Shri V.K. Jain were not informed about the same. They had also failed to explain how and why 11 specific MLAs were chosen for the midnight meeting and none of the 11 MLAs had ever sought time from the petitioner to meet him or had even written to him on any issue nor they had requested the Chief Minister to arrange for a meeting with the petitioner. It was submitted that the petitioner was deceived into

coming for the midnight meeting, where his assault was planned by the Chief Minister and Deputy Chief Minister in conspiracy with the other accused persons. Moreover, the Ld. Trial Court had ignored that the Secretaries of the Ministers had not been called for the meeting though they were responsible for their Departments nor even files were called for though it was not outside the power of Chief Minister or the Deputy Chief Minister to call for the files. If the meeting was official, there would have been an agenda note which would be circulated and which would have been informed to the petitioner and it could not be said that the calling of the meeting at midnight was an innocent circumstance. The meeting had begun by A-3 asking the petitioner to answer the MLAs and an injured witness/ informant could not be put to trial at the stage of charge. It was argued that the important thing was that the focus of that evening was to teach the petitioner a lesson and make him do what the accused persons desired him to do and he was made to sit between two specific MLAs. The petitioner was an officer who had to be treated with dignity and the conduct had to be appreciated only at the stage of trial and not at the stage of charge. The fact that the meeting was held in a particular room had to be seen in the context of the timing of the meeting, the absence of CCTV, number of people present and reference was made to the statement of Shri Pravesh Ranjan Jha, who had stated that rarely the meetings were held in that room. It was argued that the functionality of government was not a matter of adjudication before the Ld. Trial Court but only if the ingredients of the offence were made out. Once it

was agreed that all the accused persons were present, it could not be said that Section 141 IPC would not be attracted and offences could occur at any time of the day and in the instant case, the motive was shown by the antecedent events. Moreover, the quibbling on variations in the statements of Shri V.K. Jain was what was to be put to Shri V.K. Jain and the IO at the stage of trial and not at this stage. It was submitted that the charge-sheet showed that Ajay Dutt and Prakash Jarwal had filed complaints against the petitioner under SC/ ST Act on the basis of which no FIR was registered and in the said complaints, they had stated that the meeting was on ration issue which contradicted the argument adopted by the accused persons that the midnight meeting was called to discuss a number of issues. It was submitted that nobody would go for a meeting with the idea that he would be assaulted whereas the entire order of the Ld. Trial Court was as if the petitioner was on trial. Further there was no explanation why the MLAs would want to discuss issues with the petitioner at midnight at the residence of the CM especially when the petitioner was called alone, not accompanied by the concerned Secretaries, without any knowledge of the presence of the MLAs or the agenda they may like to discuss which showed that the accused persons were falsely stating that the meeting at midnight was called on a number of issues whereas the facts and the conduct of the accused reflected a conspiracy to deceive the petitioner into coming for the midnight meeting to assault him and to coerce him to do unlawful acts.

101. As regards the contention that the petitioner sat voluntarily on the sofa between A-1 and A-2, it was argued that the statement of Shri V.K. Jain recorded on 22.02.2018 under Section 161 Cr.P.C. categorically stated that A-1 and A-2 asked the petitioner to sit between them; in the FIR the petitioner had categorically stated that he was made to sit between A-1 and A-2 and Shri V.K. Jain in his Section 164 Cr.P.C. statement stated that the petitioner sat on the sofa between A-1 and A-2 but he never stated that the petitioner sat voluntarily between them. It was argued that the Ld. Trial Court failed to notice that A-1 and A-2 were involved in a number of criminal cases and that as part of the conspiracy, proper seating arrangement was purposely not made by the CM/ Dy. CM for the petitioner to be seated and he was thereafter made to sit between A-1 and A-2. It was contended that at the stage of charge, it was not permissible for the Ld. Trial Court to sift the evidence or to dissect, to read/ add meaning to the statement of Shri V.K. Jain dated 22.02.2018 recorded under Section 164 Cr.P.C. as had been erroneously done and the conclusion of the Ld. Trial Court was contrary to the record. Even if the petitioner sat voluntarily between A-1 and A-2 (even for the sake of arguments), it could not be a circumstance against the victim himself as he could not have sat there to be assaulted by the accused persons.

102. It was further submitted that the statements of Shri P.R. Jha (Joint Secretary to CM) and OSD to the petitioner Ramvir Singh and PSO Satbir Singh specifically stated that the meeting was called on the issue of release of T.V. advertisements which

corroborated what the petitioner had stated but were not considered by the Ld. Trial Court leading to perverse findings. Further, Shri V.K. Jain had stated that there was no fixed agenda for the meeting but he had informed Shri P.R. Jha that the meeting had been called to discuss the pending media advertisement issues. As regards the use of the word 'sudden' in the FIR and the contention based on that the Chief Minister/ Deputy Chief Minister and other MLAs were not part of a conspiracy, it was submitted that the petitioner is a career bureaucrat with over 35 years' experience and it was the first and the only incident of this kind in his life. The statement that the attack was 'sudden' reflected his state of mind and shock post the criminal intimidation and physical assault by the respondents/ accused persons and the use of the said word could not be used to claim that there was no conspiracy. For the petitioner, the assault was sudden whereas it was in fact preplanned and pre-scripted for all the accused persons. It was argued that sudden had to be seen from the perspective of the victim and the petitioner had quite clearly not gone there to be assaulted so for him the assault would be sudden. Nobody discloses ill-motive in advance. Reference was made to the impugned order and it was submitted that reading meaning into the use of word 'sudden' by the petitioner in the FIR without opportunity to the petitioner to explain what he meant was erroneous and had led to perverse findings. It was argued that the case was not about an individual but about the institution of Chief Secretary in the Government and a bureaucrat could not be allowed to be heckled and such a wrong doing could not be condoned. The material was

on record which showed criminal conspiracy and one word out of the statement could not be read out of context. Shri V.K. Jain had only corroborated what the petitioner had stated.

103. Reference was made to the statement of Shri V.K. Jain dated 22.02.2018 and it was argued that he had stated about witnessing assault but he had not stated that anyone had tried to stop the MLAs. Reference was made to Section 43 IPC and it was argued that the moment the respondents wanted to compel the petitioner to do what he was legally bound not to do, the act became illegal and further reliance was placed on Sections 32, 36, 141 of the IPC and it was argued that ingredients of Sections 141 and 149 IPC were satisfied. It was submitted that how people react in trauma was individual in nature and all the persons could not be painted with the same brush. It was argued that the contention that as the Chief Minister intervened, the Deputy Chief Minister and other MLAs were not required to do so was misplaced as the act of A-1 and A-2 was not independent or severable. The sequence of events of 19.02.2018 midnight meeting demonstrated that the Chief Minister did not restrain the assailants or take any positive action to prevent assault. It was a matter of record that the MLAs were present around one hour prior to the arrival of the petitioner and the petitioner arrived at about 12:00 midnight and he along with Shri V.K. Jain was taken to a small sized meeting room where 13 persons were already present. The number of seats in the room was kept limited and only one seat was available for the petitioner on the three seater

sofa between A-1 and A-2 both of whom had criminal cases against them and no separate chair for the petitioner was arranged, even though the same was required as per practice and propriety. The Chief Minister asked the petitioner to answer to the queries of the MLAs on the issue of TV advertisements though the petitioner had already explained the issue earlier to the Chief Minister in the meeting dated 12.02.2018 and to the Deputy Chief Minister during the daytime. The response of the petitioner elicited a barrage of abuses, intimidation, threats including a threat to wrongfully confine him throughout the night. Till that time, there was no intervention by the Chief Minister or Deputy Chief Minister showing their complicity and the applicability of Sections 120 B and 149 of the IPC. The petitioner was then subjected to physical assault. The statement of Shri V.K. Jain recorded on 22.02.2018 was contrary to the complaint and the FIR and it did not say that the Chief Minister restrained or stopped the assailants. It was argued that all the facts showed that there was conspiracy and assault was allowed to be perpetrated, whereas intervention by all the discharged accused persons should have happened at the very threshold when misbehavior with the petitioner commenced. Moreover, Shri V.K. Jain nowhere stated that the Chief Minister or Deputy Chief Minister or any other MLA immediately intervened at the commencement or even during the entire period of assault. It was submitted that the self-contradictory statements of Shri V.K. Jain could not be relied upon at this stage to disbelieve the statements of the petitioner, who was an injured eye-witness but the said statements had

not been considered by the Ld. Trial Court as if they had no value and the Ld. Trial Court had gravely erred in picking up one portion from one statement of Shri V.K. Jain in favour of accused persons while ignoring all the other statements of Shri V.K. Jain and the petitioner resulting in perverse findings.

104. It was submitted that the issue in question was that A-3 and A-4 did not do any positive act to restrain and in fact omitted to even move from their place to physically prevent the assault and Sections 32 and 43 of the IPC squarely covered the conduct of A-3 and A-4 and the other discharged MLAs who did not intervene to stop the assault and thus committed omissions, which showed their complicity in the conspiracy. As none of the accused persons present in the room stopped the assailants from giving several blows to the petitioner, the conduct of the accused led to the inference that they shared a common object of conspiracy and it was absurd that responsible public persons would allow the petitioner to be intimidated and assaulted in their presence if they were innocent or not a party to the action of assault. As regards the contention that the Chief Minister was unhappy with the conduct of A-1 and A-2 based on the statement of Shri V.K. Jain dated 09.05.2018 and hence the CM could not be a part of the conspiracy, it was submitted that the findings of the Ld. Trial Court in this regard were perverse and it was evident that words had been added to the statement of Shri V.K. Jain to arrive at an illegal and perverse finding to suit A-3 and the Chief Minister had never specifically disassociated himself from the assault. The Chief Minister's so called unhappiness was

not corroborated by his actions and he never reprimanded A-1 and A-2 nor took any disciplinary action taken against them and in fact denied the assault on the petitioner. The Deputy Chief Minister even held a press conference on the next day denying the assault on the petitioner. Further the assault on the petitioner in the presence of the Chief Minister and the Deputy Chief Minister and the MLAs was not reported to the police by anyone of them.

105. It was argued that the narrative of the midnight meeting was attempted to be changed by the Chief Minister to justify the presence of MLAs and calling of the meeting at midnight as reflected from the conduct of the Chief Minister in the Cabinet Meeting on 20.02.2018 where he produced a paper from his pocket for a decision on civil supply issues without there being any Cabinet Note, Secretary, Civil Supplies not even being present in the meeting and the procedure for inclusion of items in the Cabinet Meeting not being followed and reference was made to the statement of Shri Manoj Parida dated 15.06.2018 in that regard. Moreover, the Chief Minister continued interaction with A-1 during the night through Bibhav (PS to the CM) after the assault and departure of A-1 from his residence as was evident from the CDRs which were part of the charge-sheet. False complaints under SC/ST Act were filed against the petitioner the very next day by Prakash Jarwal and Ajay Dutt which could not have happened without the consent of the Chief Minister and the Deputy Chief Minister. It was argued that the purported unhappiness of the Chief Minister did not demonstrate his innocence

which had to be tested in the light of Sections 32/36 IPC and Sections 120-B and 149 IPC. It was argued that the conduct of the Chief Minister had to be seen in entirety and not in isolation, the officer of the rank of Chief Secretary had come but he was not even provided a separate seat and first verbal abuse started from the MLAs and thereafter assault began and the Chief Minister did not even reprimand them. The Chief Secretary as per the Transactions of Business Rules was answerable to the Ministers and to the Chief Minister but not to the MLAs and there was nothing to show that any of the MLAs in the past had sought an appointment with the Chief Secretary so there was no justification for calling the meeting in the night. It was argued that the act and conduct of the accused persons did not gel with what they were stating that it was an act of only two persons. When the MLAs were castigating the Chief Secretary, the Chief Minister did not interfere, when the Chief Secretary was threatened he did not interfere and even when they assaulted the Chief Secretary, he did not try to restrain them and it was only when the assault was complete that he interfered and the effort to stop after the incident was over was only to cover up the omissions. The FIR and the complaint were clear that the Chief Minister had not tried to restrain the accused persons from assaulting the petitioner. Shri V.K. Jain was not there when the assault happened so his statement could not be used to trump the statement of the petitioner. Moreover in the statement of Shri V.K. Jain, he used the word conduct of MLAs and not assailants, which word was used in the impugned order. It was argued that A-4 was a silent spectator and he acted

by omission, there was no logic of having so many persons in one room if the intention was not bad and the meeting could have been called in the day time. There was no dearth of rooms in the residence of Chief Minister, so the location was suspicious and there was even no CCTV camera. A meeting in a large room and the Secretariat would have meant more staff, security and other persons being present making the conduct of physical assault risky.

106. As regards the argument of the accused persons that the Chief Minister would not create a witness against himself by calling Shri V.K. Jain for the meeting and would not choose his own house, it was contended that the said arguments were matters of probable defence and of trial and could not be considered at the stage of framing of charge. Shri V.K. Jain was a retired IAS officer, personal staff of the Chief Minister and close confidant and his job was dependent on the Chief Minister; he was used by the Chief Minister/ Deputy Chief Minister to ensure that the petitioner did not get suspicious and to deceive him into coming for the meeting. Midnight time was chosen as no media/ general public /officers were present at that time and the residence of the Chief Minister was chosen by design to avoid any suspicion or alarm in the mind of the petitioner. A meeting in the Secretariat, even at midnight would have been too risky for assaulting the petitioner and the petitioner would not have come for the meeting at an unknown place especially at midnight. It was argued that due to the presence of Shri V.K. Jain, the petitioner was lulled into thinking that it was an official meeting.

107. As regards the contention that the Chief Minister permitted the petitioner to leave the meeting and the door was not locked, it was argued that the petitioner had clearly stated in the complaint that the door was firmly shut after he entered the meeting room. The petitioner was abused, threatened and intimidated by MLAs present in the meeting. One MLA Rituraj even threatened the petitioner that he would be confined in the room the entire night unless he agreed to release the advertisements and the petitioner had also stated that after assault he was able to leave the room with difficulty. Reference was made to the statement of Shri V.K. Jain dated 22.02.2018 in which he had stated that the Chief Secretary somehow managed to leave the room and it was submitted that the same corroborated what the petitioner had said. It was argued that for offence of wrongful confinement, it was not necessary that the door be locked and mere impression of being confined created in the mind of the petitioner was sufficient. It was argued that how witnesses react to stimuli is different and the petitioner could not be put into any bracket as to how he should have reacted. The conduct of the victim could not be tested nor his veracity which is what the Ld. Trial Court had done and even the conduct of the Chief Minister post the event had to be seen.

108. As regards the role of accused Nitin Tyagi, it was submitted that the petitioner at the very first instance in his statement under Section 161 Cr.P.C. dated 20.02.2018 had named Nitin Tyagi and stated about his role and reiterated the name and role again in his statement dated 25.04.2018. Moreover, the delay in naming an accused would not help

the case of the accused persons at the stage of charge. Further, the CCTV footage corroborated what was stated by the petitioner and reference was also made to the statement of PSO Satbir and of Bibhav Kumar. As regards the role of Ajay Dutt and the contention that his name was not there in the FIR or in the statement of Shri V.K. Jain under Section 164 Cr.P.C., it was submitted that the petitioner himself had mentioned in the complaint that a threat was made that he would be implicated in false cases including under SC/ST Act and reference was also made to the statement of the petitioner dated 25.04.2018 and that it was evidently clear that the CCTV footage was shown to him on that day. It was argued that the filing of false complaints by Ajay Dutt and Prakash Jarwal demonstrated that they were part of the conspiracy having common intention to intimidate, abuse, threaten and physically assault the petitioner. The petitioner had identified them after seeing the CCTV footage on 25.04.2018 and it was the accused persons who were in control of the CCTV footage and had handed over the same after two months so the case of the prosecution could not be doubted in this regard.

109. As regards the contention that there was no allegation against Praveen Kumar in the FIR and subsequent statements of the petitioner, it was argued that in the complaint itself, it was mentioned that one of the MLAs had firmly shut the door of the room and in the statement dated 25.04.2018, the petitioner had stated that he was able to identify Praveen Kumar as the person who had firmly shut the door of the room to confine him

in the room. The CCTV footage was shown to the petitioner only on 25.04.2018 and with the help of the same and the photos on internet he specifically named Praveen Kumar for his overt act and Shri V.K. Jain in his statement dated 22.02.2018 had corroborated the presence of Praveen Kumar in the meeting. Praveen Kumar also did not prevent or intervene to stop the assault. As regards the role of Rituraj Govind, it was submitted that the petitioner in the FIR itself had stated that one MLA had threatened to confine him in the room for the entire night unless he agreed to release the TV campaigns and he reiterated the same in the statement dated 25.04.2018 and this was corroborated by the statement of Shri V.K. Jain dated 22.02.2018 in which he had stated that the petitioner left the meeting with great difficulty and thus the threat of confinement was actual. It was argued that none of the said MLAs had met the petitioner earlier and he had no interaction with them in the recent past so he could not have identified them at the first instance.

110. As regards the role of the Deputy Chief Minister (A-4), it was argued that despite being made well aware of the requirement of contents certification by Head of Departments and issue of rates of T.V. advertisements and funding and that there was a hurdle in the release of T.V. advertisements, the Deputy Chief Minister insisted and was following up with the petitioner and the DTTDC officers for release of the proposed TV advertisements since the beginning. He called a meeting on 14.02.2018 at a very short notice on a public holiday, which showed the urgency but despite being in Chair, he

could not get his proposal approved due to objections of MD, DTTDC. Draft Minutes of DTTDC Board Meeting of 14.02.2018 were put up to him for approval on 15.02.2018 itself, but remained with him till 01.06.2018, when he directed to change/ modify the minutes of the meeting so that what all transpired in the meeting and was part of the draft minutes did not figure in the final/ issued minutes. Moreover, he called the petitioner in the evening (6.54 p.m.) on 19.02.2018 to obliquely threaten him that either have the TV advertisements released failing which he should come for the midnight meeting at Chief Minister's residence and he also rejected the request of the petitioner through Shri V.K. Jain to shift the midnight meeting to the next day in the morning. It was submitted that the Deputy Chief Minister was with the Chief Minister from the evening of 19.02.2018 till the execution of conspiracy (physical assault on the petitioner) and was fully aware or involved in the decision that 11 specific MLAs were being summoned by the Chief Minister to be present at the residence of the Chief Minister an hour prior to the scheduled midnight meeting with the petitioner. He also did not intervene to prevent threats/ intimidation and to stop the assault on the petitioner despite being seated in close proximity of the petitioner in the meeting room where the assault took place. He further held a press conference the next day to deny the happening of any such incident and did not reprimand any of the MLAs present for the midnight meeting immediately before or after the assault or at any time thereafter and also did not express regret to the petitioner regarding the conduct of the MLAs or for his

inability or failure to prevent or stop the misbehaviour/ assault. The Deputy Chief Minister though holding such a responsible public position did not inform the Police regarding the assault on the Chief Secretary even though the same happened in his presence and the assault was not denied by him in the Court. It was contended that he purposely and knowingly did not inform Shri V.K. Jain that 11 MLAs would be present in the meeting so as to prevent Shri V.K. Jain from alerting the petitioner and believing that only the Chief Minister and the Deputy Chief Minister would be present, the petitioner was deceived into coming for the meeting. It was argued that every threat had to be seen in the context of what happened that night and the only logic for calling the MLAs an hour prior was to prepare for the assault. Throughout the night, the Chief Minister was talking to A-1 and was planning for SC/ST cases.

111. As regards the question of suppression of the statement of Shri V.K. Jain recorded on 21.02.2018, it was submitted that it was for the State to respond and it did not impair the case of the petitioner and did not change the merits of what happened that night and the issue stood settled. As regards the contention that there was delay in FIR and MLC, it was submitted that the petitioner was in a state of utter shock and trauma because of the unprecedented incident at midnight meeting called by the CM and the FIR was registered on the very next morning. The petitioner was the Senior-most IAS Officer and the serving Chief Secretary of Delhi at the time of the incident and had never faced or even imagined such an incident by MLAs/ Chief Minister /Deputy Chief

Minister and it took some time for him to recover from the shock and trauma and set the legal process rolling. Reliance was placed on **Palani** v. **State of Tamil Nadu (supra).** It was argued that there were patent perversities in the impugned order and the Ld. Trial Court had acted contrary to the law.

112. A note in rebuttal to the written submissions filed by A-4 (respondent No.6) was also filed by the petitioner stating that as regards the scope of interference, the petitioner had already pointed out grave illegalities and perversities in the findings of the Ld. Trial Court, *inter alia*, as per the chart dated 07.01.2022 and in the rebuttal submissions to which the respondents (accused persons) had not been able to respond. It was submitted that the findings of the Ld. Trial Court were erroneous and contrary to record and as such, the intervention of the Court was warranted in the interest of justice and in view of the precedents cited by the petitioner, the Court had the power to set aside the impugned order and correct the illegalities as pointed out by the petitioner. It was submitted that the submissions made by A-4 regarding the **Common Cause** v. **Union of India (supra)** judgment were erroneous and highly misleading and A-4 was seeking to misconstrue the submissions of the petitioner qua the said judgment and was attempting to mislead the Court by placing reliance on irrelevant para 11 of the judgment. It was contended that the petitioner had expressed his reservations which were impediments for the release of the advertisements sought to be released by the Chief Minister/ Deputy Chief Minister. It was argued that the respondents had tried to mislead the Court by stating

that the petitioner had contended that there was a prohibition on release of anniversary advertisements, which was contrary to the record and the case of the prosecution. The submission that the petitioner had refused for the issuance of advertisements was erroneous, misleading and contrary to record. The petitioner had expressed his objections to the advertisements sought to be released by A-3 and A-4 on the issue of content verification and requirement of approval of higher rates which was evident from the statements of witnesses included in the charge sheet and the same showed that the petitioner had no objection per se to the advertisement to be released on the anniversary of the Government but he was being pressurized to have the advertisements released in violation of the guidelines of Hon'ble Supreme Court regarding content verification and without approval of rates higher than DAVP rates, and even when the DTTDC had raised legal issues in respect of release of such advertisements. It was submitted that A-4 had tried to mislead the Court by stating that the Chief Minister had asked the petitioner to give his dissent/ objections in writing whereas the Chief Minister had only taunted and rebuked the petitioner and asked him to give in writing that he was a failure as Chief Secretary and reference was made to the statement of Ms. Varsha Joshi in this regard.

113. As regards the question of temporal link of conspiracy with the changed/ modified Minutes of Meeting by A-4 on 01.06.2018, it was submitted that as per A-4 the revision of the minutes by him took place on 01.06.2018, and there was no temporal

link between the change and the conspiracy but it was a matter of record that Draft Minutes of DTTDC Board Meeting of 14.02.2018 were put up to the Deputy Chief Minister for approval on 15.02.2018 itself, but remained with him till 01.06.2018, when he directed to change/modify the draft minutes so that record of all that transpired in the said meeting and was part of the draft minutes did not figure in the final/ issued minutes. Reference was made to Section 8 of the Evidence Act regarding previous or subsequent conduct and it was submitted that as such, the acts of A-4 in modifying/ amending the draft minutes were relevant. As regards the contention that the meeting on 19.02.2018 was a routine meeting, it was argued that there was no emergency/ urgency and the meeting was called at 12:00 midnight and records showed that no meeting was called by the Chief Minister at such late time in the past and as such the argument that it was a routine meeting was erroneous and contrary to records. Despite specific requests by the petitioner, the meeting time was not shifted to the next day morning and the appointment schedule of the Chief Minister clearly revealed that there was sufficient time available the next morning to hold the meeting. Moreover, A-3 and A-4 had sufficient opportunity during the daytime on 19.02.2018 to discuss any issue with the petitioner. Further Shri V.K. Jain had not denied the fact that the meeting was called on the issue of release of TV advertisements and he had merely stated that the MLAs started asking questions regarding other issues as well and A-4 was wrongly portraying and interpreting the statement of Shri V.K Jain in a bid to mislead the Court. Shri

Pravesh Ranjan Jha, Joint Secretary to the Chief Minister in his statements under Sections 164 and 161 Cr.P.C. both dated 01.03.2018 had specifically mentioned that Shri V.K. Jain had told him that the meeting pertained to the issue of advertisement. Further, the post-conduct of the Chief Minister and Deputy Chief Minister to subsequently change the narrative of the midnight meeting clearly established that they were the kingpins of the conspiracy.

DISCUSSION

MAINTAINABILITY OF THE REVISION PETITION

114. The Ld. Counsels for the accused persons except A-11 (respondent No.13) had not specifically objected to the maintainability of the revision petition. However, it was submitted by the Ld. Counsel for A-11 that the Revision petition was not maintainable as the Hon'ble High Court vide order dated 24.08.2020 had directed that the matter would be prosecuted on behalf of State by the Public Prosecutor as consented for by the complainant (petitioner herein) and the petitioner was trying to do indirectly what he could not do directly. It was submitted that it was further clarified by the Hon'ble High Court vide order dated 12.10.2020 that the petitioner may put forward submissions that he thinks necessary through the Ld. APP and not separately as that would lead to a parallel proceedings. It was submitted that by implication of the consecutive orders passed by the Hon'ble High Court of Delhi, the petitioner had been refrained from

addressing arguments on charge before the Ld. Trial Court whereas by filing the revision petition, the petitioner was addressing the same arguments on the point of charge which he had been refrained from doing by virtue of the orders passed by the Hon'ble High Court. Reliance was placed on the doctrine of "*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*", which means "you cannot do indirectly what you cannot do directly". It is pertinent that the Hon'ble High Court vide order dated 12.10.2020 had not directed that the petitioner herein may put the submissions that he thinks necessary through the Ld. APP and not separately and in fact had clarified that the order dated 24.08.2020 did not in any manner deal with the issue whether the complainant (petitioner herein) was entitled to address arguments or make submissions before the learned MM at that stage of the proceedings. It was further clarified that the Hon'ble High Court had not expressed any opinion whatsoever on the merits of the decision of the learned Magistrate that the complainant (petitioner herein) may put forward the submissions that he thinks necessary, through the learned APP and not separately as that would lead to a parallel proceedings and further observed that the said decision dated 01.10.2020 was not impugned by any party in the Hon'ble High Court. As such there is no merit in this submission made by the Ld. Counsel for A-11, even otherwise it does not imply that a revision petition cannot be filed by an aggrieved complainant challenging the order of discharge, given the settled position of law. Reference was made to the judgment in **Vipul Gupta and S.P. Gupta** v. **State and**

Another (supra) to contend that the revision petition preferred by the complainant/ petitioner was not maintainable but it was submitted on behalf of the petitioner that the said judgment was not applicable to the present case and the Ld. Sr. Counsel for the petitioner had placed reliance on the judgment of the Hon'ble Supreme Court in **Sheetala Prasad** v. **Sri Kant (supra)** wherein it had been observed as under:

> ***"12.*** *The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant*
>
> *(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,*
>
> *(2) where the admissible evidence is wrongly brushed aside as inadmissible,*
>
> *(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,*
>
> *(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and*
>
> *(5) where the acquittal is based on the compounding of the offence which is invalid under the law.*
>
> ***13.*** *By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage*

of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered."

Thus, in this case, it was held that revisional jurisdiction could be exercised by the High Court at the instance of a private complainant against acquittal. Reliance was also placed on the judgement in **Kalyani** v. **State of Maharashtra (supra)** wherein it was held that it would be just and necessary to hear the complainant/ first informant on the revision then to pass appropriate order in accordance with law. Reliance was also placed on the judgment in **Pandharinath Tukaram Raut** v. **Manohar Sadashiv Thorve (supra)** wherein it was held that where the applicants were the victims of the alleged offences they could by no stretch of imagination be said to be strangers to the proceedings and it was held that the first informant would have the locus standi to file a revision in a prosecution initiated by the State. In fact, it was observed that the Court could call for the record and proceedings even *suo motu* and revise the order and it was observed that in fact a party applying for revision was only drawing the attention of the Court to a particular alleged illegality, impropriety or irregularity. In **Prakash C. Seth** v. **State of Maharashtra & Anr**. **(supra)** it was held that "the Hon'ble High Court of Bombay rejected the contention that the term the other person used in Sub-Section (2) of Section 401 of the Cr.P.C. did not include the first informant and held that once the term the other person was held to include the informant then opportunity of hearing to such first informant needed to be granted through the pleader of his choice and not by the prosecutor appointed by the State."

115. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Municipal Corporation of Delhi** v. **Girdharilal Sapru & Ors. (supra)** wherein it was observed as under:

> *"Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice.....Section 397 (1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power, the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself."*

Reference was also made to the judgment in **Krishnan** v. **Krishnaveni (supra)** wherein the Hon'ble Supreme Court had held that "the object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice." Reliance in this regard was also placed on **Emperor** v. **N.G. Chatterji (supra)** and on the judgment in **Alay Ahmed** v. **Emperor (supra)** and in **Shiv Kumar** v. **Hukum Chand (supra). T**he Ld. Sr. Counsel for the petitioner had further referred to the judgment of the Hon'ble Supreme Court in **Jagjeet Singh and Others** v. **Ashish Mishra alias Monu and Another** 2022 SCC OnLine SC 453 wherein the Hon'ble

Supreme Court had dealt with the law on the right of the victim to be heard in criminal proceedings and observed:

> *"24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/ her right to participate in the proceedings. He/ She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/ informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/ informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony."*

The law is thus, clear that the first informant would have the locus standi to file a revision petition. The Ld. Sr. Counsel for the petitioner had further relied upon the judgment of the Hon'ble Supreme Court in **Asian Resurfacing of Road Agency Pvt. Ltd.** v. **CBI (supra)** to contend that a revision petition is maintainable against the order on charge. The law in this regard is well settled.

116. The Ld. Senior Counsel for A-4 had argued that the scope of a revision petition was limited and that the Court under Section 397 Cr.P.C. was only to see if there was any illegality, impropriety and perversity in the impugned order. He had relied upon the judgment of Hon'ble Supreme Court in **Hydru** v. **State of Kerala (supra)** on the scope of a revision petition, wherein it was observed as under:

> *"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from*

> *the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court."*

It was thus submitted that the Revisional Court could interfere only if there was any procedural irregularity or material evidence had been overlooked or misread by the Subordinate Court and even if two views were possible, it was not permissible for the Court to interfere with the same in a revision. Reliance was also placed on the judgment in **Amit Kapoor** v. **Ramesh Chander (supra)** (on which reliance was also placed by the Ld. Sr. Counsel for A-12) again on the powers of a Revisional Court wherein it was observed as under:

> *"12. It is neither necessary nor is the court called upon to hold a full fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*
>
> *13. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution."*

It was further observed that "*The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicui concedit, conceder videtur id sine quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused*." Reliance was further placed on **Taron Mohan** v. **State and Another (supra)** (on which reliance was also placed by the Ld. Sr. Counsel for A-12) wherein the Hon'ble High Court of Delhi had held that "*The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 Cr.P.C. gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of*

any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence." The Ld. Counsel for A-11 had relied on the judgment of the Hon'ble Supreme Court in **Sanjay Kumar Rai** v. **State of Uttar Pradesh and Anr. (supra)** wherein the Hon'ble Supreme Court had held "that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstances of individual cases… For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law." Even in the case of **Sheetala Prasad** v. **Sri Kant (supra)** on which reliance had been placed by the Ld. Sr. Counsel for the petitioner, the Hon'ble Supreme Court had laid down the principles on which revisional jurisdiction can be exercise. The law regarding the scope of powers of a Revisional Court is thus well settled.

CONSIDERATIONS FOR FRAMING OF CHARGE/ DISCHARGE

117. Regarding the considerations to be kept in mind while framing charge, the Ld.

Counsels for the petitioner and the accused persons/ respondents had referred to various judgments. Reliance was placed on the judgment of Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra)** wherein the considerations to be kept in mind while framing charge have been laid down as under:

> *"(1). That the Judge while considering the question of framing the charges under Section 228 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial;*
>
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused;*
>
> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

118. The Ld. Sr. Counsel for the petitioner had also relied on the judgments in **State of Maharashtra** v. **Som Nath Thapa (supra)** wherein the Hon'ble Supreme Court had referred to the **A.R. Antulay** case and held that at the stage of framing of charge, the test of prima facie case had to be applied; **Soma Chakravarty** v. **State (supra)** wherein

it was reiterated that if on the basis of material on record the Court could form an opinion that the accused might have committed the offence, it could frame the charge though for conviction, the conclusion was required to be proved beyond reasonable doubt that the accused had committed the offence. It was observed that at the time of framing of charge, the probative value of the material on record could not be gone into and the material brought on record by the prosecution had to be accepted at that stage. Before framing a charge, the Court must apply its judicial mind on the material placed on record and it must be satisfied that the commission of the offence by the accused was possible, whether in fact the accused had committed the offence could only be decided in trial. It was also held that charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prime facie finding that there was existing some material therefor. Reliance was also placed on the judgments in **Akbar Hussain** v. **State of Jammu & Kashmir & Anr. (supra)** and in **Bhawna Bai** v. **Ghanshyam & Ors. (supra)** wherein the Hon'ble Supreme Court referred to the judgment in **State of Bihar** v. **Ramesh Singh** (1977) 4 SCC 39 **(**on which reliance was also placed by the Ld. Counsel for A-11) and also to the judgment in **Amit Kapoor** v. **Ramesh Chander and another (supra)** wherein it was observed that once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. It was also observed that at the initial stage of framing of a charge, the court is concerned

not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. *"All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."* Thus, at the stage of framing of charge, the court is only to see if there is strong suspicion that the accused had committed an offence and not whether the material on record would lead to conviction or not. At the stage of framing of charge, the Court is required to evaluate the material and documents only to the extent and with a view to finding out if the facts taken on their face value disclosed the existence of a prima facie case.

119. The Ld. Counsels for the accused persons had placed reliance on the judgments in **Sajjan Kumar** v. **Central Bureau of Investigation** (2010) 9 SCC 368; **Dilawar Balu Kurane** v. **State of Maharastra (supra); Onkar Nath Mishra** v. **State (NCT of Delhi) (supra); State of Karnataka** v. **L. Muniswamy & Ors. (supra); Sanjay Kumar Rai** v. **State of Uttar Pradesh and Anr. (supra); State by Superintendent of Police through the SPE CBI** v. **Uttamchand Bohra (supra)** and **Kanshi Ram** v. **State (supra).** The Ld. Counsel for A-10 (R-12) had relied upon the judgment of Hon'ble Supreme Court in **State Tr. Insp. Of Police** v. **A. Arun Kumar & Anr. (supra)** on the considerations to be kept in mind while framing of charge and reference was made to the observations made by the Hon'ble Supreme Court in **Sajjan Kumar** v. **CBI (supra)** that:

> *"It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the*

> *accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."*

It was also observed that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused and at this stage, he is not to see whether the trial would end in conviction or acquittal. The Ld. Counsel for A-10 had also relied upon the judgment of Hon'ble Supreme Court in **Krishna Lal Chawla And Others** v. **State of Uttar Pradesh & Anr. (supra)** on the role of the judiciary and that abuse of process should not be allowed, wherein it was observed as under:

> *"21. All of this leads to one inescapable conclusion. That the Trial Judge has a duty under the Constitution and the CrPC, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him."*

Reference was made to the judgment in **Yogesh** v. **State of Maharashtra (supra)** (on which reliance was also placed by the Ld. Senior Counsel for A-12) wherein also it was observed that the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case

and in this regard it is neither feasible nor desirable to lay down a rule of general application. The Ld. Sr. Counsel for A-12 had also relied on the judgment in **Prashant Bhaskar** v. **State (Govt. of NCT of Delhi) (supra)** wherein the Hon'ble High Court had observed that if two versions or two inferences can be reasonably drawn, the version favourable to the accused has to be accepted by the Court so long as it is a reasonable one. Reliance was also placed upon the judgment in **Sanjaysinh Ramrao Chavan** v. **Dattatray Gulabrao Phalke (supra)**, wherein it was observed that "Summoning of an accused in a criminal case is a serious matter that the process of the criminal court shall not be permitted to be used as a weapon of harassment. Once, it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person".

120. Reference may be made to the judgment of the Hon'ble Supreme Court in **Niranjan Singh Karam Singh Punjabi** v. **Jitendra Bhimraj Bijjaya & Ors.** (1990) 4 SCC 76 (on which reliance was also placed by the Ld. Sr. Counsel for A-12) wherein it was observed by the Hon'ble Supreme Court as under:

> *"4…Under this section (Section 227 Cr.P.C.) a duty is cast on the judge to apply his mind to the material on record and if on examination of the record he does not find sufficient ground for proceeding against the accused, he must discharge him. On the other hand if after such consideration and hearing he is satisfied that a prima facie case is made out against the accused, he must proceed to frame a charge as required by Section 228 of the Code. Once the charge is framed the*

trial must ordinarily end in the conviction or acquittal of the accused. This is in brief the scheme of Sections 225 to 235 of the Code.

5. Section 227, introduced for the first time in the new Code, confers a special power on the Judge to discharge an accused at the threshold if 'upon consideration' of the record and documents he considers 'that there is not sufficient ground' for proceeding against the accused. In other words his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge under section 228, if not he will discharge the accused. It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

6. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh, [1978] 1 SCR 257 this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

Xxx

> *7. Again in Supdt. & Remembrancer of Legal Affairs,* ***West Bengal*** *v.* ***Anil Kumar Bhunja & Ors.****, [1979] 4 SCC 274 this Court observed in paragraph 18 of the judgment as under:*
>
> "*The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or other- wise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion rounded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence*".
>
> *From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."*

121. Reference may also be made to the observations made by the Hon'ble Supreme Court in **State of Tamil Nadu** v. **N. Suresh Rajan & Ors** 2014 1 AD (SC) 505: (2014) 11 SCC 709 wherein it was observed as under:

> *"…True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has not to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be*

considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Alhawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused."

122. The law in this regard is well settled that at the stage of framing of charge, the court is only to see if a prima facie case is made out. It may be mentioned that the Ld. Trial Court in the impugned order had duly referred to the judgments in **Union of India** v. **Prafulla Kumar Samal (supra)** and **Kanshi Ram** v. **State (supra)**. While it is the contention of the Ld. Sr. Counsel for the petitioner that the Ld. Trial Court did not properly apply the parameters laid down in the said judgments while passing the impugned order, it is the contention of the Ld. Counsels for the accused persons that the impugned order was passed within the four corners of the test laid down by the Hon'ble Supreme Court for framing of charge and the said contention would be dealt with subsequently.

VERACITY OF WITNESSES TO BE TESTED AT TRIAL

123. The Ld. Sr. Counsel for the petitioner had relied upon several judgments on the point that the veracity of the witnesses has to be tested during trial and reliance in this regard was placed on the judgment in **Nallapareddy** v. **State of AP (supra)** wherein it was observed as under:

> *"25. The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial."*

Further reliance was placed on **State** v. **J. Doraiswamy (supra)** wherein it was observed that "while considering the case of discharge sought immediately after the charge-sheet is filed, the court cannot become an appellate court and start appreciating the evidence by finding out inconsistency in the statements of the witnesses as was done by the High Court in the impugned order running in 19 pages. It is not legally permissible"; **Abhishek Tanwar** v. **State (NCT of Delhi) (supra)** wherein also it was observed that "the veracity and truthfulness of the prosecution witnesses would be tested only during the trial. At this stage, the appreciation is limited to the test of "grave suspicion"; and **Sushila** v. **State (Govt.) NCT of Delhi (supra).** The law in this regard is well established. The Ld. Sr. Counsel for the petitioner had also relied on **Abdul Sayed** v. **State of Maharashtra (supra)** wherein it was held that the statement of injured witness could not be discarded observing:

> ***"28.*** *The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness"*
>
> ***30.*** *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because*

> *the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."*

Again the said proposition of law cannot be disputed though it was also observed in the said judgment that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

124. The Ld. Sr. Counsel for A-12 had placed reliance on the judgment in **Sunny Maan** v. **State** Crl. Rev. P. 494/2010 wherein it was observed that the statement made before the Court under Section 164 Cr.P.C. bears more value than the statement made before the Police. In **Satpal** v. **State of NCT of Delhi** Bail Appln. 65/2008 as well, it was held that the Section 164 Cr.P.C. statement of witness having been recorded by the Ld. MM had greater weight over the statement recorded under Section 161 Cr.P.C. during investigation. This is also as per the well settled law. It was submitted on behalf of the petitioner that statements under Section 161 Cr.P.C. are inadmissible and reliance was placed on **Rajeev Kourav** v. **Baisahab & Ors. (supra)** wherein it was observed that statements of witnesses recorded under Section 161 Cr.P.C. being wholly inadmissible in evidence could not be taken into consideration by the Court while adjudicating petition filed under Section 482 Cr.P.C. However in the said case, it was held that proceedings could not be quashed by assessing the statements under Section

161 Cr.P.C. whereas in the present case the matter is at the stage of framing of charge and even the petitioner had relied upon statements of several witnesses under Section 161 Cr.P.C. and in fact one of the contentions of the petitioner is that the Ld. Trial Court had not considered some of the statements recorded under Section 161 Cr.P.C. or not appreciated them correctly.

125. Further, the Ld. Senior Advocate for A-2 had relied upon several judgements wherein it had been held that the complaint on the basis of which the registration of FIR was sought must disclose essential ingredients of the offence and in case the complaint was found wanting in any of the essential ingredients, the lacunae or deficiency could not be filled up by obtaining additional complaint or supplementary statement. Reference in this regard was made to the judgment of the Hon'ble High Court of Delhi in **Deepa Bajwa** v. **State and Ors (supra)** wherein it was observed that if such a course was permitted, it would give undue latitude as well as opportunity to unscrupulous complainant to nail either by hook or by crook inspite of the fact that the initial complaint did not make out the offence complained of and such a course would be utter abuse of the process of law. To similar effect is the judgment of the Hon'ble High Court of Delhi in **M.S. Gayatri @ Apurna Singh** v. **State & Anr. (supra) a**s also **Manoj Bajpai** v. **State of Delhi (supra)** (on which reliance was also placed by the Ld. Counsel for A-11)**,** wherein it was observed that the first version as disclosed in a complaint is always important for adjudicating as to whether an accused had committed an offence

or not. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Neelu Chopra & Anr.** v **Bharti (supra)** wherein it was observed that in order to lodge a proper complaint, mere mention of the sections and the language of the sections is not the be all and end of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. In that case the Hon'ble Supreme Court had observed that the complaint was sadly vague and did not show as to which accused had committed what offence and what was the exact role played by the appellant in the commission of the offence.

DELAY IN LODGING THE FIR AND THE MLC

126. The Ld. Counsels for the accused persons had argued at length about the delay in registration of FIR and the conduct of medical examination of the petitioner in the present case. It was submitted that the incident was of 12 midnight whereas the FIR was got registered after a delay of almost 12 hours though the petitioner had the entire police machinery at his disposal and the petitioner had even gone to meet the Hon'ble LG; even the medical was got done subsequently for which there was no sufficient explanation and which showed that the FIR was got lodged as an after-thought and after due deliberation. The Ld. Senior Advocate for A-2 had relied upon the judgment of Hon'ble Supreme Court in **State of Andhra Pradesh** v. **M. Madhusudan Rao (supra)**

wherein it was held that delay in lodging the FIR results in embellishment which is a creature of an after-thought. It was further submitted on behalf of the accused persons that the medical examination was got done by the petitioner even thereafter about 9 hours after the 'tehrir' and it is seen that in the statement of the petitioner recorded under Section 161 Cr.P.C. on 20.02.2018 itself the petitioner had stated that he would reach Aruna Asaf Ali Hospital for his medical examination later in the evening. Reliance was also placed on **Puran Chandra** v. **State of Uttaranchal (supra)** wherein it was held that delay in conducting medical examination makes out a strong probability that the prosecution had set up a theory after due deliberation. The Ld. Sr. Counsel for the petitioner, on the other hand had relied on the judgment in **Palani** v. **State of Tamil Nadu (supra)** wherein it was held that delay in FIR, if it was explained, would not be fatal to the case of prosecution and it was observed:

> *"19. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of FIR. But there may be cases where the delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused."*

In the instant case, it was argued on behalf of the petitioner that the petitioner was in a state of utter shock and trauma because of the unprecedented incident at midnight meeting called by the CM, and the FIR was registered the very next morning; the

petitioner was the senior most IAS officer and the serving Chief Secretary of Delhi at the time of the incident and had never faced or even imagined of such incident by MLAs/ CM/ Dy. CM and it took him some time to recover from the shock and trauma and set the legal process rolling. In the present case, it cannot be disputed that the FIR was lodged after several hours of the alleged incident and even the medical examination was got conducted belatedly, however, the delay in lodging the FIR or getting the medical examination done by itself cannot be regarded as a ground for throwing out the case of the prosecution at the stage of framing of charge and it would be a matter of trial whether the delay in lodging the FIR and getting the medical examination done was sufficiently explained and what would be its effect.

BAR ON TAKING COGNIZANCE IN ABSENCE OF COMPLAINT UNDER SECTION 195 Cr.P.C.

127. The Ld. Counsel for A-11 had argued that the offences under Sections 186, 332 and 353 IPC could not be made out as when the charge-sheet was submitted, the complaint under Section 195 Cr.P.C. was not there. Cognizance was taken on the charge-sheet and not on the complaint under Section 195 Cr.P.C. It was further submitted that since all the offences were part of the same transaction, the other offences could not be separated from the bar of Section 195 Cr.P.C. It was submitted that the Hon'ble High Court of Delhi in **Sachin & Ors.** v. **State of NCT of Delhi (supra)** had held that "No Court could take cognizance of an offence under Section 186

IPC unless a complaint was made by the proper officer in the proper format as prescribed under Section 195 Cr.P.C." Reliance was also placed on the judgments in **Saloni Arora** v. **State Govt of NCT of Delhi (supra)** and **Mohan Kukreja** v. **State Govt of NCT of Delhi (supra);** in **Nayan Harishbhai Kanakhara** v. **State of Gujarat (supra)** and in **State of U.P.** v. **Suresh Chandra Srivastava and Others (supra)**. It was stated that it was not permissible for the Court to split up three offences i.e. Sections 186, 332 and 353 of IPC because all the three offences could be said to have been committed in the course of one transaction and the law being well settled, the prosecution must fail. However, it is seen that the complaint under Section 195 Cr.P.C. was filed on 13.08.2018 and cognizance was taken on 18.09.2018, as such when cognizance was taken, the complaint under Section 195 Cr.P.C. was already on record. Thus, there is no merit in this contention. Even otherwise, the Ld. ACMM has already directed framing of charge against A-1 and A-2 for the offences under Sections 186, 353 and 332 IPC and the said order has not been challenged and as such, the said contention need not be gone into at this stage. The Ld. Sr. Counsel for the petitioner had relied on the judgment in **State** v. **Usman Gani (supra)** on what would constitute the ingredients of Section 353 IPC. However, as observed the Ld. ACMM had directed framing of charge against A-1 and A-2, *inter alia,* for the offence under Section 353 IPC which order has not been challenged, as such whether the ingredients of offence under Section 353 IPC are satisfied or not satisfied in the present case has already been considered by the Ld. Trial

Court in the impugned order.

CONSIDERATION OF THE STATEMENT OF SHRI V.K. JAIN DATED 21.02.2018

128. The Ld. Counsels for the accused persons had vehemently argued that the statement of Shri V.K. Jain dated 21.02.2018 was deliberately concealed by the prosecution and thereafter a petition was filed before the Hon'ble High Court and the Hon'ble High Court had then directed that the said statement of Shri V.K. Jain be considered by the Ld. Trial Court. The Ld. Sr. Counsel for A-3 had in this regard referred to Section 114 (g) of the Evidence Act as per which the Court can presume that the evidence which could be and was not produced would, if produced, be unfavourable to the person who withheld it. It was submitted that the said statement had been concealed as Shri V.K. Jain had not stated anything about the alleged incident in the said statement. On behalf of the petitioner, on the other hand, it was contended that the issue of suppression of the purported statement under Section 161 Cr.P.C. dated 21.02.2018 of Shri V.K. Jain had no bearing on the case of the petitioner and the issue was between the investigating agency and the accused persons. While it is true that the issue of alleged suppression of the statement dated 21.02.2018 of Shri V.K. Jain was a matter between the investigating agency and the accused persons, the contention that it had no bearing on the case of the petitioner is misplaced as it is not that the case of the petitioner is different from the case of the prosecution and it is one and the same case only. However,

the issue has been set at rest by the order of the Hon'ble High Court dated 21.10.2020 in **Mr. Arvind Kejriwal & Anr.** v. **State NCT of Delhi (supra)** by which the Hon'ble High Court directed the Ld. Trial Court to consider the statement dated 21.02.2018 of Shri V.K. Jain, which was part of the 'case diary' at the time of passing the order on charge and further the SLP before the Hon'ble Supreme Court against the order dated 21.10.2020 was dismissed by the Hon'ble Supreme Court vide order dated 01.07.2021. It is seen that the said statement of Shri V.K. Jain was duly adverted to by the Ld. Trial Court while passing the impugned order and as such the said issue need not be gone into in the present petition.

CONSPIRACY/ UNLAWFUL ASSEMBLY/ COMMON INTENTION/ ABETMENT

129. It is the case of the petitioner that all the accused persons had conspired to intimidate, assault, restrain and threaten him in the midnight meeting of 19-20.02.2018 in order to release the advertisements on completion of 3 years of the AAP Government whereas the accused persons have controverted the said allegations. A perusal of the record shows that the petitioner in his complaint and supplementary statements that were recorded had attributed specific overt acts, as had even been observed by the Ld. Trial Court in the impugned order to certain accused persons i.e. A-1 Amanatullah Khan, A-2 Prakash Jarwal, A-6 Nitin Tyagi, A-7 Praveen Kumar, A-8 Ajay Dutt and A-10 Rituraj Govind. As regards the other accused persons i.e. A-3 Arvind Kejriwal, A-4

Manish Sisodia, A-5 Rajesh Rishi, A-9 Sanjeev Jha, A-11 Rajesh Gupta, A-12 Madan Lal and A-13 Dinesh Mohania, no specific overt act was attributed to them. However, it is the contention of the petitioner that they, along with the accused persons against whom specific overt acts had been alleged, had hatched a criminal conspiracy to assault, restrain, threaten and intimidate the petitioner and in any case, they were all part of an unlawful assembly and were liable for various offences and they shared a common intention and also abetted the commission of offences in the present case and as such A-3 to A-13 had been wrongly discharged by the Ld. Trial Court as a prima facie case was made out against all the accused persons and certain other offences were also attracted against A-1 and A-2 for which they had not been charged.

130. Section 120A IPC defines the offence of criminal conspiracy. It stipulates:

> *"**120A. Definition of criminal conspiracy.** - When two or more persons agree to do, or cause to be done, -*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means,*
>
> *such an agreement is designated a criminal conspiracy.*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*
>
> *Explanation. - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."*

The Hon'ble Supreme Court had outlined the essential ingredients of criminal conspiracy in **R. Venkatakrishnan** v. **CBI** Criminal Appeal No.76 of 2004 decided on 07.08.2009 as under:

> *"A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.*
>
> *The ingredients of the offence of criminal conspiracy are:*
>
> *(i) an agreement between two or more persons;*
>
> *(ii) the agreement must relate to doing or causing to be done either*
>
> *(a) an illegal act;*
>
> *(b) an act which is not illegal in itself but is done by illegal means.*
>
> *Condition precedent, therefore, for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution, viz., meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means."*

A perusal of the impugned order shows that the Ld. Trial Court had discussed the law regarding criminal conspiracy therein and had referred to the judgment of the Hon'ble Supreme Court in **Gulam Sarbar** v. **State of Bihar** (2014) 3 SCC 401 wherein the essential ingredients of criminal conspiracy were likewise, delineated as under:

> *"11. The essential ingredients of criminal conspiracy are:*
>
> *(i) an agreement between two or more persons;*

> *(ii) agreement must relate to doing or causing to be done either*
>
> *(a) an illegal act, or*
>
> *(b) an act which is not illegal in itself but is done by illegal means.*
>
> *What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence."*

Thus, mere generation of a crime in the mind of the accused or discussion or mere knowledge would not be sufficient to constitute an offence and what is needed is a meeting of minds of two or more persons or an agreement for doing or causing to be done an illegal act or an act which is not illegal in itself by illegal means which is a *sine qua non* for the offence of criminal conspiracy [**Rajiv Kumar** v. **State of U.P.** AIR 2017 SC 3772]. While the agreement may be express or implied, there must be consensus *ad idem* i.e. meeting of minds. Reference may be made to Section 43 IPC which defines what is illegal and it states as under:

> ***"43. "Illegal", "Legally bound to do".*** *- The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.***"**

In the instant case, it would be the contention of the petitioner that there was a meeting of minds between the accused persons for doing an illegal act i.e. assaulting, intimidating, threatening and restraining the petitioner in order to pressurize him on the issue of release of TV advertisements.

131. The Ld. Trial Court had also referred to the judgment of the Hon'ble Supreme Court in **CBI** v. **K. Narayana Rao (**2012) 9 SCC 512 in this regard and to the judgment in **Natwarlal Shankarlal Mody** v. **The State of Bombay (supra)** (on which reliance was also placed by the Ld. Sr. Counsel for A-3) wherein it was observed as under:

> *"...Shortly stated, before the Section can be invoked, as a general rule, some prima facie evidence should be placed before the Court to enable it to form an opinion that there is reasonable ground to believe that two or more persons have conspired together; and if that condition is fulfilled the acts and declarations of a conspirator against his fellow conspirators may be admitted in evidence..."*

The law is clear that for invoking the offence of criminal conspiracy, there must be at least prima facie material before the court to show that two or more persons had conspired together. The offence of criminal conspiracy can be shown by either direct or circumstantial evidence. However, it has also been held in a catena of judgments that it is difficult to get direct evidence of conspiracy as a conspiracy is generally hatched in secrecy and a private setting so it is impossible to produce any direct evidence of the date of formation of the criminal conspiracy, the persons involved in it, the object of such conspiracy or how such object is to be carried out, all of which is necessarily a matter of inference [**Mohd. Arif** v. **State of NCT of Delhi** (2011) 13 SCC 621]. Showing meeting of minds is one of the hardest things to do and would only be a matter of circumstances, hence criminal conspiracy is based on circumstantial evidence in most of the cases as there is no direct evidence to prove the same. The existence and objective of criminal conspiracy can be inferred from the surrounding circumstances

and parties' conduct and oftener than not, has to be inferred from the acts, statements and conduct of the parties to the conspiracy. At the same time, even if some acts are shown to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy.

132. The Ld. Trial Court had observed that "*since, direct evidence to prove conspiracy is rarely available, the circumstances before, during and after the occurrence have to be considered to decide about the complicity of the accused*" and the same is as per the settled law in this regard. In fact, the Ld. Sr. Counsel for the petitioner had quoted the judgment of the Hon'ble Supreme Court in **Pratapbhai** v. **State of Gujarat (supra)** to contend that circumstances before and after the conspiracy are relevant and in the said case, it was observed as under:

> *"23… The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."*

As such, it was held that the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

Reliance was also placed on the judgement in **Mohmed Amin** v. **CBI (supra)** wherein it was observed as under:

> **"71.** In *Yash Pal Mittal vs. State of Punjab (1977) 4 SCC 540* this Court interpreted the term conspiracy and held: (SCC p. 543, para 9)-
>
> > *"9. … The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co- participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy."*
>
> **72.** *In Nalini's case (State v. Nalini (1999) 5 SCC 253) the Court analyzed various decisions on the subject and held: (SCC pp. 568-662)*
>
> > *"662. … In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out, cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from*

> *which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offence."*
>
> xxx
>
> **74.** *The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participators in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy."*

It was thus held in the said case that it was not necessary that the conspirators should know each and every detail of the conspiracy or even that they should participate from the inception of the conspiracy to its end and what was necessary was unity of object or purpose. In this case reference was made to the judgment in **State** v. **Nalini (supra)** on which reliance was placed by the Ld. Sr. Counsel for A-4. The Ld. Sr. Advocate for the petitioner had also relied upon the judgment in **Yash Pal Mittal** v. **State of Punjab (supra)** in this regard which has already been referred to in the judgment in **Mohmed Amin** v. **CBI (supra).**

133. The Ld. Sr. Counsel for A-3 had on the other hand, cited the judgment in **Satyapal Singh** v. **State (NCT of Delhi) (supra)** wherein law relating to criminal conspiracy was discussed and reference was made to the judgment of Hon'ble High Court of Delhi in **Devender Pal Singh** v. **State NCT of Delhi** 2002 Crl. LJ 2035 wherein as well it was held that the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Reference was also made in the said judgment to the judgment in **Gulam Sarbar** v. **State of Bihar (now Jharkhand) (supra)** which had been referred to in the impugned order. Thereafter it was observed as under:-

> **"71.** *The burden lies on the prosecution to show that each of the accused had agreed to commit the offence. As cautioned by the Supreme Court in* ***State*** *v.* ***Nalini*** *(1999) 5 SCC 253:*
>
> > *"A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been*

associated in any degree whatever with the main offenders."

Thus, it was held that the Court has to guard itself against the danger of unfairness to the accused and that there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. Reliance was also placed on the judgment of Hon'ble High Court of Delhi in **L.K. Advani** v. **CBI (supra)** wherein reference was made to Section 10 of the Evidence Act which was also referred to by the Ld. Sr. Counsel for A-4 and it was observed as under:-

> **"79.** *Section 10 of the Evidence Act is an exception to the rule of hearsay as is Section 21 of the Evidence Act. The said section is based on the principle of agency. However, to make a piece of evidence admissible under the said section it must be prima facie shown that:*
>
> *(a) there was a conspiracy;*
>
> *(b) if the conspiracy is shown to be in existence in that eventuality anything said, done or written by any of the persons who are members of the said conspiracy would be admissible against any one of the co-conspirators;*
>
> *(c) the said thing done or written by any of such co-conspirators must be in reference to their common intention in order to be made admissible in evidence; and*
>
> *(d) the said piece of evidence would also be relevant for the said purpose against any other co-conspirator who entered the conspiracy irrespective of the fact whether the said thing was done or written before he entered the conspiracy or after he left it."*

Section 10 of the Evidence Act refers to the situation where there is reasonable ground to believe that two or more persons have conspired together to commit an offence and under what conditions, an act of one would be read against the others and be relevant for the purpose of proving the existence of the conspiracy. Thus, the law regarding criminal conspiracy and the principles governing the same have been laid down in a

catena of decisions and in the present case, it is to be seen if the offence of criminal conspiracy is prima facie, made out against the accused persons.

134. It is the case of the petitioner and the prosecution that the whole controversy centered around the release of advertisements to highlight the achievements of AAP Government on completion of 3 years and that the petitioner had expressed a legitimate concern on the issuance of advertisements in terms of the judgment of the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** which ultimately led to the hatching of the conspiracy by the accused persons as the petitioner was not doing their bidding and the incident in the midnight meeting of 19.02.2018. It is the contention of the petitioner that the Ld. Trial Court had erred by referring to only para 11 of the said judgment ignoring para 6 of the said judgment and had thus placed reliance on a wrong paragraph of the judgment, which was not pertinent to the present matter as it was not the case of the prosecution that the State Government was not authorized to issue advertisements or that the petitioner had objected to the right of the government to issue advertisements but the release of advertisements was getting stuck/ being delayed because of non-compliance of DAVP rates and issues of certification of content of the advertisements as stated/ mentioned in para 6 of the aforesaid judgment and as such it was apparent that the Ld. Trial Court had proceeded to pass the impugned order without appreciating the germane issue involved in the matter. It is seen that the Ld. Trial Court in the impugned order had referred to para 11 of the aforesaid judgment wherein the

Hon'ble Supreme Court had held as under:

> *"**Advertisements highlighting completion of a fixed period of the Government's tenure***
>
> *11. Governments at the Centre as well as in the State often bring out advertisements on completion of a number of days, months and years of governance. In such advertisements, not only the 'achievements' are highlighted even the different tasks which are in contemplation are enumerated. By way of example one of the points highlighted may be supply of electricity to each and every village. Though the achievements of a Government should not be a matter of publicity and really ought to be a matter of perception to be felt by the citizens on the results achieved, such advertisements do have the effect of keeping the citizens informed of the government functioning and therefore would be permissible."*

Thus, by virtue of this para which had been reproduced in the impugned order, the Governments were permitted to issue advertisements highlighting their achievements and the Ld. Counsels for the accused persons had also relied upon the said para to argue that there was no bar on issuance of advertisements by Governments to highlight their achievements on completion of certain period. However, it is also the case of the petitioner that the fact that advertisements could be issued by the Government was not in controversy. It was argued on behalf of the petitioner that the Ld. Trial Court had proceeded on the premise that the advertisements could be issued by referring to para 11 of the judgment so there being no controversy, there could be no coercion but the said contention is not borne out by the impugned order. Though the Ld. Trial Court had referred only to para 11 of the judgment in **Common Cause** v. **Union of India (supra),** the Ld. Trial Court had time and again referred to the allegation of the petitioner that the

meeting was called for a single agenda i.e. delay in release of advertisements and had dealt with the same in the impugned order.

135. The case of the petitioner is that the requirements stipulated in para 6 of the judgment in **Common Cause** v. **Union of India (supra)** were an impediment to the release of proposed TV advertisements by the AAP Government about which he had raised his concern. Para 6 of the said judgment refers to the Guidelines on Content Regulation of Government Advertising suggested by the Committee appointed by the Hon'ble Supreme Court and sub-clause (2) of clause 7 of the same provides that “Heads of government departments and agencies shall be responsible for ensuring compliance with these Guidelines and shall follow a procedure of certification of compliance before advertisements are released to the media”. The Guidelines also speak of advertisement campaigns to be undertaken in an efficient and cost-effective manner. It is thus, the case of the petitioner that he had raised a concern regarding the content of the advertisements sought to be issued in terms of the aforesaid guidelines and the non-acceptance of DAVP rates by TV channels, which aspect had not been considered by the Ld. Trial Court. Detailed arguments were advanced by the Ld. Sr. Counsel for the petitioner on this aspect and detailed submissions in writing were also made in this regard, including that the TV channels were not willing to accept the advertisements at the DAVP rates and were asking for higher rates but the Government did not want to give higher rates and wanted to use the route of PSUs but there were objections even in that respect.

Reference was also made to the meetings which were held prior to the midnight meeting of 19.02.2018 on this issue and the statements of Ms. Varsha Joshi under Section 161 Cr.P.C. dated 04.06.2018, Shri Shurbir Singh dated 06.06.2018, Shri S.N. Sahai dated 18.06.2018 and of the petitioner dated 18.04.2018 all recorded under Section 161 Cr.P.C.

136. It is on record that on 11.02.2018, an i-message was sent by A-3 to the petitioner at 12.54 p.m. regarding release of TV advertisements. Further, the statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai all point to the fact that a meeting was called on 12.02.2018 by A-3 at his residence to discuss the issue of release of TV advertisements on the occasion of completion of 3 years of AAP Government in Delhi. In the said meeting, A-3 was in a bad temper and he asked the petitioner why the issue of TV advertisements had not been settled yet on which the petitioner attempted to explain the procedural requirements for release of advertisements. A-3 aggressively stated that the advertisements must come the next morning at any cost and it was the task of the petitioner to ensure that. The petitioner stated that due to lack of DAVP rates, the issue had become complex on which Principal Secretary (Finance) suggested a Cabinet Approval to permit release of advertisements despite lack of DAVP rates but A-3 disregarded the said suggestion and suggested the PSU route and directed the petitioner to ensure that the advertisements came out the next day and also made some harsh remarks to the effect that if the petitioner felt that it could not be done, he should

give in writing that he could not do so, that he was a failure as Chief Secretary and so on. The petitioner however, remained calm and cool and pointed out that as per the guidelines of the Hon'ble Supreme Court on government advertisements, the content of the advertisements needed to be certified by the concerned Head of Department but parts of the text proposed by the Chief Minister's office for the TV advertisements were of such nature as would be difficult to be verified by any of the Heads of Departments of the Government and the said issue would be required to be considered and resolved. The meeting concluded with A-3 again repeating angrily that the advertisements must come out at any cost the next morning. It is the admitted position that the advertisements were not released the next morning.

137. The statements also refer to a Board meeting of DTTDC on 14.02.2018 (which was a public holiday) called at very short notice by A-4 which was chaired by A-4 wherein A-4 stated that the meeting had been convened because TV advertisements had to be released to highlight the achievements of Delhi Government in the previous three years and had to be released by DTTDC at its own cost on which Shri Shurbir Singh, MD, DTTDC informed the Board that due to legal advice taken by DTTDC, the media campaign proposed by the Chairman needed to be examined in light of provisions of Section 182 of the Companies Act, 2013 and he suggested that if required, the opinion of the Law Department may be sought on the subject. However, A-4 insisted that the advertisements should be taken out by DTTDC immediately on which Shri Shurbir

Singh made further suggestions but no consensus was arrived at in the meeting. A perusal of the statement of the petitioner dated 18.04.2018 shows that he had stated that the meeting in the midnight of 19.02.2018 was fixed by the CM (A-3) on the specific subject of difficulties in release of certain TV advertisements related to completion of three years of government in Delhi.

138. It is thus seen from the said statements that in the meeting on 12.02.2018 A-3 was angry with the petitioner due to non-release of the advertisements and used harsh remarks against him and also asked him to give in writing that he was a failure. Further, they show that the petitioner had not raised any objection to the release of the advertisements *per se* but had raised concern about the certification of the content of the advertisements by the Heads of Departments and about the DAVP rates not being accepted by TV channels. However, the petitioner was not a part of the meeting dated 14.02.2018 and in that meeting, the objections were raised by Shri Shurbir Singh, MD, DTTDC and the said meeting remained inconclusive. Looking to the said statements, while it can be said that A-3 was angry over the issue of non-release of advertisements and had stated that the advertisements must come out at any cost the next morning which never happened, there is nothing on the basis of which it can be inferred that on that ground, a conspiracy had been hatched by A-3 and A-4 against the petitioner as part of which he was called for the midnight meeting on 19.02.2018, more so when the petitioner was not even a part of the meeting on 14.02.2018 wherein objections were

raised by Shri Shurbir Singh, as if that were so, then the conspiracy should have been hatched against Shri Shurbir Singh as well who had objected to the issuance of advertisements by DTTDC. Further, the argument that the Ld. Trial Court by not considering para 6 of the judgment of the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** and placing reliance only on para 11 of the said judgment had proceeded to pass the impugned order without appreciating the germane issue involved in the matter is wholly without merit as even though the Ld. Trial Court had not specifically adverted to para 6 of the judgment in **Common Cause** v. **Union of India (supra)**, the issue before the Ld. Trial Court was not whether the concerns expressed by the petitioner regarding the issuance of advertisements were legitimate or not and whether the advertisements could be legitimately issued or not or were sought to be issued in violation of the guidelines laid down by the Hon'ble Supreme Court (about which lengthy arguments were advanced on behalf of the petitioner) but whether the issue of release of advertisements was the basis of conspiracy as alleged by the prosecution for which the midnight meeting was called on 19/20.02.2018 and it cannot be anyone's case that even if the petitioner had wrongly objected to the issuance of advertisements, it gave any right to any person to assault him or intimidate him or threaten him on that ground. The Ld. Trial Court, in the impugned order had observed as under:

"*55. Coming back to the facts of the present case, as discernible from*

the charge-sheet, statements of complainant and witnesses and other documents filed therewith, the then Chief Minister of Delhi (A-3), was very keen for release of proposed TV advertisements upon completion of three years of the Government in Delhi, to highlight the achievements of Delhi Government over the last three years; he had discussed the issue several times with the complainant; on 11.02.2018, Chief Minister sent him a SMS message stating "Are we ready to put up TV ads from 14th Feb.2018? Hope orders have been placed"; on 12.02.2018, Chief Minister called a meeting at his residence to discuss about the TV advertisements issue; the meeting was attended by complainant and various other officials and in the said meeting Chief Minister was very annoyed and angry for non-release of TV ads; he called the complainant as useless and ordered him to ensure that ads should be released by the next day; on 19.02.2018, complainant was informed telephonically at around 8.45 p.m. by Sh. V.K. Jain, the then advisor to the Chief Minister that he had to reach at Chief Minister's residence at 12.00 midnight to discuss with Chief Minister and Deputy Chief Minister, the issue of difficulty in release of certain T.V. advertisements relating to completion of three years of current Government in Delhi; complainant suggested that meeting could be held on 20.02.2018 in the morning, however, it was reiterated by the Advisor to Chief Minister at 9.00 p.m. and again at around 10.00 p.m. that the meeting had been scheduled by Chief Minister at 12 midnight; Prior to that message from Advisor to Chief Minister, the Deputy Chief Minister had also called him at around 6.55 p.m. and informed him that if the matter of release of T.V. advertisement was not resolved by the evening, he should reach Chief Minister residence at 12.00 midnight to discuss the issue and he had already explained to Deputy Chief Minister that any advertisement to be released should not be in contravention of Hon'ble Supreme Court guidelines.

56. So, it is clearly manifested from the complaint of complainant that the then Chief Minister of Delhi (A-3) scheduled a meeting on 19.02.2018 at 12 midnight to discuss the issue of difficulty in release of certain T.V. advertisements relating to completion of three years of current Government in Delhi and about the said meeting, complainant was informed telephonically well in advance by Sh. V.K. Jain, the then advisor to the Chief Minister, during the course of that day. Thus, even as per his own version, complainant, the then Chief Secretary, Government of NCT of Delhi, was well aware about the agenda of that meeting."

It is thus seen that the Ld. Trial Court, in the impugned order had duly considered the fact that as per the complaint of the petitioner, A-3 had scheduled the meeting on 19.02.2018 at 12 midnight to discuss the issue of difficulty in release of certain T.V. advertisements. Further, contrary to the argument on behalf of the petitioner that the Ld. Trial Court had not considered the antecedent events, it is seen that the Ld. Trial Court had duly adverted to the message sent to the petitioner by A-3 on 11.02.2018 and to the meeting dated 12.02.2018 and also to the calls made to the petitioner to attend the meeting at 12 midnight on 19.02.2018. Further, the Ld. Trial Court had also referred to the statements of Ms. Varsha Joshi and Shri Shurbir Singh in paras 69 and 70 of the impugned order.

139. It was argued on behalf of the petitioner that there was perversity in the impugned order as the Ld. Trial Court had observed that the petitioner was informed telephonically well in advance by Shri V.K. Jain during the course of day about the midnight meeting and was also aware of the agenda whereas Shri V.K. Jain had submitted in his statements under Section 164 Cr.P.C. and Section 161 Cr.P.C. that no agenda was drawn up for the midnight meeting and he informed the petitioner only at 08.45 p.m. about the meeting at 12.00 midnight and even the message by the Deputy Chief Minister to the petitioner was given late in the evening. The record shows that as per the case of the petitioner himself as stated in the complaint, he had received a call from the Dy. Chief Minister at around 6.54 p.m. who had informed him that if the

matter of release of TV advertisement was not resolved by the evening, he should reach CM residence at 12.00 midnight to discuss the issue. Thereafter he had received a call from Shri V.K. Jain at around 8.45 p.m. informing him that he had to reach CM's residence at 12.00 midnight to discuss with the Chief Minister and Deputy Chief Minister the issue of difficulty in release of certain TV advertisements relating to completion of three years of current Government in Delhi on which he suggested that the meeting could be held on 20.02.2018 in the morning but it was reiterated by Shri V.K. Jain at 9.00 p.m. and again at around 10.00 p.m. that the meeting had been scheduled by the CM at 12 midnight. As such, at 6.54 p.m., the petitioner had been sounded about the meeting by the Dy. CM (A-4) and further he was informed about the meeting by Shri V.K. Jain at around 8.45 p.m. The Ld. ACMM in the impugned order had observed that "*about the said meeting, complainant was informed telephonically well in advance by Sh. V.K. Jain, the then advisor to the Chief Minister, during the course of that day.*" It is true that it cannot be said that the petitioner was informed during the course of the day about the meeting or well in advance but as repeatedly pointed out by the petitioner and the prosecution in reference to the meetings dated 12.02.2018 and 14.02.2018, it was not unusual to call meetings at short notice. It is also pertinent that stray observations do not make the entire order perverse and the impugned order has to be seen as a whole for whether the view taken therein is correct and possible or not. The same holds true for the observation that "*Thus, even as per his own*

version, complainant, the then Chief Secretary, Government of NCT of Delhi, was well aware about the agenda of that meeting" as though Shri V.K. Jain had stated in his statements that there was no agenda for the meeting, what the Ld. Trial Court observed was that the petitioner, even as per his own version, was well aware about the agenda of that meeting i.e. the meeting was to discuss the issue of release of advertisements according to what was stated by him.

140. It may be mentioned that it was argued on behalf of A-3 and A-4 that the petitioner, at no point, had officially refused the issue of advertisements and there was accordingly no motive for hatching of any conspiracy as claimed by the prosecution; that the petitioner had at no point, reduced his objection to the release of advertisements in writing though the prosecution witnesses themselves had stated that A-3 had instructed that if the petitioner had any complaint or objection, he may reduce the same to writing. It was further submitted on behalf of A-4 that the petitioner had raised an argument that the minutes of meeting dated 14.02.2018 showed that the Chief Secretary/ petitioner had objected to the issue of advertisements but read as a whole, the minutes did not reflect that the Chief Secretary/ petitioner had any opposition to the release of the advertisements as they were contrary to the judgments of the Hon'ble Supreme Court; and even otherwise, the file notings of the Chief Secretary were not part of the charge sheet and the Court could not be asked to speculate as to the contents of the note sheet, when the prosecution had not seen it fit to rely upon them. In rebuttal to the said

contentions, reliance was placed on the statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai recorded under Section 161 Cr.P.C. and it was argued on behalf of the petitioner that the Ld. Trial Court had picked up a portion of the statement and had interpreted the same as per the submissions of the accused persons. It was also submitted that the petitioner sent a note to MD, DTTDC on 12.02.2018 to direct that DTTDC Board would decide/ take further action; the petitioner vide noting dated 13.02.2018 directed MD, DTTDC to take up the matter with Principal Secretary, Finance/ concerned Head of Departments and to decide in the DTTDC Board Meetings which was reflected in the draft minutes of DTTDC Board Meeting which were purposely changed by the Dy. CM on 01.06.2018; and even otherwise the ground that the petitioner did not give a dissent in writing for release of TV advertisements could not be a justification for conspiring to physically assault the petitioner and hence the finding of the Ld. Trial Court was perverse and suffered from material irregularity.

141. In this respect, the Ld. Trial Court in paras 68 to 70 of the impugned order had observed as under:

> *"68. Moreover, whatever was required to be done, with regard to the approval of such alleged publicity programme, could have been done only as per the prescribed procedure, which would certainly consist of requisite paper work, note-putting and processing of files, with final concurrence and approval of the concerned ministry approving the same. Complainant can always express his reservations, if any, regarding advertisement issue, through proper note-putting on his part and send it to the concerned department for further decision in that regard. Certainly, he was not the final authority to give his approval in*

the said matter. The same could be a part of the procedure, which may or may not be acceptable to the concerned ministry, which had final say in the said matter. So, to say, that the Chief Minister (A-3) was entirely dependent upon the complainant regarding issuance of such advertisements and meeting was called to pressurize the complainant to release the TV advertisements, as part of criminal conspiracy, would be to misconstrue and misconceive the entire set of things and the same appears to be completely groundless.

69. Furthermore, Ms. Varsha Joshi, the then Secretary (Power) and Commissioner (Transport), Govt. of NCT of Delhi, who is stated to have attended the meeting at CM residence on 12.02.2018 regarding issue of release of TV advertisements, stated in her statement given u/s 161 Cr.P.C. that the Chief Minister directed the Chief Secretary (Complainant) to ensure that the advertisements come out the next day; he also made some more harsh remarks to the effect that if the Chief Secretary felt that it could not be done, he should give in writing that he cannot do it, that he is a failure as Chief Secretary, and so on.

70. Sh. Shurbir Singh, the then Managing director, DTTDC, Govt. of NCT of Delhi, who also attended the said meeting, stated in his statement u/s 161 Cr.P.C. that Chief Minister directed the Chief Secretary to ensure that the advertisements come out the next day; he also made some more inappropriate remarks that if Chief Secretary cannot do that, he should give the same in writing. Now, if that be so and even the aforesaid two witnesses cited by the prosecution have also stated that in the aforesaid meeting dated 12.02.2018, Chief Minister asked the complainant to ensure that the advertisements come out the next day and if he cannot do that, he should give the same in writing, then complainant could have always expressed his objections to the proposed advertisement campaign through proper noting. However, there is no noting by the complainant in the file on record which demonstrates the complainant's objections to the proposed advertisement campaign. In the background of these facts and circumstances, the plea of the complainant that since he was not agreeing to the directions of the Chief Minister for release of advertisements and it led to hatching of conspiracy to physically assault him, is also not sustainable."

It is thus seen that the Ld. Trial Court had adverted to the statements of Ms. Varsha Joshi and Shri Shurbir Singh at length. No doubt there is merit in the contention of the

Ld. Sr. Counsel for the petitioner that as evident from the statements of Ms. Varsha Joshi and Shri Shurbir Singh, the context and emphasis of the CM was to make the petitioner give in writing that he was a failure and not to give his objections to the release of TV advertisements in writing and that the petitioner did not give a dissent in writing for release of TV advertisements could not be a justification for conspiring to physically assault the petitioner but there is no merit in the contention that on the basis of fallacious interpretation, the Ld. Trial Court gravely erred in holding that since there was no file noting of the petitioner regarding his objections, the plea of the petitioner that his not agreeing to the directions of the CM for release of advertisements led to hatching of conspiracy to physically assault him was not sustainable or that the finding of the Ld. Trial Court was perverse or suffered from material irregularity in this regard. The Ld. Trial Court had observed that if the Chief Minister had asked the petitioner to ensure that the advertisements come out the next day and if he could not do that, he should give the same in writing. It may be mentioned that the Ld. Trial Court had referred to the fact that as per the statements of Ms. Varsha Joshi and Shri Shurbir Singh, the CM had made harsh/ inappropriate remarks against the petitioner, and even if it be that the Chief Minister/ A-3 had asked the petitioner to give in writing that he was a failure and not that he should give his objections to the release of advertisements in writing, the observation that the petitioner could have always expressed his objections to the proposed advertisement campaign through proper noting cannot be regarded as

perverse as it only reflected that it was always open to the petitioner to record his objections to the release of advertisements in writing.

142. The Ld. Trial Court had observed that there was no noting by the petitioner on the file on record which demonstrated the petitioner's objections to the proposed advertisement campaign. The statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai do refer to the objections raised by the petitioner to the release of advertisements but no specific file noting has been produced by the prosecution which would show that the petitioner had noted his objections to the release of advertisements in writing. The Ld. Sr. Counsel for the petitioner had referred to the DTTDC note sheet dated 02.02.2018, order to amend draft minutes of meeting given by A-4 dated 01.06.2018, changed Minutes of Meeting and the earlier Minutes of Meeting, the note to MD, DTTDC on 12.02.2018 by the petitioner to direct that DTTDC Board would decide/ take further action and the noting dated 13.02.2018 by the petitioner directing MD, DTTDC to take up the matter with Principal Secretary, Finance/ concerned Head of Departments and to decide in the DTTDC Board Meetings which was reflected in the draft minutes of DTTDC Board Meeting dated 14.02.2018 but the said note dated 12.02.2018 or the noting dated 13.02.2018 have not been produced on record. Further the Draft Minutes of DTTDC Board Meeting do refer to the noting of the CS dated 12.02.2018 and dated 13.02.2018 as aforesaid and there is also reference to a meeting taken by the CS on the issue on 13.02.2018 wherein it was discussed that directions to

DSIIDC and DTTDC were being issued by the Government to issue advertisements in the main TV news channels and the expenditure for the same was to be booked by the respective Corporations from their internal resources. However, there is nothing in the same to infer that the petitioner had specifically listed his objections to the release of TV advertisements (which were referred to in the statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai) by way of any noting nor has any such noting been produced on record. In fact the said documents reflect that the objections to the issuance of advertisements were raised even by the Secretary, Tourism and MD, DTTDC. In these circumstances, there is nothing perverse in the finding of the Ld. Trial Court that "*in the background of these facts and circumstances, the plea of the complainant that since he was not agreeing to the directions of the Chief Minister for release of advertisements and it led to hatching of conspiracy to physically assault him, is also not sustainable"* as the said finding of the Ld. Trial Court was based on the fact that there was no specific noting listing the objections of the petitioner to the release of advertisements.

143. It may also be mentioned that it was submitted on behalf of the petitioner himself that in the meeting on 12.02.2018, the CM decided that the advertisements be released through State PSUs so there was no occasion or requirement for the petitioner to record his objection in writing, however, if the CM had decided that the advertisements be released through State PSUs (which is also reflected from the meeting of DTTDC being

called at short notice by A-4), the question of hatching conspiracy against the petitioner on the said issue would not then arise, more so as it is seen that in the meeting (which was the last meeting on the issue of release of advertisements before the alleged incident of midnight of 19.02.2018) on 14.02.2018, it was Shri Shurbir Singh who had raised objections to the release of advertisements and the petitioner was not even present.

144. Another factor may also be referred to here and that is while the petitioner had referred to the incidents prior to 12.02.2018, the meetings on 12.02.2018 and on 14.02.2018, there is nothing to the effect that between 15.02.2018 and 18.02.2018, the issue of release of TV advertisements was brought up again. A perusal of the charge-sheet also shows that in the 'results of investigation' it was noted that:

> *"17. As such, as of 14.02.2018, it became clear that the release of TV advertisements was getting stuck in difficulties."*

It is not in dispute that the AAP Government had completed three years in office on 14.02.2018 as noted in the charge sheet and as of 14.02.2018, the release of TV advertisements was getting stuck in difficulties. In these circumstances, if any conspiracy had to be hatched, it should have been done immediately thereafter so as to ensure that the advertisements came out timely and there would have been no occasion to wait till 19.02.2018 for hatching a conspiracy to intimidate and assault the petitioner on the issue of release of TV advertisements. It is further pertinent, as noted in the

charge sheet that on 19.02.2018, the petitioner and the CM attended office and during the course of the day, they had two meetings which related to issues other than the release of TV advertisements and the issue of TV advertisements was not brought up by the CM with the petitioner in any of the said meetings. In fact it was also argued on behalf of the petitioner that A-3 and A-4 had sufficient time during the day on 19.02.2018 to discuss the issue of release of TV advertisements with the petitioner but that was not done and the midnight meeting was scheduled over the said issue. The said events somehow do not fall in line with the allegation of conspiracy as there was no reason why A-3 and A-4 would have kept silent on 15.02.2018, 16.02.2018, 17.02.2018, 18.02.2018 and on 19.02.2018 during the day (when the issue of release of advertisements would be more urgent) and thereafter would hatch a conspiracy in the evening of 19.02.2018 to assault and intimidate the petitioner on the issue of release of TV advertisements at midnight of 19.02.2018, considering that the petitioner had stated that A-4 had called him only at 6.54 p.m. and told him that if the issue of advertisements was not resolved till evening, he should reach the CM residence at midnight to discuss the issue.

145. The Ld. Sr. Counsel for the petitioner had then referred to the events leading up to the meeting and argued that the antecedent events showed criminal conspiracy and clearly pointed to the fact that the petitioner was called for the midnight meeting as part of a criminal conspiracy. In particular, reference was made to several calls being made

to the petitioner to ensure that he was present for the meeting. The petitioner in his complaint had stated about the call from the Dy. CM at 6.55 p.m.; thereafter Shri V.K. Jain called him around 8.45 p.m. to inform him about the meeting and then at 9.00 p.m. and again at 10.00 p.m. to reiterate that the meeting had been scheduled by the CM at 12 midnight and then again around 11.20 p.m. to confirm that he had left for the CM's residence. A perusal of the statement of Shri V.K. Jain under Section 164 Cr.P.C. shows that he had stated that he had received a call from the Dy. CM at around 8.00 p.m. who had told him that the CM had kept a meeting at 12 that night in which the petitioner had to be called; then he called the petitioner at 8.44 p.m. to inform him about the meeting; the petitioner told him that the Dy. CM had already told him about the meeting and he asked Shri V.K. Jain to speak to the Dy. CM to have the meeting the next day on which Shri V.K. Jain called the Dy. CM who stated that the meeting would be held the same day; he then called the petitioner at 9.05 p.m. to inform him about the meeting; at 10.00 p.m. the petitioner called Shri V.K. Jain to tell him that he was coming for the meeting; at around 11.20 p.m. the CM called him to ask if the petitioner was coming for the meeting on which he told the CM that the petitioner was coming for the meeting and then at 11.30 p.m. he confirmed from the petitioner if he had left for the meeting or not who stated that he would reach for the meeting on time. As such the statement of Shri V.K. Jain gives details of the various calls that were exchanged and the same are also detailed in the charge sheet but from the same it cannot be inferred, as was contended

on part of the petitioner that repeated calls were made to the petitioner as A-3 and A-4 were desperate to ensure the presence of the petitioner in the midnight meeting on 19.02.2018 and the sequence of the calls is detailed on record. The sequence of the calls or the so-called repeated calls do not point to any criminal conspiracy, even prima facie, contrary to what was contended on behalf of the petitioner.

146. It was then argued on behalf of the petitioner that at the time A-4 made a call to the petitioner at about 6.54 p.m., he was present at the residence of A-3. However, that by itself cannot be construed to be suspicious as there was nothing unusual for the Dy. CM to be present at the residence of the CM. In fact the petitioner had referred to the schedules of appointment of the CM and the Dy. CM and they show that the CM and the Dy. CM had to go for a wedding at 7.00 p.m. and it is even recorded in the charge sheet that the CM and Dy. CM left the CM residence together (at around 7.15 – 7.30 p.m.) to attend a function. The said issue was also discussed by the Ld. ACMM in the impugned order as under:

> *"71. Another contention raised on behalf of complainant that while Deputy CM made two calls to the complainant, he was at CM residence and the same was also part of conspiracy, is absolutely fallacious and groundless. There is nothing unusual and uncommon for the deputy CM to be present at CM residence. It is further demonstrated from records that as per the schedule of appointments of CM and programme of Deputy CM filed alongwith present charge-sheet, both of them (CM and Dy. CM) were invited to a same wedding reception on 19.02.2018. Hence, such a plea raised on behalf of complainant, making the presence of Deputy CM at CM residence on that day, as part of criminal conspiracy, clearly falls on the ground."*

Clearly there is no perversity or illegality or infirmity in the said finding of the Ld. Trial Court and there is no merit in the contention raised on behalf of the petitioner in this regard.

147. The thrust of arguments on behalf of the petitioner was the timing of the meeting on 19.02.2018 i.e. at midnight. It was argued on behalf of the petitioner that A-3 and A-4 had sufficient time and ample opportunity during the day to discuss any issue with the petitioner as A-3 met the petitioner twice during the day (11.30 a.m. and 12.30 p.m.) in the Secretariat on 19.02.2018 so there was no cogent reason why he was called for a meeting at midnight. It is also recorded in the charge sheet and further borne out by the documents that A-3 had met the petitioner twice during the day. However, that does not imply that an issue could not have been discussed at any other time. It was also submitted that during the meetings in the day, it was never raised that the petitioner would be called for a meeting in the night but there was no illegality in calling a meeting at short notice and even in the past, as demonstrated by the record, meetings had been called at short notice. It was further argued that the petitioner specifically requested Shri V.K. Jain for rescheduling the meeting for the next day i.e. 20.02.2018 and the CM had no engagements before 10 a.m. the next day or after the Cabinet Meeting and it was not that the Chief Minister had no time that day or the next day, hence the meeting could have been rescheduled and a Cabinet meeting was already fixed for the next day at 3.00 p.m. and there was no justification for calling the meeting

at midnight. The same is also borne out by the records that A-3 did not have any appointments in the morning the next day but being the Chief Minister, A-3 was within his right to call a meeting and it cannot be argued that the meeting should have been held the next day only because he had time the next day. It was then submitted that the request of the petitioner was rejected deliberately by the Dy. CM/ CM who as per the records were together at that time. While, as observed above, there was nothing suspicious in A-3 and A-4 being together, it is again borne out by the statements of the petitioner and of Shri V.K. Jain that the request of the petitioner for rescheduling the meeting was not acceded to. However, on that basis, it cannot be said that the request was deliberately rejected or that the meeting was fixed at midnight as part of any conspiracy. Being the Chief Minister, it was the prerogative of A-3 to call a meeting at any time, if he felt that there was need for discussion on any issue. It is also pertinent that as noted in the charge sheet, A-3 and A-4 had come back together at around 10.00 p.m. and there is merit in the contention of the Ld. Counsels for the accused persons that the CM and the Dy. CM could not have been expected to cancel their scheduled appointment to hold the meeting at any earlier time. There is also merit in the argument raised by Ld. Sr. Counsel for A-4 that if the meeting was fixed soon after A-3 and A-4 came back, say at 10.30 p.m. or 11.00 p.m. or 11.30 p.m., would it make it less suspicious compared to the midnight timing as even then the meeting would be beyond the working hours.

148. It was also submitted on behalf of the petitioner that the CM had never in the previous 3 years fixed a meeting at 12 midnight and reference was made to the charge sheet wherein it was noted that during the course of investigation, some accused persons had raised a counter narrative to the effect that the meeting was on an urgent basis and that the meeting between MLAs and officers of the Delhi Government were regularly held at the CM residence at late hours of the night and the material collected during investigation had borne out such claims as false and incorrect. However, as per the case of the petitioner himself, meetings had been fixed outside the working hours and even on holidays and at short notice such as on 12.02.2018 and on 14.02.2018 and as such merely because in the past, a meeting had not been fixed at 12 midnight could be no reason why the meeting could not be fixed at that time, given the schedule of appointments of A-3 and A-4 of 19.02.2018 and there was nothing unusual about it. Even as regards the contention that there was nothing urgent to discuss as there was no discussion during the two meetings during the day on the issue of TV advertisement or even on civil supply issues which demonstrated that there was no urgency for the meeting at midnight and for not agreeing to shift the meeting the next day, it was clearly within the prerogative of the CM and the Dy. CM to decide if and when something needed to be discussed and on that basis, it cannot be said that the timing of the meeting

became suspicious. The Ld. ACMM in the impugned order had considered the said arguments and observed as under:

> *"66. Even otherwise, it was a close door meeting called by Chief Minister, where elected representatives of people were also present apart from complainant. It was not a public meeting, which should have been called only in a daylight. Nothing would have prevented the accused persons to do in a meeting, which would have been called in daylight, which they wanted to do or achieve in a meeting called at midnight. Thus, because meeting was called at 12 midnight by the Chief Minister, does not give rise to the proposition that it was under a pre-planned conspiracy. Hence, plea raised on behalf of complainant that meeting was intentionally scheduled at midnight under a preplanned conspiracy, whereas no such issue was raised during the day time meetings, which he attended with the Chief Minister and Deputy CM, is also not sustainable."*

It was argued on behalf of the petitioner that the entire inference was erroneous as the Ld. Trial Court had not considered that the manner in which and the place at which the meeting was convened showed palpable departure from the usual meetings of the Chief Minister/ Deputy Chief Minister with the petitioner. It was also submitted that the timing of the meeting (despite the fact that the Chief Minister and the Deputy Chief Minister had already met the petitioner during the course of the day on 19.02.2018 itself) showed that the midnight meeting was called (outside of public glare) to assault the petitioner under a conspiracy. However, the inference drawn by the Ld. Trial Court cannot be regarded as erroneous as it is not unusual to work at late hours and even the fact that the petitioner had only requested for rescheduling the meeting to the next day in the morning and had at no point objected specifically to the timing of the meeting

showed that even he did not consider it out of place to have the meeting at midnight. Moreover, as observed by the Ld. Trial Court, there was nothing which would have prevented the accused persons to do in a meeting which would have been called in daylight, what they wanted to do or achieve in a meeting at midnight. It was argued that the meeting was called outside the public glare and that if the meeting had been called earlier, there would have been more staff. However, even as per the case of the prosecution, Shri Vivek Yadav, Shri Bibhav Kumar and Shri V.K. Jain were aware of the meeting and it could not be that A-3 and A-4 were unaware that the petitioner would be accompanied by his driver and PSO and as such there is no merit in this contention and there is no basis for the presumption sought to be drawn that the timing of the meeting itself showed that the midnight meeting was called to assault the petitioner under a conspiracy. It was also argued that midnight time was chosen as no media/ general public /officers were present at that time but they would not have been present even if the meeting was called at 10.00 p.m. or 11.00 p.m.

149. It was then vehemently contended on behalf of the petitioner that A-3 and A-4 called the petitioner for the meeting on the midnight of 19/20.02.2018 at the residence of A-3 without letting him know that 11 selected MLAs were also being called and even Shri V.K. Jain was not informed about the same and their presence was kept a secret from both the petitioner and Shri V.K. Jain with the intention to criminally intimidate, threaten and physically assault the petitioner in a bid to teach him a lesson and force

him to succumb to undertake illegal acts. It was argued that the petitioner was informed that the meeting was only with CM and Dy. CM. A perusal of the statements of the petitioner and of Shri V.K. Jain under Section 164 Cr.P.C. and under Section 161 Cr.P.C. recorded on 22.02.2018 shows that even Shri V.K. Jain was not aware that 11 MLAs would be present at the meeting and he had stated to that effect in his statements and quite clearly the petitioner was not aware of the same. However, from that, no inference can be drawn that the same was done as part of any conspiracy and A-3 was within his right to call anyone for the meeting. It was also asserted on behalf of the petitioner that in furtherance of the conspiracy, the MLAs were summoned on the directions of A-3 so that they could be present one hour prior to the petitioner's midnight meeting with A-3 and A-4. Shri Bibhav Kumar who was the PS to A-3 had stated in his statement under Section 161 Cr.P.C. that A-3 used to decide who all would be present in the meeting; where the meeting would be held and whoever had to be called for meeting was informed telephonically. However, that would be because being the Chief Minister, it was within his power to decide that. He further stated that on 19.02.2018 at time he did not remember, the CM asked him to keep a meeting at his residence at 11.00 p.m. and told him the names of the 11 MLAs to be called (some of the names are mentioned in the statement) which message he conveyed to Vivek Yadav. He had also stated that he had informed A-4 that a meeting had been fixed for 11.00 p.m. on which A-4 stated that he knew about the same.

150. Further, Shri Vivek Yadav in his statement under Section 161 Cr.P.C. had stated that on 19.02.2018 in the evening, PS to CM Bibhav informed him that the CM had asked to keep a meeting at 11.00 p.m. in which some MLAs were to be called. He stated the names of the MLAs whom he informed about the meeting and that he received confirmation from the MLAs and he confirmed to Bibhav about the same. From the statements of Bibhav Kumar and Vivek Yadav, it is evident that A-3 had told the names of the MLAs to be called and further that they were called for a meeting at 11.00 p.m. As per the charge sheet, between 10 p.m. and 11.30 p.m. the 11 MLAs reached the CM residence; Shri V.K. Jain reached the CM residence at around 11.45 p.m. and asked Shri Bibhav Kumar about the venue of the meeting but he was told to sit in the waiting room and he was taken to the meeting room only when the petitioner arrived. However, even if A-3 and A-4 had a meeting with 11 ‘selected’ MLAs one hour prior to the meeting with the petitioner, it cannot lead to any inference that the meeting with the MLAs was to finalize the conspiracy as was alleged as the Chief Minister and the Deputy Chief Minister were within their right to have a meeting with MLAs at any time and in fact, if read with the statements of Shri V.K. Jain that the Chief Minister directed the petitioner to answer the queries of the MLAs, it could be that the meeting was called to discuss the concerns raised by the MLAs as the Chief Minister would know that the MLAs had queries only if they had raised them to him.

151. As regards the arguments on behalf of the petitioner that A-3 and A-4 had not been able to rebut or explain as to why the MLAs were to assemble one hour prior to the midnight meeting of the petitioner or as to why the presence of MLAs was kept secret from the petitioner and Shri V.K. Jain, it is the settled law that at the stage of consideration of charge, the defence of the accused persons is not to be looked at and as such there was no occasion for the accused persons to rebut the allegations made by the prosecution. It was also argued that A-3 and A-4 had failed to explain how and why eleven specific MLAs were chosen for the midnight meeting but again the occasion for the explanation on part of the accused persons has not come as at the stage of consideration of charge, only the material brought forth by the prosecution is to be seen. Even otherwise, the emphasis by the petitioner on 'selected' MLAs seems to be misplaced. No doubt it was A-3 who had told which MLAs were to be called but as per the petitioner himself, only two of the MLAs had a 'colourful past' and not the other 'selected' MLAs. It is further pertinent that even as per the allegations contained in the complaint and the subsequent statements of the petitioner, no specific overt acts have been attributed to all the 11 'selected' MLAs and specific acts were attributed only to Ajay Dutt, Rituraj Govind, Praveen Kumar, Nitin Tyagi and the MLAs with the 'colourful past' Amanatullah Khan and Prakash Jarwal while there was nothing against Rajesh Rishi, Sanjeev Jha, Rajesh Gupta, Madan Lal and Dinesh Mohania and if indeed, they had been selected as part of any conspiracy, they would have discharged some role

during the meeting but there is no specific allegation against them. In fact one of the arguments advanced on behalf of the petitioner (in the note on the alleged perversities in the impugned order) was that the Ld. Trial Court had ignored that the MLAs had no role to play in the midnight meeting but if that were so, there would be no reason to call them one hour prior to the midnight meeting 'to fine tune the conspiracy' as alleged by the petitioner. There is also merit in the contention of Ld. Sr. Counsel for A-4 that would it be less suspicious if all 67 MLAs were called or if only 2 MLAs with the 'colourful' past were called and quite clearly, if the argument of the petitioner is accepted, there would have been no logic in calling 11 MLAs and the alleged purpose could have been served even with 5 or 6 or even 2 MLAs with the 'colourful' past.

152. It was also argued on behalf of the petitioner that none of the eleven MLAs had ever sought time from the petitioner to meet him or had ever written to him on any issue nor had they requested the CM to arrange for a meeting with the petitioner and no communication/ grievance/ representation of any kind related to delivery of ration was ever made by the selected 11 MLAs to the petitioner before the midnight meeting. While that may be so, again no inference can be drawn therefrom that they had been called for a specific purpose i.e. to heckle and assault and intimidate the petitioner on the issue of release of advertisements as part of a conspiracy. The Ld. Sr. Counsel for A-4 had argued that it was a routine meeting which was strongly refuted on behalf of the petitioner. At the same time, the contention raised by the petitioner in this regard is

fallacious as the act of the CM and/ or Dy. CM of calling 11 ‘selected’ MLAs for a meeting cannot by any stretch be termed as illegal or beyond their power and it was for them to decide who would be called for a meeting. Only because 11 MLAs were called, it cannot be said that they were ‘selected MLAs’ so called as part of a conspiracy nor the fact that they were called an hour prior to the meeting with the petitioner would lead to an inference of conspiracy as again it was for the CM to decide whom to call for a meeting at what time. The Ld. Trial Court had also considered the argument raised with regard to 11 specific MLAs being called for the meeting and observed as under:

> *“67. Furthermore, the plea of complainant that specific MLAs were chosen by the Chief Minister and Deputy Chief Minister for the purpose of the meeting at midnight, who had no official role to play in the meeting, is again without any merits. All the persons present there in the meeting were MLAs, who were the elected representatives of people and not criminals, who all had gathered there as per the directions of Chief Minister to attend a meeting, in which even as per the version of prosecution star witness Mr. V.K. Jain, various issues were raised including door step delivery of ration, TV advertisement issues etc. So, referring those MLAs as ‘specific MLAs’ chosen for some ‘specific purpose’, does not make any sense and does not fortify the theory of conspiracy, as portrayed by the prosecution.”*

While the question of what issues were raised during the meeting would be discussed subsequently, there is no infirmity in the said observations of the Ld. ACMM and clearly the theory of conspiracy is not fortified by the presence of 11 MLAs. It may be that 2 of the MLAs have criminal cases against them but on that basis the observation of the Ld. ACMM that “a*ll the persons present there in the meeting were MLAs, who were the elected representatives of people and not criminals, who all had gathered there as*

per the directions of Chief Minister to attend a meeting" cannot be found any fault with, more so as it was undoubtedly a meeting called by the Chief Minister wherein the MLAs were also asked to be present and their presence in the meeting cannot be said to be unnatural.

153. It was then argued on behalf of the petitioner that the MLAs were not part of the Government but of the Legislative Assembly; the Council of Ministers was collectively responsible to the Legislative Assembly as per Article 239 AA which was specifically applicable for GNCTD; Rule 4(2) of the Transaction of Business Rules framed under GNCTD Act made each Minister responsible to his Department; hence the petitioner was not directly responsible to individual MLAs and there was no justification for the CM/ Dy. CM accosting the petitioner with MLAs at midnight meeting to answer their questions. While it may be that the petitioner was not directly responsible to the individual MLAs whereas in the meeting the CM had asked the petitioner to answer the queries of the MLAs as per the statement of Shri V.K. Jain, that itself cannot be the basis for inferring any conspiracy. Being the Chief Secretary, the petitioner was the Head of the bureaucracy in Delhi as was also pointed out by the Ld. Sr. Counsel for the petitioner and he would be responsible for the administration being the administrative head of the State, so there would be no infirmity if the political head called the petitioner to answer the queries of the MLAs, rather than calling individual Secretaries or Heads of Departments and such a purpose cannot be termed as 'illegal' or 'unlawful'

only on the plea that the petitioner was not directly responsible to the individual MLAs.

154. It is then the case of the petitioner and the prosecution that the midnight meeting was called only to assault, intimidate and threaten the petitioner to release the TV advertisements whereas according to the accused persons, a number of issues were raised in the midnight meeting. The Ld. ACMM had dealt with the issue at length and observed that the meeting was called over a number of issues. It was observed as under:

> *"57. Further, as per the version of complainant, upon his arrival at Chief Minister's residence, he met Sh. V.K. Jain, advisor to Chief Minister and thereafter both of them were taken to the front room, where the Chief Minister and Deputy Chief Minister and around 11 MLAs/persons were present; Chief Minister told him that the persons present in the room were MLAs and they had come to ask him about Government's publicity programme on completion of three years; Chief Minister directed him to answer the MLAs and explain the reasons for delay in release of T.V. campaign, to which he explained to them that the officers were bound by the guidelines laid down by Hon'ble Supreme Court and any advertisement to be released must be in consonance with the said guidelines; MLAs started shouting and abused him while blaming him and the bureaucracy for not doing enough for publicity of the government. Thereafter, some of the MLAs present there allegedly committed the offence, assaulted and intimidated the complainant.*
>
> *58. However, even after going through the chronology of aforesaid events, the same by no means suggests for any inference, which can be drawn of any unlawful assembly in prosecution of common unlawful object or any criminal conspiracy, as alleged, being hatched by the accused persons, who were none other than the elected members of Delhi Legislative Assembly including the then Chief Minister and Deputy Chief Minister of Delhi and who all gathered there in the meeting called by the Chief Minister himself, to question the complainant, who was the then Chief Secretary of the Government of NCT of Delhi, the principal bureaucrat, about certain issues. While the complainant alleged that meeting was called for a single agenda i.e. delay in release of advertisements. Whereas, as per Mr. V.K. Jain,*

another star witness of the prosecution, MLAs present there questioned the Chief Secretary (Complainant) on several issues apart from advertisement issue.

59. Be that as it may, from the conduct of all the persons present there and surrounding circumstances, as discernible from the charge-sheet and documents filed therewith including the statement of witnesses, no inference as to any unlawful assembly or any criminal conspiracy, as alleged, can be drawn, much less to infer that accused persons in any manner abetted the commission of any offence, allegedly committed by some of the accused present there, upon response given by the complainant to the questions put to him. There is also no material available on record to infer that the alleged act of assault and intimidation by some of the accused persons present there was done in furtherance of common intention of all present there or that there was any pre-arranged plan or prior meeting of minds or prior concert amongst the accused persons present there.

60. At this stage, it is also worthwhile to mention here that whereas, the complainant stated in his complaint that CM (A-3) told him that the persons present in the room were MLAs and they had come to ask him about Government's publicity programme on completion of three years and then CM directed him to answer the MLAs and explain the reasons for delay in release of T.V. campaign. Whereas, Mr. V.K. Jain, star witness for prosecution, stated in his statement u/s 164 Cr. P.C. that CM told him that MLAs wanted to talk to him and thereafter, 4-5 MLAs started questioning the Chief Secretary (complainant) on the topics of advertisements on completion of 3 years of Government, door step delivery of ration, slow processing of files and funds release. Hence, in sharp contrast of version of complainant that he was only asked about the advertisement issues in the meeting, as per the statement of Mr. V.K. Jain, there were many issues as aforesaid raised by the MLAs present there, apart from the issue of advertisements. This itself hits against the very genesis and foundation of alleged unlawful assembly, criminal conspiracy or sharing of common intention by all present there. It also prima facie negates the plea of complainant that meeting was called to discuss the issue relating to the advertisements only."

Thus, the Ld. Trial Court had referred to the fact that as per the version of the petitioner, the CM/ A-3 had told him that the MLAs *"had come to ask him about Government's publicity programme on completion of three years; Chief Minister directed him to*

answer the MLAs and explain the reasons for delay in release of T.V. campaign" but as per the version of Shri V.K. Jain, other issues were also raised and then it came to a finding that the plea of the complainant/ petitioner that the meeting was called to discuss the issue relating to the advertisements only was prima facie negated. The Ld. Trial Court had referred to the statements of Shri V.K. Jain who was cited as a prosecution witness and in his statement dated 21.02.2018, he had stated about the MLAs asking the petitioner about Door Step Delivery of Ration, Advertisement Fund Release and slow processing of files; in his statement under Section 164 Cr.P.C. as well he had stated about the MLAs asking the petitioner about advertisements on completion of 3 years of Government, Door Step Delivery of Ration, slow processing of files and funds release and in his statement under Section 161 Cr.P.C. dated 22.02.2018 as well, he had stated that from the beginning of the meeting, the MLAs had in their own way started talking about different topics such as Door Step Delivery of Ration, release of Advertisement Funds and slow processing of files in the Government. Thus, Shri V.K. Jain had in all his statements been consistent that issues other than advertisements were also raised.

155. It was argued on behalf of the petitioner that the statements of Shri V.K. Jain could not be used to contradict or trump the statement of the petitioner who was an injured witness and the complainant. It is true that the statement of the complainant/ injured witness holds greater weight than other witnesses, if found to be consistent but it

cannot also be the case that the statements of Shri V.K. Jain should be ignored and only the statement of the petitioner should be considered as it is pertinent that Shri V.K. Jain had been joined as a witness by the investigating agency and the prosecution itself and several statements of his were recorded. It cannot also be that only selective portions of the statement of Shri V.K. Jain which favour the case of the prosecution should be looked at ignoring the remaining part of the statements. Further, it is not a case of finding inconsistencies in the statements given by the petitioner and Shri V.K. Jain or trumping one statement with another and the moot point is that the Court has to take a prima facie view on the basis of the entire material on record and not just based on the statements made by the complainant or one witness while discarding the statements of another prosecution witness recorded by the IO. Moreover, even as per the statements of Shri V.K. Jain, it is not that the issue of advertisements was not raised but that in addition, other issues were also raised.

156. It may be mentioned that the petitioner in all his statements had only stated about the issue of advertisements being raised in the meeting of 19/20.02.2018 and had also given a detailed statement dated 18.04.2018 wherein he had stated that the meeting in the midnight of 19.02.2018 was fixed by the CM on the specific subject of difficulties in release of certain TV advertisements related to completion of three years of the government in Delhi and had also stated that the statement given by Dy. CM and other functionaries/ MLAs that the meeting was fixed to discuss the issue of Civil supplies

was done purposely and in conspiracy and to mislead the public. Various reasons were given by him why the issue of civil supplies could not have been raised. There is merit in the contention of the Ld. Sr. Counsel for the petitioner that neither the Ministers nor Secretaries of the concerned departments were called for the meeting though they were responsible for their respective Departments (as per the Transaction of Business Rules for GNCTD) nor the files were called for by the Chief Minister and the Dy. Chief Minister, if other issues were to be discussed and even the Secretaries or officers responsible to explain the issue of advertisements were not called but on that basis, the statements of Shri V.K. Jain that other issues were also raised cannot be ignored, nor any inference can be drawn that other issues were not raised as even in relation to the issue of advertisements, neither the concerned Secretaries nor the MD of DTTDC nor the relevant files were called for. Moreover, the petitioner was the Chief Secretary and the chief functionary of the State and would be answerable for the work of the State administration and there was no infirmity in the CM calling him to answer the queries of the MLAs.

157. It was then argued on behalf of the petitioner that if the MLAs were called for discussion on a number of issues, why no agenda was circulated but that would not lead to any inference that only the issue of advertisements was raised as even for a discussion on the advertisements, no agenda was circulated. In fact, as per the case of the petitioner himself, there was no fixed agenda of the meeting for which the petitioner

had relied on the statements of Shri V.K. Jain who had stated that there was no fixed agenda of the meeting but in the absence of any agenda, it cannot be said that other issues could not have been raised by the MLAs as per their concerns. It may be mentioned that it was also argued on behalf of the petitioner that if it was an official meeting, then there should have been an agenda note which would be circulated and which would have been informed to the petitioner and the meeting should have been reflected in the appointment schedule of A-3 and A-4 as also of the petitioner and the appointment schedules were also referred to, so the calling of the meeting at midnight was not an innocent circumstance. However, this contention is groundless as it is the undisputed case that the meeting was called at a short notice, yet it cannot be said that merely because the meeting was called at short notice or there was no agenda note, there was any illegality in calling the meeting, once it was called by the Chief Minister wherein the Deputy Chief Minister and elected representatives of people were present who questioned the petitioner on several issues as per the statements of Shri V.K. Jain.

158. It was also argued on behalf of the petitioner that the Section 164 Cr.P.C. statement of Shri P.R. Jha (Joint Secretary to CM) and the statement of Shri Ramvir Singh (OSD of the petitioner) and PSO Satbir Singh specifically stated that the meeting was called on the issue of release of TV advertisements and corroborated what the petitioner had stated. As per the statement of Shri Pravesh Ranjan Jha recorded under Section 164 Cr.P.C., on 19.02.2018, he had got a call in the evening from Shri V.K. Jain

directing him to inform the Chief Secretary that the Chief Minister shall chair a meeting at his residence at 12 midnight on which he asked Shri V.K. Jain that what should he inform the Chief Secretary if he enquired about the agenda of the meeting on which Shri V.K. Jain informed him that the meeting had been called to discuss some pending media advertisement issues. However, Shri V.K. Jain himself had not stated about informing Shri P.R. Jha about the same, though in the statement dated 21.02.2018, Shri V.K. Jain had stated about exchange of calls with Shri P.R. Jha. Shri Ramvir Singh in his statement dated 02.04.2018 had stated that the petitioner had told him that around 8.45 p.m. Shri V.K. Jain had told him on phone that the CM had called a meeting at his home at 12 in relation to TV advertisement on completion of three years of the government. However, this was what was told by the petitioner to him according to his statement. PSO Satbir Singh in his statement under Section 161 Cr.P.C. dated 03.04.2018 had stated that while leaving from the Secretariat for the residence of the petitioner, in the car, the petitioner had told him that the CM had called for a meeting at his residence at 12 and that the meeting was regarding TV advertisement. However, it is seen that what the latter two witnesses have stated is as per what was told to them by the petitioner and the petitioner's own case is that the meeting was called on the issue of release of advertisements and what Shri P.R. Jha had stated was not stated even by Shri V.K. Jain. Even otherwise, on the basis of the statements of the said three witnesses, no inference could be drawn that no other issues were raised in the meeting as they were not even

present in the meeting so they could not be in a position to say what issues were raised in the meeting.

159. It was argued on behalf of the petitioner that in the complaints under SC/ST Act filed by A-2 and A-8 on the next day of the incident, they had stated that the meeting was on the ration issue which contradicted the arguments of the accused persons that the meeting was called to discuss a number of issues. However, Shri V.K. Jain had stated about the issue of door step delivery of ration being raised besides other issues. Further, the question is not of arguments raised by accused persons or by the petitioner but what the record shows and as per the statements of Shri V.K. Jain, issues other than advertisements were also raised and Shri V.K. Jain had been consistent in all his statements regarding the same. It was also contended on behalf of the petitioner that there was no reason why the MLAs would want to discuss issues with the petitioner at midnight at the residence of the CM especially when the petitioner was called alone, not accompanied by Secretaries, without any knowledge of presence of MLAs or the agenda they may like to discuss. However, the said argument is more in the nature of surmises and conjectures and the statements of Shri V.K. Jain are there on record as per which several issues were raised by the MLAs and the contention raised on behalf of the petitioner that the accused persons were falsely stating that the meeting at midnight was called on a number of issues and that the facts and conduct of the accused persons reflected a conspiracy to deceive the petitioner into coming for the midnight meeting to

assault him and to coerce him to do unlawful acts is groundless as it is not what the accused persons said which is to be considered but what the prosecution has brought on record. The point for consideration in fact is that even if the petitioner had known that 11 MLAs would also be present in the meeting, could or would he have refused to attend the meeting called by the CM and Dy. CM more so as it is the case of the petitioner himself that he was discharging his official duties and in those circumstances, the argument that he was tricked or deceived into coming for the meeting is baseless. Further, even if the contention of the petitioner is accepted that the meeting was called only over the issue of advertisements, the question that arises is whether it can lead to an inference, even prima facie that the accused persons had hatched a conspiracy to pressurize the petitioner on the issue of advertisements in the meeting. The answer to that has to be in the negative as there is nothing on record which would suggest the same looking to the antecedent events and the other circumstances to which the Ld. Sr. Counsel for the petitioner himself had adverted to at length.

160. Another contention raised on behalf of the petitioner was that the meeting was deliberately called in a small room with no CCTV camera. Shri Bibhav Kumar had stated in his statement under Section 161 Cr.P.C. that the CM had only stated that the meeting would be held in the drawing room in which 11 MLAs were called as also the petitioner. As such it was A-3 who had decided the venue of the meeting but that would be his prerogative being the Chief Minister. Reference was made on behalf of the

petitioner to the statement of Shri P.R. Jha. Shri Pravesh Ranjan Jha in his statement under Section 164 Cr.P.C. had stated that the meetings which were called in CM Residence were mostly held in the Camp Office (POTA Cabin/ Meeting Hall) and it was rare that any meeting with more than 5 to 6 participants was convened in the drawing room of the Hon'ble Chief Minister. In his statement under Section 161 Cr.P.C. recorded on 01.03.2018 as well, he had stated that the official meetings, whenever convened at CM Residence were mostly held in the Camp Office (Porta Cabin/ Meeting Hall). Rarely, he had seen any meeting being held in the drawing room of the CM when the number of the participants was more than 5 to 6. He had also stated that the meetings involving issues of MLAs, whenever held at CM Residence, were mostly convened in the Camp Office (Porta Cabin) and to cover the proceedings in the camp office, CCTV cameras had been installed. Thus, Shri Pravesh Ranjan Jha had stated that official meetings or meetings involving issues of MLAs and meetings in which the number of participants was more than 5 to 6, whenever convened at CM residence were mostly held in the Camp Office where CCTV cameras were installed. It is pertinent that he had stated that rarely he had seen any meeting being held in the drawing room of the CM when the number of the participants was more than 5 to 6, however, he had not stated that he had never seen any such meeting being held in the drawing room of the residence of the CM.

161. In the meeting in question, the number of participants was 15 as per the case of the prosecution and it is the case of the prosecution that the said venue was chosen as it was not covered by CCTV cameras. However, as per the statements of Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai, a meeting was held in the same room on 12.02.2018 on the issue of advertisements. No doubt, the number of participants in that meeting was only 5-6 as pointed out by the Ld. Sr. Counsel for the petitioner whereas in the midnight meeting on 19.02.2108, there were 15 participants but it is not the case that the meeting could not have been held in the drawing room. Thus, on reading the statements of the witnesses, it is clear that official meetings had been held in the drawing room in the past though rarely if the number of participants was more than 5 to 6. But again on that basis, it cannot be said that the meeting on 19.02.2018 was deliberately held in that room as part of any conspiracy or as the room did not have CCTVs as then even when the meeting of 12.02.2018 was called in the same room, there were no CCTVs and no oblique motive had been attached to holding that meeting in the absence of CCTVs. The Ld. Trial Court in the impugned order had duly considered the said aspect and observed as under:

> *"64. Furthermore, as per the prosecution case, the said meeting, deliberately and under pre-planned conspiracy, was held in the drawing room at CM's residence, where no CCTV cameras were installed so as to avoid having any CCTV coverage of the incident. However, the said theory of prosecution also holds no ground. As per the supplementary statement of complainant dated 18.04.2018, he also attended a meeting in the same room on 12.02.2018, where he was later allegedly assaulted in the night of 19.02.2018. Hence, it is clear that it*

> *was not uncommon to hold the meetings in the said room at Chief Minister's residence, where the alleged incident took place and it cannot be inferred that meeting at that place was deliberately held in conspiracy of accused persons to assault and intimidate the complainant."*

Thus, the Ld. ACMM had held that it could not be inferred that the meeting was held in that room deliberately in conspiracy of the accused persons to assault and intimidate the petitioner and there is no infirmity in the said finding. It was argued on behalf of the petitioner that there were around 15 participants for the midnight meeting, still the drawing room was used, thus the Ld. Trial Court instead of prima facie believing the story of the petitioner had tried to find discrepancy in the case of the prosecution. No doubt there were around 15 participants in the midnight meeting but it is also not anyone's case that there was not enough space to accommodate everyone. Merely on the basis of the statement of Shri Pravesh Ranjan Jha that he had 'rarely' seen any meeting being held in the drawing room of the CM when the number of the participants was more than 5 to 6 when he had not even stated that he had not ever seen any such meeting in the drawing room of the CM, an adverse inference cannot be drawn that the meeting was held in the said room as part of any conspiracy nor it amounts to trying to find any discrepancy in the case of the prosecution.

162. It was also argued on behalf of the petitioner that there was no logic in having so many persons in one room if the intention was not bad but that argument could be taken

even if the room was bigger. It was submitted that there was no dearth of rooms in the residence of Chief Minister, so the location was suspicious and there was even no CCTV camera but as observed above, it was not the case that a meeting was never held in the same room. It was then contended that a meeting in a large room and the Secretariat would have meant more staff, security and other persons being present and even at midnight would have been too risky making the conduct of physical assault risky but that argument is neither here nor there and even in the present case, no staff was present in the meeting room at the time of the midnight meeting. Besides the PSO and driver of the petitioner were present outside and Shri V.K. Jain was also there as also Shri Bibhav (though not in the meeting room) so there is no merit in this contention. As regards the contention that the petitioner would not have come for the meeting at an unknown place especially at midnight or that the residence of the Chief Minister was chosen by design to avoid any suspicion or alarm in the mind, the said argument falls flat on its face as even as per the complaint, the petitioner was discharging his official duties and if he knew that A-3, A-4 and Shri V.K. Jain would be present as contended by the petitioner himself, there perhaps would have been no reason for him to be suspicious of even an unknown place and again it was not unusual to have the meetings at the residence of A-3 who also had his camp office there.

163. It was then contended on behalf of the petitioner that as part of the conspiracy, he was made to sit on the sofa between A-1 and A-2 who had a ‘colourful’ past. Reference

was made to the statements of the petitioner and Shri V.K. Jain in this regard. In the complaint, the petitioner had stated that he was made to sit in between Shri Amanatullah Khan and another person/ MLA on a three-seater sofa and in his statement dated 20.02.2018 recorded under Section 161 Cr.P.C., he had identified the other person/ MLA as Prakash Jarwal and had stated that these two were sitting by his both sides and had assaulted him and intimidated him in conspiracy with others. Shri V.K. Jain in his statement recorded on 21.02.2018 had stated that in the meeting room, the petitioner sat between Shri Amanatullah Khan and Shri Prakash Jarwal on the sofa; in his statement recorded on 22.02.2018 under Section 161 Cr.P.C. he had stated that A-1 and A-2 asked the petitioner to sit between them on the sofa and the petitioner sat between them; and in his statement under Section 164 Cr.P.C., he stated that the petitioner sat on the sofa between A-1 and A-2. As such, the petitioner had stated that he was made to sit between A-1 and A-2 though he did not know the name of A-2 then and had identified him later but he had not even stated as to who had specifically asked him to sit between them. Shri V.K. Jain had in the statement dated 22.02.2018 stated that A-1 and A-2 asked the petitioner to sit between them on the sofa whereas in the statements dated 21.02.108 and under Section 164 Cr.P.C. he stated that the petitioner sat between A-1 and A-2 on the sofa.

164. It was argued on behalf of the petitioner that Shri V.K. Jain never stated that the petitioner sat voluntarily between A-1 and A-2 and that the Ld. Trial Court failed to

notice that A-1 and A-2 were involved in a number of criminal cases and that as part of the conspiracy, proper seating arrangement was purposely not made by the CM/ Dy. CM for the petitioner to be seated and he was thereafter made to sit between A-1 and A-2. However, there is nothing in the latter two statements of Shri V.K. Jain to suggest that the petitioner was asked by anyone to sit between A-1 and A-2. Even otherwise, if A-1 and A-2 had asked the petitioner to sit between them, they have already been charged by the Ld. Trial Court and on that basis, it cannot be inferred that the petitioner was made to sit between A-1 and A-2 as part of any conspiracy hatched by all the accused persons. It was argued on behalf of the petitioner that the number of seats in the room was kept limited and only one seat was available for the petitioner on the three seater sofa between A-1 and A-2 and no separate chair was arranged for the petitioner, even though the same was required as per practice and propriety. However, it is significant that as per the statements of Shri V.K. Jain, there was another seat available next to MLA Rajesh Gupta on which Shri V.K. Jain sat and as such it is seen that there were enough seats available for all, though when Shri V.K. Jain and the petitioner entered the room, only two seats were available, one of which was occupied by the petitioner and one by Shri V.K. Jain. The Ld. ACMM in the impugned order, had in this regard observed as under:

> *"63. Moreover, prosecution star witness Mr. V.K. Jain, in his statement u/s 164 Cr. P.C. dated 22.02.2018 and statement u/s 161 Cr. P.C. dated 21.02.2018, stated that in the meeting room, Chief Secretary (complainant) sat on a sofa in between accused Amanatullah Khan and Prakash Jarwal. Whereas, in his statement u/s 161 Cr.P.C. given on*

> *22.02.2018, Mr. V.K. Jain stated that Amanatullah Khan and Prakash Jarwal asked the Chief Secretary to sit on the sofa in between them. It is well settled that statement given under section 164 Cr.P.C. before the Magistrate stands on higher pedestal than the statement made u/s 161 Cr. PC. given to the police. If that be so, then from the aforesaid circumstance, it can fairly be inferred that complainant sat on the sofa in between accused Amanatullah Khan and Prakash Jarwal, without being insisted or forced by anyone. Thus, the very allegation that complainant, under a pre-planned conspiracy, was made to sit on the sofa in between accused Amanatullah Khan and Prakash Jarwal, in order to assault and intimidate him, does not survive."*

It is true that in the impugned order, the Ld. ACMM had given weightage to the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. to hold that it could be fairly inferred that the petitioner sat on the sofa in between accused Amanatullah Khan and Prakash Jarwal, without being insisted or forced by anyone but that is as per the well settled law that the statement under Section 164 Cr.P.C. carries more weightage than the statement recorded under Section 161 Cr.P.C. as held in **Sunny Maan** v. **State (supra)** and **Satpal** v. **State of NCT of Delhi (supra).** Even otherwise, there was no reason to disbelieve the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. It was also contended on behalf of the petitioner that at the stage of charge, it was not permissible for the Ld. Trial Court to sift the evidence or to dissect, to read/ add meaning to the statement of Shri V.K. Jain dated 22.02.2018 recorded under Section 164 Cr.P.C. as had been erroneously done and the conclusion of the Ld. Trial Court was contrary to the record, however there is nothing to show that the Ld. Trial Court had read or added meaning to the statement of Shri V.K. Jain under Section 164 Cr.P.C. and in fact the petitioner by arguing that Shri V.K. Jain had not stated that the petitioner sat

voluntarily between A-1 and A-2 is trying to get the Court to add words or meaning to the statement of Shri V.K. Jain which was not as per the plain words of his statement.

165. It was further argued that even if the petitioner sat voluntarily between A-1 and A-2 (even for the sake of arguments), it could not be a circumstance against the victim himself as he could not have sat there to be assaulted by the accused persons. That is true but there is nothing to suggest that the said issue was dealt with by the Ld. Trial Court as a circumstance against the victim himself and the Ld. Trial Court was only dealing with a contention raised by the prosecution. Even otherwise, whether the petitioner was made to sit between A-1 and A-2 or he sat voluntarily between them would not lead to any inference that it was done out of conspiracy and as observed above, even if the petitioner was asked by A-1 and A-2 to sit between them, it not being the case of the petitioner that it was someone else who had asked him to sit between them, they have already been directed to be charged by the Ld. Trial Court and no inference of any criminal conspiracy can be drawn therefrom. The argument on behalf of the petitioner that the observations of the Ld. ACMM in para 63 of the impugned order were perverse on this account are also accordingly without any merit.

166. The Ld. Sr. Counsel for the petitioner had argued that the subsequent events also pointed to conspiracy. On the other hand the Ld. Counsels for the accused persons had referred to the statement that some of the MLAs had greeted the petitioner and argued

that the same was not in consonance with the alleged conspiracy. In his statement recorded under Section 161 Cr.P.C., Shri V.K. Jain had stated that some MLAs had greeted the Chief Secretary when he came and clearly the same would not be if they had been part of the meeting at 11.00 p.m. where the conspiracy was 'fine tuned'. The Ld. Trial Court had also adverted to this aspect and observed as under:

> *"72. Moreover, the circumstances and conduct of the accused persons, which is manifested from the material on record itself, even during and after the occurrence is also very relevant to be considered so as to decide about their complicity, if any in the commission of offence as alleged. As per the statement of prosecution star witness Mr. V.K. Jain recorded u/s 161 Cr. P.C. on 22.02.2018, some of the MLAs greeted the Chief Secretary (complainant) upon his arrival (in the meeting)."*

As such, some of the MLAs had greeted the petitioner upon his arrival and the said statement has not been controverted by the prosecution or the petitioner in any manner.

167. As per the case of the prosecution, the petitioner was thereafter assaulted and the petitioner had stated about the same in the complaint and his statements. Shri V.K. Jain in his statement recorded on 21.0.2018 had stated that the CM had started the meeting and told the CS that the MLAs had come and they had some problems/ issues about which they wanted to talk to him on which 4-5 MLAs together started questioning the CS and during that time Shri V.K. Jain went to the washroom and when he came back, the CS was leaving and the CM told him that the meeting was over and he could also leave. He had also stated that he had gone to the washroom for some time and he could not say what had happened during that time. In his statement under Section 164 Cr.P.C.

Shri V.K. Jain had stated that as there was no fixed agenda for the meeting and he felt that no minutes were to be drawn, he felt that he had no role in the meeting so he went to the washroom. When he came back, he saw that two MLAs A-1 and A-2 were standing and asking the petitioner who was sitting something by touching, pushing and putting hands on the chin of the petitioner and asking him as to why he did not work; in the incident, the spectacles of the CS fell; the CM asked the two MLAs not to do the same; the CS picked up his spectacles and told the CM that he wanted to leave and the CM gave him permission to leave and then the CS left from there. In his statement under Section 161 Cr.P.C. recorded on 22.02.2018, Shri V.K. Jain had stated that he did not know about the agenda of the meeting, he also did not know that MLAs would come for the meeting and as there was no prefixed agenda of the meeting and the minutes of the meeting were not be drawn up, he had no role in the meeting and he went to the washroom; when he came back from the washroom, he saw that A-1 and A-2 were standing and had surrounded the CS who was sitting and were assaulting him physically; the spectacles of the CS fell; the CS picked up his spectacles and left the room somehow saving himself. Thus, in his first statement which was recorded, Shri V.K. Jain had not stated about witnessing the assault whereas in his two subsequent statements, he had stated about the same, however it has come out in all his statements that he was not present when the assault had started so his statements do not throw any light on the point at which the alleged assault started. Even otherwise, at this stage,

there is no specific dispute to the finding that the petitioner was allegedly assaulted by A-1 and A-2 for which they have been directed to be charged by the Ld. Trial Court.

168. It is the contention of the accused persons that even as per the case of the prosecution and the petitioner, the alleged attack on the petitioner was sudden which was reflected from the word 'suddenly' used in the FIR. Per contra, it was argued on behalf of the petitioner that the petitioner is a career bureaucrat with over 35 years' experience and it was the first and the only incident of this kind in his life; the statement that the attack was 'sudden' reflected his state of mind and shock post the criminal intimidation and physical assault by the respondents/ accused persons and the use of the said word could not be used to claim that there was no conspiracy. It was also contended that nobody disclosed ill-motive in advance and that reading meaning into the use of word 'sudden' by the petitioner in the FIR without opportunity to the petitioner to explain what he meant by the Ld. Trial Court was erroneous and had led to perverse findings. It was asserted that the material was on record which showed criminal conspiracy and one word out of the statement could not be read out of context and Shri V.K. Jain had only corroborated what the petitioner had stated. As observed above, the statements of Shri V.K. Jain recorded under Section 164 Cr.P.C. and under Section 161 Cr.P.C. on 22.02.2018 do speak about physical assault on the petitioner by A-1 and A-2 but Shri V.K. Jain was not present when the assault had started.

169. As regards the statements of the petitioner in this regard, in the complaint, the petitioner had stated about the MLAs shouting at him and abusing him and also threatening him; "*then suddenly Shri Amanatullah Khan, MLA and the person/ MLA on my left side, whom I can identify, without any provocation from my side, started hitting and assaulting me and hit several blows with fists on my head and temple. My spectacles fell on the ground. I was in a state of shock. With difficulty, I was able to leave the room and get into my official car and left CM residence. At no stage did I retaliate or provoke any person in the room despite confinement, criminal intimidation by extending threat to my life and assault by several MLAs while I was discharging my official duties*." In his statement under Section 161 Cr.P.C. recorded on 20.02.2018, the petitioner had stated "*Upon repeated message of CM conveyed by Mr. V.K. Jain, Advisor to CM, I reached CM residence at about 12.00 midnight and immediately thereafter within about 5 minutes, incident happened with me. Due to the said incident, I was in state of extreme shock and I could not give the names of other MLAs involved in the incident in my complaint....MLA Amanatullah and Prakash Jarwal who were sitting by my both sides, had assaulted me and intimidated me in conspiracy with others...They have assaulted and intimidated me in such a manner that anything could have happened, including death had my good fortune not helped me... Such sort of demeaning and intimidating incident had never happened to me in my life.*"

170. It is thus seen that in the complaint on the basis of which the FIR was registered, the petitioner had used the words "*then suddenly Shri Amanatullah Khan, MLA and the person/ MLA on my left side, whom I can identify, without any provocation from my side, started hitting and assaulting me and hit several blows with fists on my head and temple*". No doubt, the petitioner being the Chief Secretary could not have expected that such an incident would take place with him and he had also stated about being in extreme shock which was natural, more so as stated by him that such sort of demeaning and intimidating incident had never happened to him in his life and as argued, it was the first and only incident of the said kind in his life, however, the clear words used in the complaint cannot be given a different interpretation as has now been sought to be contended on behalf of the petitioner and the word 'suddenly' used cannot be discarded on the specious plea that it merely reflected his state of mind and shock post the criminal intimidation and physical assault by the respondents/ accused persons. This is all the more relevant as it is not the case that the complaint was made immediately after the incident but was made after almost 12 hours of the alleged incident and a senior bureaucrat of the rank of the petitioner would clearly know the meaning and import of the words used by him in the complaint. As such, there is also no merit in the argument that reading meaning into the use of word 'suddenly' by the petitioner in the FIR without opportunity to the petitioner to explain what he meant by the Ld. Trial Court was erroneous and had led to perverse finding.

171. It was then argued that for the petitioner, the assault was sudden whereas it was in fact preplanned and pre-scripted for all the accused persons and sudden had to be seen from the perspective of the victim and the petitioner had quite clearly not gone there to be assaulted so for him the assault would be sudden but again the said argument does not hold water considering that the complaint was made after almost 12 hours of the incident, when the petitioner already had time to think over what had happened and it cannot be that only such an interpretation be given to the words used in the complaint which would be suitable to the case of the prosecution discarding its plain meaning. It is true that one word out of the statement cannot be read out of context but even seen in light of the material that has been brought on record by the prosecution, there can be no other interpretation of the word. The Ld. ACMM in the impugned order had dealt with the said aspect as under:

> *"78. Even, complainant stated in his first complaint that suddenly two MLAs, sitting on a sofa with him, without any provocation from his side, started hitting and assaulting him and hit several blows with fists on his head and temple and his spectacles fell on the ground.*
>
> *79. From the aforesaid circumstances and material available on record including the statement of prosecution witness Mr. V.K. Jain recorded u/s 164 Cr. PC, it appears that the alleged incident with the complainant happened suddenly, after some of the MLAs started questioning him over some issues and in the spur of the moment, two of the aforesaid MLAs allegedly assaulted and hit him, without any conspiracy, prior meeting of minds or pre-meditation amongst the accused persons present there."*

Quite clearly, there is nothing perverse in the said finding of the Ld. Trial Court which is as per the material on record and the complaint of the petitioner. When the assault, as per the complaint had taken place 'suddenly', it could not be said to be pursuant to any criminal conspiracy or common intention or prior concert.

172. The Ld. Sr. Counsel for the petitioner had then contended that the Ld. Trial Court had failed to consider that in terms of Section 8 of Evidence Act, both prior and subsequent conduct of the accused persons was relevant. Section 8 of the Evidence Act in so far as is material, reads as under:

> *"**8. Motive, preparation and previous or subsequent conduct.**- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*
>
> *The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."*

It is seen that the Ld. Trial Court, in the impugned order had duly referred to the antecedent events and the prior conduct of the accused. As regards the subsequent conduct of the accused persons, it was argued that there was nothing to show that A-3 and A-4 had tried to restrain the MLAs or took any positive action to prevent the assault. Per contra, the Ld. Counsels for the accused persons had argued that the statement of Shri V.K. Jain that A-3 had stopped the MLAs from assaulting showed that

there was no meeting of mind and once A-3 had intervened, there was no occasion for the others to intervene. A perusal of the record shows that the petitioner in his complaint had stated that with difficulty, he was able to leave the room and get into his official car and leave the CM residence. He had not stated anything about anyone trying to stop the assault or whatever happened nor even about taking permission from the CM to leave the room. Even in his further statements dated 20.02.2018 and 18.0.4.2018, he had not stated about anyone trying to restrain the MLAs from what they were doing while in his statement dated 25.04.2018, he had stated that the Ld. CM and Dy. CM did not intervene. Shri V.K. Jain in his first statement dated 21.02.2018 had not stated about witnessing the assault and had only stated that when he came back from the washroom, the CS was leaving from the meeting and the CM told Shri V.K. Jain that the meeting was over and he could leave. However, in his statement recorded under Section 164 Cr.P.C. in which he had stated about witnessing the assault, he had also stated that the Chief Minister (A-3) told both the MLAs (A-1 and A-2) not to do so. He further stated that the Chief Secretary picked up his spectacles and told the Chief Minister that he wanted to leave on which the Chief Minister gave him permission to leave whereafter the Chief Secretary left from there and Shri V.K. Jain also left. In his statement recorded under Section 161 Cr.P.C. on 22.02.2018, Shri V.K. Jain had stated about witnessing the assault but he did not state about the CM restraining the MLAs from doing what they were doing or about the petitioner seeking or being given permission to leave the room.

The Ld. Sr. Counsel for the petitioner had referred to the statement of Shri V.K. Jain dated 22.02.2018 wherein he had stated about witnessing the assault but he had not stated that anyone had tried to stop the MLAs or that the Chief Minister restrained or stopped the assailants but it is seen that in his statement under Section 164 Cr.P.C., Shri V.K. Jain had stated that A-3 had restrained the MLAs from doing so and had given permission to the petitioner to leave the room.

173. It was contended on behalf of the petitioner that the self-contradictory statements of Shri V.K. Jain could not be relied upon at this stage to disbelieve the statements of the petitioner, who was an injured eye-witness. However, there is also no reason to disbelieve the statements of Shri V.K. Jain who was present in the meeting and had been cited by the prosecution itself as an independent witness. Moreover, it is not a case of using the statements of Shri V.K. Jain to disbelieve the statements of the petitioner who had in his statement dated 25.04.2018 stated that Ld. CM and Dy. CM did not intervene but of reading all the statements together and the prosecution itself had relied on the statements of Shri V.K. Jain to contend that the same corroborated what had been stated by the petitioner about the petitioner and Shri V.K. Jain not being aware that 11 MLAs would be present in the meeting, there being no agenda for the meeting and regarding the assault. Shri V.K. Jain was the only other person present at the time of the meeting other than the petitioner who has been made a witness, the rest of the persons present in the meeting having been joined as accused in the present case and the investigating

agency had chosen to join him as a witness and now the prosecution or the petitioner cannot contend that only those parts of his statements be considered which are favourable to the prosecution and in line with what the petitioner stated and the other parts of his statements be ignored. Quite clearly all the statements have to be seen together and at this stage, it is to be seen whether the material on record prima facie gives rise to grave suspicion that the accused persons had committed the offence. The Ld. Trial Court in this respect had observed as under:

> *"62. Moreover, in the meeting room at the Chief Minister's residence, complainant was not alone, rather he was accompanied by Mr. V.K. Jain, who stated in his statement u/s 164 Cr.P.C. that MLAs present there, starting questioning the complainant (the then Chief Secretary) on several topics. Thereafter, he went to the washroom and when he came back, he saw that two of the MLAs namely Amanatullah Khan and Prakash Jarwal, by physically touching, pushing and putting hand on his chin, were asking the complainant as to why he was not performing his duties. Chief Minister asked the aforesaid two MLAs to refrain from doing so. Thus, it is manifestly clear that such a meeting which was called by the Chief Minister, attended by the elected representatives of Delhi Legislative Assembly, top bureaucrat i.e. Chief Secretary (complainant) and other official namely Mr. V.K. Jain, cannot be termed as an unlawful assembly in prosecution of common unlawful object or any criminal conspiracy, as alleged, being hatched by the accused person, merely because during the course of meeting, while answering the questions of the MLAs by the complainant, two of them allegedly assaulted and hit him or some of the MLAs allegedly started shouting, abusing or threatening the complainant.*
>
> *Xxx*
>
> *72….Further, in his statement u/s 164 Cr. P.C., Mr. V.K. Jain stated that when he came back from the washroom, he saw two MLAs namely Amanatullah Khan and Prakash Jarwal, by touching, pushing and putting hands on the chin of the Chief Secretary, were asking him as to why he was not performing his duties and during that incident, his*

> *(Chief Secretary) spectacle fell down on the ground. Chief Minister asked both the MLAs to refrain from doing so. He further stated that Chief Secretary picked up his spectacles and sought the permission from the Chief Minister to leave and the Chief Minister permitted him to leave from there.*
>
> *73. Now, if that be so, even as per the aforesaid statements of the prime witness Mr. V.K. Jain, relied upon by the prosecution itself, if the Chief Minister (A-3) himself asked both the MLAs to refrain from doing so and even permitted the complainant to leave from there, upon such permission so sought by him, then how come, an inference of any criminal conspiracy or common intention, can be drawn against such an accused (A-3). If he would have been part of any conspiracy or sharing common intention with the abovesaid two assailants or in any manner abetted the crime, then how come he objected the aforesaid conduct of two MLAs, asked them to refrain from doing so and even permitted the complainant to leave from there, when permission was so sought by the complainant."*

While the aspect of unlawful assembly in prosecution of common unlawful object would be dealt with later, it cannot be said that there is anything perverse in the finding of the Ld. Trial Court that the meeting could not be termed as in pursuance of criminal conspiracy and that no inference of criminal conspiracy could be drawn against A-3 in view of what has been brought on record. It was asserted by the Ld. Sr. Counsel for the petitioner that the Ld. Trial Court had gravely erred in picking up one portion from one statement of Shri V.K. Jain in favour of the accused persons while ignoring all the other statements of Shri V.K. Jain and the petitioner resulting in perverse findings, however there is no merit in the said contention as quite clearly all the statements have to be seen together and the Ld. Trial Court had only adverted to an aspect which was contained in the statement under Section 164 Cr.P.C. of Shri V.K. Jain.

174. It was contended on behalf of the petitioner that even admittedly no actual effort was made to stop the physical assault by any of the participants of the meeting including A-3 and A-4 but it has come in the statement of Shri V.K. Jain that A-3 had asked A-1 and A-2 to refrain from doing what they were doing. It was also argued that Shri V.K. Jain had not used the word 'assailants' in his statement and he had used the word 'conduct of MLAs' and not assailants, which word was used in the impugned order. However, the said contention is on the face of it fallacious as the Ld. Trial Court specifically referred to A-3 asking the MLAs to refrain from doing so and the use of the word 'assailants' would only be to describe those who had indulged in the alleged assault on the petitioner which is evident on a perusal of the order and the usage of the word 'assailants' therein.

175. The Ld. Sr. Counsel for the petitioner had then argued that all the facts showed that there was conspiracy and assault was allowed to be perpetrated, whereas intervention by all the discharged accused persons should have happened at the very threshold when misbehavior with the petitioner commenced; the issue in question was that A-3 and A-4 did not do any positive act to restrain and in fact omitted to even move from their place to physically prevent the assault and Sections 32 and 43 of the IPC squarely covered the conduct of A-3 and A-4 and the other discharged MLAs who did not intervene to stop the assault and thus committed omissions, which showed their complicity in the conspiracy. Per contra, it was argued on behalf of the accused persons

that when A-3 had intervened, there was no reason for the other accused persons to intervene. Section 32 IPC reads as under:

> *"**32.** In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions."*

Section 43 IPC has already been referred to above. It is pertinent that Section 32 IPC refers not to 'omissions' *per se* but to 'illegal omissions' and 'illegal' is defined in Section 43 IPC as everything which is an offence or which is prohibited by law or which furnishes a ground for a civil action and a person is said to be 'legally bound to do' whatever it is illegal in him to omit. The Ld. Sr. Counsel for the petitioner had argued that the accused persons were legally bound to stop the MLAs from assaulting the petitioner and had omitted to do so. However, under Section 32 IPC, the liability for an omission requires a legal duty to act and a moral duty is not sufficient and in cases of omissions, the liability needs to be adequately justified and should be imposed by clear statutory language. In the instant case, the Ld. Sr. Counsel has not been able to point any legal duty of the accused persons to have intervened to stop the alleged assault by A-1 and A-2 and as such the contention that A-3 and A-4 did not do any positive act to restrain A-1 and A-2 and the conduct of A-3 and A-4 and the other discharged MLAs who did not intervene to stop the assault showed that they had committed omissions, which showed their complicity in the conspiracy is without merit and no liability can be attached to them on that count. Even if it is accepted that the accused persons did not

take any positive step to stop the assault, it cannot be said that failure to take any positive act was an omission which was illegal or an offence. It may reflect on their conduct but there was no illegality attached to it. Even otherwise, it is borne out by the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. that A-3 had restrained the MLAs and had also permitted the petitioner to leave the meeting when he asked for permission to leave which would take the matter out of any allegation of criminal conspiracy based on the alleged failure to stop the assault. The argument that it was absurd that responsible public persons would allow the petitioner to be intimidated and assaulted in their presence if they were innocent or not a party to the action of assault is neither here nor there and if it was argued on behalf of the petitioner that the petitioner was in shock due to the incident, it could also be that even the accused persons were not in a position to react immediately, more so in view of the fact that the alleged incident happened ‘suddenly’.

176. As regards the argument that the accused persons did not move to physically stop the assault, the question would arise as to whether all the accused persons should have moved and then only it would bring the matter out of alleged conspiracy or whether action by A-3 and A-4 would have been sufficient. Quite clearly, every person cannot be expected to react in the same manner (as was also the contention of the petitioner in a different context) and there is also merit in the contention of the accused persons that when A-3 who was chairing the meeting had restrained A-1 and A-2, there was no

occasion for the others to intervene. It was argued that A-4 was a silent spectator and he acted by omission, A-4 did not intervene to prevent threats/ intimidation and to stop the assault on the petitioner despite being seated in close proximity to the petitioner in the meeting room where the assault took place but there is merit in the contention of the Ld. Sr. Counsel for A-4 that when A-3 had restrained the MLAs, there was no reason for A-4 to intervene and as observed above, the omission, if any could not be called illegal. The Ld. Trial Court in the impugned order had also adverted to the said aspect and observed as under:

> *"80. Moreover, it is clearly demonstrated from the statement u/s 164 Cr. P.C. of the witness Mr. V.K. Jain that the Chief Minister asked the two MLAs to refrain from any unruly behaviour. Once the Chief Minister did so, there was no occasion for the Deputy Chief Minister and other MLAs present there to do the same, especially when as per the version of said witness, the complainant himself left the meeting immediately after taking permission from the Chief Minister. Hence, the contention raised on behalf of prosecution/complainant that Chief Minister, Deputy Chief Minister and other MLAs present there did not intervene during the alleged assault, holds no ground."*

Clearly there is no perversity in the said observations of the Ld. Trial Court, more so looking to the fact that the petitioner had left immediately after taking permission from A-3 as per the statement of Shri V.K. Jain and there would have been no occasion for A-4 and the other MLAs present there to restrain the two MLAs from doing what they were doing. From the statements of the petitioner (he stated that the incident happened only after about 5 minutes of the start of the meeting), Shri V.K. Jain (in his statement dated 21.02.2018, he had stated that the CS had come to the CM residence around 12.05

a.m. so clearly the meeting would have started after that) and Shri Bibhav Kumar (he had called Shri V.K. Jain at 12.19 a.m. to call him back to the CM residence which implied that by then the meeting was over and everybody had already left), it is evident that the alleged incident lasted for a very short duration and in that time period, it may not even have been possible for everyone to react and in fact there is nothing to show that even the prosecution witness, Shri V.K. Jain who had witnessed the assault had taken any step to stop the assault. Further, other than the allegation that Nitin Tyagi (which would be dealt with later) had followed the petitioner when he went out of the meeting room, there is no allegation that any of the MLAs- even A-1 or A-2 had tried to restrain the petitioner from doing so, which would be so if any conspiracy would have been hatched to assault, intimidate, threaten and restrain the petitioner over the issue of TV advertisements as was contended. It was also argued on behalf of the petitioner that the Ld. ACMM had used the words ‘unruly behaviour’ whereas the said words were nowhere used in the statement of Shri V.K. Jain. Shri V.K. Jain in his statement recorded under Section 164 Cr.P.C. had stated about the assault by A-1 and A-2 and that the Chief Minister asked them not to do so. It is true that Shri V.K. Jain himself had not used the words ‘unruly behaviour’ in his statement but the said words have been used in the impugned order only to describe the acts of A-1 and A-2 as is evident from their usage and nothing much turns on this contention.

177. It was argued that the contention that as the Chief Minister intervened, the Deputy Chief Minister and other MLAs were not required to do so was misplaced as the act of A-1 and A-2 was not independent or severable but there is no merit in the said contention as from the facts and circumstances of the case, nothing has been brought on record to show any criminal conspiracy despite lengthy arguments advanced in that respect and the acts of A-1 and A-2 were at the most individual acts. It was also argued that when the MLAs were castigating the Chief Secretary, the Chief Minister did not interfere, when the Chief Secretary was threatened he did not interfere and even when they assaulted the Chief Secretary, he did not try to restrain them and it was only when the assault was complete that he interfered and the effort to stop after the incident was over was only to cover up the omissions. However, the said contention is without merits as nowhere had Shri V.K. Jain stated that when the assault was over, A-3 restrained the MLAs from doing so and he simply made a statement that A-3 restrained the MLAs from doing so and as observed, it is apparent that the incident lasted for a short duration. It was submitted that the FIR and the complaint were clear that the Chief Minister had not tried to restrain the accused persons from assaulting the petitioner which is as per the record; that Shri V.K. Jain was not there when the assault happened so his statement could not be used to trump the statement of the petitioner, however, that is true only of the statement of Shri V.K. Jain recorded on 21.02.2018 and his statements were recorded even subsequently wherein he had stated about witnessing the assault and the

prosecution itself has relied on the said statements of Shri V.K. Jain and even the petitioner has referred to them to corroborate the alleged incident; the petitioner cannot blow hot and cold in the same breath and contend that only that part of the statements of Shri V.K. Jain be read which are in favour of the prosecution or the case of the petitioner and the remaining part of the statements should be discarded.

178. It was submitted on behalf of the accused persons that not only had A-3 restrained A-1 and A-2 but he was also unhappy with the conduct of A-1 and A-2 based on the statement of Shri V.K. Jain dated 09.05.2018 and hence A-3 could not be a part of the conspiracy. On the other hand, the Ld. Sr. Counsel for the petitioner had submitted that the findings of the Ld. Trial Court in this regard were perverse and it was evident that words had been added to the statement of Shri V.K. Jain to arrive at an illegal and perverse finding to suit A-3 and the Chief Minister had never specifically disassociated himself from the assault. A perusal of the record shows that it was Bibhav Kumar who had stated that after some time of the start of the meeting, CS had come out in a disheveled condition and behind him Nitin Tyagi had come till the main gate; thereafter Dy. CM, Shri V.K. Jain and all the MLAs had left from the residence of the CM. He had further stated that the CM was sitting in the drawing room and was upset and he asked Bibhav Kumar to call Shri V.K. Jain and ask him to come back on which he called Shri V.K. Jain and asked him to come back to the residence of the CM; after 15-20 minutes Shri V.K. Jain came back and was sitting in the drawing room with the

CM for some time and thereafter Shri V.K. Jain had left from the residence of the CM. Bibhav Kumar had stated that he had come to know then that in the meeting, some MLAs had done 'hathapai' with the CS. While Shri V.K. Jain in his earlier statements had not stated about being called back by A-3, it is seen that after the statement of Bibhav Kumar was recorded, statement of Shri V.K. Jain was again recorded under Section 161 Cr.P.C. on 09.05.2018 wherein he had stated that "*after I left from the meeting in my car, I got a phone call from Mr. Bibhav that CM wanted to see me again. I came back and met CM. CM was unhappy about the conduct of the MLAs.*" It is thus seen that Shri Bibhav Kumar had stated about A-3 being upset and in his supplementary statement recorded on 09.05.2018, after recording of the statement of Shri Bibhav Kumar, Shri V.K. Jain had stated about the CM being unhappy about the conduct of the MLAs. It is apparent that if A-3 was part of the conspiracy, there would be no occasion for him to be upset or to call back Shri V.K. Jain to express his unhappiness over the conduct of the MLAs.

179. It was sought to be argued on behalf of the petitioner that the same was done by A-3 to cover up what had happened but the said argument is too far-fetched as in that case, there would be no reason why A-3 would express his unhappiness only to Shri V.K. Jain and not to others and why would he be upset as stated by Shri Bibhav Kumar. In this regard, it was observed in the impugned order as under:

"*74. Not only this, Mr. V.K Jain, in his supplementary statement dated*

09.05.2018 also stated that after he left the meeting, he got a call from Mr. Bibhav (Personal Secretary to CM) that CM (A-3) wanted to see him again and he came back and met CM. CM was unhappy about the conduct of the MLAs. Moreover, Mr. Bibhav Kumar, another witness cited in this case stated in his statement u/s 161 Cr. PC dated 19.04.2018 that after the meeting, CM Sahab was sitting in the drawing room and he was upset.

75. Thus, the Chief Minister (A-3), who, even as per the version of aforesaid witnesses, asked both the assailants (two MLAs) to refrain from doing so; he even permitted the complainant to leave from there, when complainant sought his permission to leave from there; he (A-3) was also unhappy about the conduct of MLAs (assailants) and he was upset after the meeting, then how come such a person be part of any criminal conspiracy, as alleged, in relation to the said assault or any other offence. From the conduct of A-3 and surrounding circumstances, it cannot be inferred even remotely that he was part of any such conspiracy, as alleged, much less to draw any inference of his complicity in the commission of offence. His conduct clearly is not in consonance with the allegations levelled against him in the present case.

76. The aforesaid conduct of the A-3 and surrounding circumstances, as deductible from the statements of witnesses relied upon by the prosecution itself and material available on record, speaks volume not only for himself but for all those, who were present in the meeting, for the reason that meeting was called by him (A-3) (the then Chief Minister of Delhi); all the accused MLAs attended the meeting as per the communication made to them and if there would have been any common unlawful object or criminal conspiracy, he (A-3) would be the first one to be a party to such unlawful agreement and/or object, being helm of the affairs and presiding over the meeting. However, the conduct of A-3 and all other surrounding circumstances, as discussed hereinbefore, do not suggest for his complicity in the commission of any offence."

Quite clearly there is nothing perverse in the aforesaid findings of the Ld. Trial Court and it was not only that A-3 refrained the MLAs from doing what they were doing but according to Bibhav Kumar, he was upset after the meeting and further he called Shri V.K. Jain and expressed his unhappiness over the conduct of the MLAs to him. Even in

the charge sheet, in point ‘w’ under analysis of electronic and oral evidence, it is noted that whilst Shri V.K. Jain left the CM residence shortly after the complainant/ petitioner, he returned to the CM residence on the directions of the CM; the CM met him on his return and conveyed that he was unhappy with the conduct of the MLAs. This is obviously not in consonance with what the conduct of a person who was the ‘kingpin’ of the conspiracy to assault, intimidate and threaten the petitioner would be.

180. It was also argued that the Chief Minister's so called unhappiness was not corroborated by his actions and he never reprimanded A-1 and A-2 nor took any disciplinary action taken against them and in fact denied the assault on the petitioner. Further, the Deputy Chief Minister also did not reprimand any of the MLAs present for the midnight meeting before or after the assault or at any time thereafter and did not express any regret to the petitioner regarding the conduct of the MLAs or for his inability or failure to prevent or stop the misbehavior/ assault; he even held a press conference on the next day denying the assault on the petitioner and the assault on the petitioner in the presence of the Chief Minister and the Deputy Chief Minister who were holding responsible public positions and the MLAs was not reported to the police by anyone of them and A-3 and A-4 did not object to the false SC/ST complaints which were filed against the petitioner and at present the assault was not denied by them. It is true that there is nothing on record to demonstrate that A-3 or A-4 or any of the other MLAs reprimanded the MLAs allegedly involved in the incident, nor took any

disciplinary action against them and in fact denied the incident, including by calling a press conference but on that basis, no inference can be drawn that the alleged incident took place as part of any conspiracy nor can any inference be drawn of the complicity of A-3 and A-4 in any conspiracy, looking to the facts and circumstances of the case. The Ld. Sr. Counsel for A-3 had contended that the conduct of the petitioner should also be seen who did not report the matter to the police immediately, did not even inform his PSO, met the Hon'ble LG but still no complaint was filed immediately. It is true that there is nothing to show that the petitioner had informed his PSO about the incident immediately after leaving the CM residence or had lodged any complaint immediately or even made any call on 100 number but even otherwise, looking to the material on record and the statements of witnesses, no inference of any criminal conspiracy can be drawn even prima facie, against the accused persons.

181. Regarding A-4, it was also argued on behalf of the petitioner that despite being made well aware of the requirement of contents certification by Head of Departments and issue of rates of T.V. advertisements and funding and that there was a hurdle in the release of T.V. advertisements, the Deputy Chief Minister insisted and was following up with the petitioner and the DTTDC officers for release of the proposed TV advertisements since the beginning. However, the said conduct cannot be called into question as even if objections had been raised to the release of advertisements, it did not mean that A-3 and A-4 should have given up all efforts to get the advertisements

released and no attempt should have been made by them to clear the hurdles, if any in the release of the advertisements and the said argument itself conveys that A-4 was not following up the matter with the petitioner alone but with the officers of DTTDC as well but there is no allegation of any conspiracy being hatched against officers of DTTDC though they had raised objections to release of advertisements as well. It was also argued that A-4 called a meeting on 14.02.2018 at a very short notice on a public holiday, which showed the urgency but despite being in Chair, he could not get his proposal approved due to objections of MD, DTTDC but it was not unusual to hold meetings on short notice and on holidays and beyond working hours. The fact that despite being Dy. CM, A-4 could not get his proposal approved speaks for itself and again the objections were by MD, DTTDC and not by the petitioner and as per the material brought on record by the prosecution, that was the last time, objections were raised to the release of advertisements and thereafter, there was no talk regarding release of advertisements till 19.02.2018, that too when A-4 called the petitioner in the evening (6.54 p.m.).

182. It was submitted that A-4 had called the petitioner to obliquely threaten him that either have the TV advertisements released failing which he should come for the midnight meeting at Chief Minister's residence and he also rejected the request of the petitioner through Shri V.K. Jain to shift the midnight meeting to the next day in the morning but again nothing amiss can be found in the said conduct as if the CM had

fixed a meeting at midnight, it was not for A-4 to change the same to the next day and there was nothing unusual about the Dy. CM calling the Chief Secretary even at 6.54 p.m. It was submitted that the Deputy Chief Minister was with the Chief Minister from the evening of 19.02.2018 till the execution of conspiracy (physical assault on the petitioner) and was fully aware or involved in the decision that 11 specific MLAs were being summoned by the Chief Minister to be present at the residence of the Chief Minister an hour prior to the scheduled midnight meeting with the petitioner but again there can be nothing suspicious about the Dy. CM being with the CM and as per the appointments schedule of A-3 and A-4 referred to by the Ld. Sr. Counsel for the petitioner himself, A-3 and A-4 were supposed to go for a function together at 7.00 p.m. Moreover, if A-4 was with A-3 and knew about the meeting, he would also know about the decision to call 11 MLAs but it has not been pointed out that he was under any duty or obligation to inform the petitioner and Shri V.K. Jain about the presence of 11 MLAs. On that basis, no inference can be drawn that the petitioner was tricked into coming for the midnight meeting and at the most the petitioner was taken by surprise but as stated by the petitioner, he was discharging his official duties so even if he knew that 11 MLAs would be present, he perhaps could not have refused to come for the meeting. Even no inference can be drawn that A-4 purposely and knowingly did not inform Shri V.K. Jain that 11 MLAs would be present in the meeting so as to prevent Shri V.K. Jain from alerting the petitioner.

183. It was then argued on behalf of the petitioner that the narrative of the midnight meeting was attempted to be changed by the Chief Minister to justify the presence of MLAs and calling of the meeting at midnight as reflected from the conduct of the Chief Minister in the Cabinet Meeting on 20.02.2018 where he produced a paper from his pocket for a decision on civil supply issues without there being any Cabinet Note, Secretary, Civil Supplies not even being present in the meeting and the procedure for inclusion of items in the Cabinet Meeting not being followed and reference was made to the statement of Shri Manoj Parida dated 15.06.2018 in that regard. Shri Manoj Parida in his statement under Section 161 Cr.P.C. recorded on 15.06.2018 had stated that the venue of the Cabinet meeting was changed from Delhi Secretariat to Chief Minister Camp Office. In the meeting the circulated agenda items were discussed and necessary decisions were taken. After that A-3 stated that a new item should be taken up as an additional agenda (table item); he brought out a paper from his pocket and read out the decision which concerned delivery of rations; all the ministers consented to the decision and accordingly it was recorded and formal minutes were subsequently issued. Thus, Shri Manoj Parida had stated about A-3 bringing out a paper from his pocket and reading out the decision which concerned delivery of rations. However, nothing much turns on the contention that thereby the narrative of the midnight meeting was sought to be changed by A-3 as there is nothing to show what was the nature of the paper and even without producing a paper, the CM was not precluded from talking about a

decision on civil supplies issue or delivery of rations. In fact it could be that the said matter was taken up by A-3 as the issue was raised by the MLAs the previous night though it is not for the Court to surmise in that regard. This is also corroborated by Shri V.K. Jain stating in his statements that delivery of rations was one of the issues about which the MLAs questioned the petitioner. It becomes relevant that the Cabinet meeting was held on 20.02.2018 and Shri V.K. Jain had mentioned about the issue of delivery of rations being raised by the MLAs subsequent to the said Cabinet meeting as even the statement dated 21.02.2018 of Shri V.K. Jain was recorded subsequent to the Cabinet meeting. Even otherwise, as observed above, in the midnight meeting of 19.02.2018, several other issues were also raised.

184. It was also argued that the Chief Minister continued interaction with A-1 during the night through Bibhav (PS to the CM) after the assault and departure of A-1 from his residence as was evident from the CDRs which were part of the charge-sheet. An analysis of CDRs was also placed on record on behalf of the petitioner and as per the same, Bibhav had called Amanatullah at 23:07:03 i.e. prior to the midnight meeting and in fact it would reflect that till 11.07 p.m. Amanatullah had not reached for the meeting allegedly called one hour prior to the midnight meeting with the petitioner to ‘fine tune’ the conspiracy as otherwise there would be no occasion for Bibhav to call him; A-3 called Bibhav at 23:15:21 when the alleged meeting with the MLAs should have been going on; Bibhav called A-4 at 23:16:10 when again the meeting with the MLAs should

have been going on; A-3 called Shri V.K. Jain at 23:21:01 and Bibhav called Shri V.K. Jain at 23.27.26. Further Bibhav called Shri V.K. Jain at 00.19.52 which is also as per his statement that he called Shri V.K. Jain at the instance of A-3 to call him back, which in fact lends credence to the fact that the meeting and the alleged incident were of a very short duration because the meeting was stated to have started after midnight and by 12.19 everyone had left and Bibhav had called Shri V.K. Jain at the instance of A-3. Thereafter A-1 called Bibhav at 12:43:15 but there is nothing in the statement of Bibhav about the said call nor about the call of Dinesh Mohania at 01:09:39 and it may be mentioned that no specific overt act was alleged against Dinesh Mohania. Even if it is accepted that A-3 was using the phone of Bibhav to be in communication as was contended, there is only one call with A-1 and one call with Dinesh Mohania in the night and that too the calls were made by them to Bibhav. It was only at 7:50:48 on 20.02.2018 that Bibhav had called A-4. As such there is nothing to show that A-3 was in continuous interaction with A-1 through Bibhav and only two calls are reflected, one before the midnight meeting and one after the midnight meeting.

185. It was also argued that false complaints under SC/ST Act were filed against the petitioner the very next day by Prakash Jarwal and Ajay Dutt which could not have happened without the consent of the Chief Minister and the Deputy Chief Minister but that cannot be construed as part of any conspiracy as the conspiracy at the most as per the case of the prosecution was to assault, intimidate and threaten the petitioner over the

issue of TV advertisements. It was argued that the purported unhappiness of the Chief Minister did not demonstrate his innocence which had to be tested in the light of Sections 32/36 IPC and Sections 120-B but the said sections do not in any way help the case of the petitioner or the prosecution in light of what has been observed above. It was also argued that the conduct of the Chief Minister had to be seen in entirety and not in isolation and that the act and conduct of the accused persons did not gel with what they were stating that it was an act of only two persons but even then no inference of any conspiracy can be drawn and in fact the conduct of A-3, looked at in totality shows that he had called the meeting at midnight with the petitioner; 11 MLAs were called one hour prior to the said meeting; when the meeting started, he told the petitioner that the MLAs wanted to ask him some things and thereafter, when A-1 and A-2 assaulted the petitioner, he told them not to do so and later on he was upset and conveyed his unhappiness over the conduct of the MLAs to Shri V.K. Jain.

186. The Ld. Sr. Counsel for the petitioner had also submitted that the narrative of the midnight meeting was sought to be changed further by A-4 by belatedly changing the Minutes of Meeting of the meeting held on 14.02.2018 and Draft Minutes of DTTDC Board Meeting of 14.02.2018 were put up to him for approval on 15.02.2018 itself, but remained with him till 01.06.2018, when he directed to change/ modify the minutes of the meeting, during the investigation of the present case, so that what all transpired in the meeting and was part of the draft minutes did not figure in the final/ issued minutes.

Per contra, it was argued by the Ld. Sr. Counsel for A-4 that the said argument was de hors the charge sheet or the prosecution case as the prosecution case as reflected in the charge sheet made it clear that the conspiracy was hatched and achieved on 19.02.2018 itself and as the revision of the minutes took place well later on 01.106.2018, there was no temporal link whatsoever and it was the admitted position that the meeting remained inconclusive and the revised minutes reflected the said position and were consistent with everybody's understanding of the meeting. As noted above and seen from the statements of the witnesses Ms. Varsha Joshi, Shri Shurbir Singh and Shri S.N. Sahai, there cannot be any doubt that the meeting on 14.02.2018 had remained inconclusive. Draft Minutes of the said meeting were drawn up which referred to the notes by the petitioner dated 12.02.2018 and 13.02.2018 and the meeting by the CS on 13.02.2018 but the said notes were never produced nor the objections of the petitioner to the release of advertisements were reflected in the said draft minutes. It is true that A-4 gave an order to amend the draft minutes on 01.06.2018 and thereafter the amended Minutes of the Meeting of 14.02.2018 were issued. However, to link the said action of getting the minutes changed to the alleged conspiracy of 19.02.2018 would be too far-fetched as even as per the case of the prosecution, the meeting on 14.02.2018 was not attended by the petitioner and the objections in the said meeting were raised by MD, DTTDC who was not called for the midnight meeting on 19.02.2018. As such there is even no merit in the submission on behalf of the petitioner that A-4 directed to change/ modify the

draft minutes so that record of what all transpired in the said meeting (and was part of the draft minutes) did not figure in the final/ issued minutes as what transpired in the meeting on 14.02.2018 was not about the objections allegedly raised by the petitioner regarding the content of advertisements or DAVP rates but about the objections of DTTDC to the release of advertisements. The Ld. Sr. Counsel for the petitioner had referred to Section 8 of the Evidence Act and argued that the same stipulated the law regarding previous or subsequent conduct and thus the acts of A-4 in modifying/ amending the draft minutes were relevant. Sub-clause (e) of Section of the Evidence Act, which has relied upon reads as under:

> *"8(e) – A is accused of a crime. The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant."*

While the provision of law is clear, there is nothing in the instant case to show that A-4 after the alleged crime destroyed or concealed evidence as A-4 would clearly be aware that the Draft Minutes would also be on the record and further there was nothing in the draft meetings which could lead to an inference that the same formed the basis for hatching any conspiracy against the petitioner, more so as the same do not reflect the objections of the petitioner to the release of the advertisements which, as per the case of the prosecution and the petitioner gave rise to the conspiracy. The Ld. Sr. Counsel for A-

4, on the other hand had contended that as per the charge sheet, the conspiracy was hatched and achieved on 19.02.2018 itself and a perusal of the charge sheet shows that it has been concluded therein:

> *"J. It is concluded from the material collected and analysed during investigation that on 19.02.2018, Sh. Arvind Kejriwal (CM) and Sh. Manish Sisodia (Dy. CM), hatched a plan to pressurize/ punish the Chief Secretary for not doing their bidding in relation to releasing the TV advertisements to highlight the achievements of the Delhi Government over the last 03 years. Towards this end, they orchestrated a meeting at the CM residence late at midnight in which they conspired to summon the Complainant and humiliate/ intimidate and assault him through and in the presence of select MLAs of their ruling party (AAP)….*
>
> *L. Investigation has disclosed that Sh. Arvind Kejriwal, CM and Sh. Manish Sisodia, Dy. CM were the kingpins of the criminal conspiracy. They hatched the plan and orchestrated the meeting at midnight on 19.02.2018/ 20.02.2018…"*

Thus, in the charge-sheet, it was concluded from the material collected and analyzed during investigation that A-3 and A-4 had hatched a plan on 19.02.2018 to pressurize/ punish the petitioner for not doing their bidding and that A-3 and A-4 were the kingpins of the criminal conspiracy and hatched the plan and orchestrated the meeting at midnight on 19.02.2018/ 20.02.2018 and there is no reference therein to the subsequent events. It was also submitted by the Ld. Sr. Counsel for A-4 that the revision of minutes of the meeting had taken place much later and as per the settled law, events subsequent to the conspiracy having ended could not be the basis of inferring that there existed a conspiracy. He had cited the judgment of the Hon'ble Supreme Court in **State of NCT**

of Delhi v. **Navjot Sandhu (supra)** wherein it was observed as under:

> *"70. In Sardul Singh Caveeshar v. State of Bombay 1958 SCR 161 a three-Judge Bench of this Court approvingly referred to the decision of the Privy Council. However, the following observation made therein does not go counter to the submissions of Mr. Subramanium: (SCR pp. 193-94)*
>
> > *Where the charge specified the period of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence.*
>
> *But, the ultimate conclusion is not strictly in conformity with that remark. After referring to this and the other decisions, Thomas, J observed in State of Gujarat v. Mohd. Atik (1998) 4 SCC 351 thus: (SCC p.357, para 17)*
>
> > *"17. Thus, the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act."*

It was thus argued by the Ld. Sr. Counsel for A-4 that events subsequent to the conspiracy having ended could not be considered and it is seen that the charge-sheet does speak of the conspiracy being hatched and actualized on 19.02.2018/20.02.2018. Even otherwise, if the contention of the petitioner that the Minutes of the Meeting dated 14.02.2018 were changed on 01.06.2018 by A-4 is accepted, it would still not reflect that the same was done as part of any conspiracy or to cover up any conspiracy in light of what has been observed above about the Draft Minutes of the Meeting dated 14.02.2018 and the same cannot be construed as an attempt to change the narrative of the midnight meeting of 19.02.2018.

187. It was also stated in the submissions filed in rebuttal on behalf of the petitioner that as regards the argument of the accused persons that the Chief Minister would not create a witness against himself by calling Shri V.K. Jain for the meeting and would not chose his own house, the said arguments were matters of probable defence and of trial and could not be considered at the stage of framing of charge. It is the settled position of law that the defence of the accused persons cannot be looked at the stage of consideration of charge. However, the argument that the CM would not create a witness against himself by calling Shri V.K. Jain would be borne out from the record itself as it is the case of the prosecution itself that Shri V.K. Jain was present at the time of the midnight meeting and even the argument that the CM would not choose his own residence also arises from the record and in fact, it was vehemently argued on behalf of the petitioner that A-3 had chosen his residence so that there would be no suspicion in the mind of the petitioner and if the said argument is put forward to counter the argument advanced by the prosecution and/ or the petitioner in this regard, it cannot be construed to be a matter of defence of the accused persons. The Ld. ACMM in this regard, in the impugned order had observed as under:

> *"77. Moreover, if there would have been any prior meeting of minds or pre-meditation amongst them to commit an offence against the complainant, why would he (A-3) choose his own residence for that purpose and even allowed the complainant to accompany with Mr. V.K. Jain, to create a witness against himself in this case. Thus, his conduct is inconsistent with the charge of conspiracy. Conspiracy, which is always pre-meditated, stands negated from the conduct of the A-3. It is clearly demonstrated from these circumstances that there was no prior*

> *meeting of minds, prior concert, conspiracy or pre-meditation amongst the accused persons to commit any offence against the complainant."*

Thus, the Ld. Trial Court had held that the fact that A-3 chose his own residence and even allowed the petitioner to be accompanied by Shri V.K. Jain negated that there was any prior meeting of minds or pre-meditation and clearly, that is a factor which can be read in favour of the accused persons rather than in favour of the prosecution as was sought to be put forth by the Ld. Sr. Counsel for the petitioner. In fact the Ld. Trial Court had also observed as under:

> *"61. Furthermore, all the MLAs gathered there in the meeting, were informed in advance about the meeting through Sh. Vivek Yadav, who also stated in his statement to the IO that he informed the MLAs about the meeting and upon receiving their confirmation to attend the meeting, he conveyed the same to Mr. Bibhav (Personal Secretary to CM). Now, if there would have been an element of some common unlawful object or criminal conspiracy or prior meeting of mind amongst the accused persons (MLAs) to do any criminal act in furtherance of their common intention, there was no reason as to why Mr. Vivek Yadav was asked to communicate to all of them about the meeting, who also conveyed their confirmation to Mr. Bibhav Kumar (another prosecution witness in this case). This also goes to show that there was no pre-arranged plan or prior meeting of minds or prior concert or pre-meditation amongst the accused persons present there. Conspirators or persons with criminal bent of mind would prefer to execute their unlawful design in secrecy, without its knowledge being shared to third persons. They would not create witnesses against themselves. Hence, the aforesaid circumstances also do not subscribe the theory of common unlawful object, criminal conspiracy, abetment or common intention, as alleged by the prosecution."*

It is thus seen that the Ld. Trial Court had also adverted to the fact that the MLAs were informed about the meeting through Shri Vivek Yadav who conveyed their confirmation

to attend the meeting to Shri Bibhav Kumar and if there was any criminal intention or prior meeting of mind amongst the accused persons, they would not have informed Shri Vivek Yadav or Shri Bibhav Kumar. It is true that Shri Vivek Yadav and Shri Bibhav Kumar were close to A-3 and Aam Aadmi Party as would be argued on behalf of the petitioner but even then, no infirmity can be found in the said observation of the Ld. Trial Court as it is not the case of the prosecution that Vivek Yadav or Bibhav Kumar or Shri V.K. Jain were part of the conspiracy and if indeed there was any criminal conspiracy, A-3 and A-4 would endeavour that persons who were not part of the conspiracy do not come to know about the same. It was argued on behalf of the petitioner that the Ld. Trial Court had made erroneous inferences and interpretations which were contrary to the material available on record including that there was no conspiracy as A-3 asked Vivek Yadav to call the selected MLAs at 11.00 p.m. to his residence instead of calling the MLAs himself as why would A-3 create a witness against himself. It was argued that the said defence was not even taken by A-3 in his submissions as recorded by the Ld. Trial Court and the Ld. Trial Court had gravely erred in supplanting its views on behalf of A-3. However, even if the defence was not taken by A-3, albeit it not even being the stage for A-3 to put forth his defence, the Court is not precluded from considering all the relevant factors. It was then argued that the Ld. Trial Court had gravely erred in not appreciating the established norm and practice where the public functionaries such as the Chief Minister use their political assistants or

staff to call the MLAs and that Shri Vivek Yadav in his statement recorded under Section 161 Cr.P.C. had stated that his job included conveying messages to MLAs; he was a party worker and also a faithful and reliable associate of A-3. Even then, if the Chief Minister was the kingpin of a conspiracy, he would try to maintain secrecy and not inform even his political assistants or staff or party workers who could later on be witnesses against himself. It was also contended that by observing in para 61 that conspirators or persons with criminal bent of mind would prefer to execute their unlawful design in secrecy, without its knowledge being shared to third persons and they would not create witnesses against themselves, the Ld. Trial Court had erroneously inferred that conspirators/ criminals act in a certain manner and the Ld. Trial Court had proceeded only on a surmise that in a case of conspiracy, the accused was not expected to create witnesses against himself but that is also as per what has been held in a catena of decisions that a criminal conspiracy is normally hatched in secrecy. It was then asserted that the secrecy regarding the midnight meeting was maintained at every step as Vivek Yadav who was a close confidante of A-3 and A-4 and associated with the party since its inception had been tasked to call the MLAs but admittedly he was not a part of the alleged conspiracy.

188. It was then asserted on behalf of the petitioner that Shri V.K. Jain was a retired IAS officer, personal staff of the Chief Minister and close confidant and his job was dependent on the Chief Minister; he was used by the Chief Minister/ Deputy Chief

Minister to ensure that the petitioner did not get suspicious and to deceive him into coming for the meeting; that due to the presence of Shri V.K. Jain, the petitioner was lulled into thinking that it was an official meeting but the argument that Shri V.K. Jain was used by A-3 seems out of place as being personal staff of the CM, it would be natural for the CM to ask him to coordinate with the petitioner for the meeting and to ask him to be present in the meeting (and not because he wanted to deceive the petitioner or lull the petitioner into thinking that it was an official meeting) and it was not required that A-3 would be directly calling up the Chief Secretary to fix the meeting. In fact as regards Vivek Yadav, it was argued on behalf of the petitioner himself that the Ld. Trial Court had gravely erred in not appreciating the established norm and practice where the public functionaries such as Chief Minister use their political assistants or staff to call the MLAs and if the said practice and norm had been followed by A-3 by asking Shri V.K. Jain to coordinate with the petitioner about the meeting (in fact Shri V.K. Jain had first asked Shri Pravesh Ranjan Jha to inform the petitioner about the meeting but when he was unable to do so, Shri V.K. Jain himself had called the petitioner), it cannot be argued that A-3 had thereby used Shri V.K. Jain to ensure that the petitioner did not get suspicious. Moreover, the question would also arise whether the petitioner would have refused to attend the meeting if Shri V.K. Jain was not there to which the answer would have to be in the negative as according to the petitioner himself, he was discharging his official duties. It should also not be lost sight of that

Shri V.K. Jain who was present in the meeting has been joined by the prosecution as its witness and in fact several statements of Shri V.K. Jain were recorded by the IO including getting his statement recorded under Section 164 Cr.P.C. so now the petitioner cannot seek to cast any aspersion on Shri V.K. Jain by contending that Shri V.K. Jain was a retired IAS officer, personal staff of the Chief Minister and close confidant and his job was dependent on the Chief Minister and he was used by the Chief Minister/ Deputy Chief Minister, while at the same time relying on the favourable portions of his statement to contend that the same corroborated the case of the prosecution.

189. It is thus seen that the Ld. Sr. Counsel for the petitioner had argued at length and even detailed written submissions in rebuttal were filed to make out the case that A-3 and A-4 had along with the other accused persons hatched a conspiracy to heckle, assault, intimidate, restrain and threaten the petitioner. However, none of the factors referred to by the petitioner give rise to any inference of a criminal conspiracy having been hatched. It is the established law that inferences from the circumstances regarding the conspiracy may be drawn only when such circumstances are incapable of any other reasonable explanation and an offence of conspiracy cannot be deemed to have been shown on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence, even at the stage of consideration of charge. In the instant case, none of the factors relied upon by the petitioner, even prima facie point to the offence of criminal conspiracy in view of the above discussion.

190. Further the factors even when taken together i.e. the antecedent events whereby an i-message was sent by A-3 to the petitioner on 11.02.2018 at 12.54 p.m. regarding release of TV advertisements; meeting called by A-3 at his residence in the morning of 12.02.2018 on the issue of TV advertisements; meeting of DTTDC Board called at a very short notice by A-4 on 14.02.2018 (which was a public holiday) to discuss the issue of TV advertisements; two meetings of the petitioner with A-3 on 19.02.2018 during the day regarding Budget Estimates and Delhi-Haryana water issue wherein the issue of advertisements or any other pressing or urgent matter was not taken up and the petitioner was not informed about the meeting at midnight then; call by A-4 to the petitioner on 19.02.2018 at 6.54 p.m. asking him to resolve the issue of TV advertisements by the same evening or to come for a midnight meeting with A-3; presence of A-4 at the residence of A-3; A-3 asking Shri V.K. Jain to call the petitioner and inform him about the meeting scheduled at 12.00 midnight of 19.02.2018/ 20.02.2018; the timing of the meeting even without any alleged emergency or compelling circumstance; the request of the petitioner to shift the meeting to the morning of 20.02.2018 being declined despite A-3 not having any appointment in the morning; 'so called' repeated calls to the petitioner to ensure his presence at the midnight meeting; asking 11 'specific' MLAs to come to the residence of A-3 one hour prior to the midnight meeting with the petitioner who were selected by A-3 and which fact was not disclosed either to Shri V.K. Jain or to the petitioner; having the meeting in

the drawing room of A-3 where meetings in which the number of participants was more than 5 to 6 were rarely held; the drawing room not being covered by CCTVs; and the petitioner 'being made to sit' between A-1 and A-2 also do not lead to any inference, even prima facie that there was prior concert between the accused persons or prior meeting of minds or that they had hatched a criminal conspiracy as part of which the petitioner was assaulted, intimidated, threatened and restrained on the issue of release of TV advertisements, in view of the above discussion and also considering that there was nothing illegal in A-3 who was the Chief Minister calling a meeting even outside the working hours and it rather appears to be a case where the prosecution has tried to piece together irrelevant factors or factors for which there was a plausible explanation borne out from the record to support its theory of a criminal conspiracy having been hatched. The assault and the subsequent events i.e. A-4 and other MLAs not doing anything to restrain the MLAs, it having come on record that A-3 told the MLAs not to do what they were doing; A-3 and A-4 not reprimanding the MLAs nor taking any disciplinary action against them nor reporting the matter to the police; A-4 calling a press conference to deny the incident and the Minutes of Meeting dated 14.02.2018 being changed on 01.06.2018 also likewise do not point to any criminal conspiracy having been hatched. It may also be mentioned that contrary to the contention of the petitioner, the Ld. Trial Court had duly referred to the antecedent and the subsequent events in the impugned order. Reference may also be made to the observations in paras 58 and 65 of the

impugned order which were as under:

> *"58. However, even after going through the chronology of aforesaid events, the same by no means suggests for any inference, which can be drawn of any unlawful assembly in prosecution of common unlawful object or any criminal conspiracy, as alleged, being hatched by the accused persons, who were none other than the elected members of Delhi Legislative Assembly including the then Chief Minister and Deputy Chief Minister of Delhi and who all gathered there in the meeting called by the Chief Minister himself, to question the complainant, who was the then Chief Secretary of the Government of NCT of Delhi, the principal bureaucrat, about certain issues….*
>
> *Xxx*
>
> *65. Moreover, even calling of such meeting at 12 midnight by the Chief Minister, in which the complainant, was asked to attend and answer the MLAs, cannot be considered as part of criminal conspiracy or design amongst the accused persons, to assault and threaten the complainant, in order to pressurize him to release the T.V. campaign. Complainant was none other than the senior most bureaucrat of the Government of NCT of Delhi. Even complainant himself stated in his complaint that he was discharging his official duties, while he attended the said meeting at the CM residence. If that be so and complainant admittedly attended that meeting in discharge of his official duties, then how come such a meeting consisting of CM, Deputy CM, MLAs and Chief Secretary (complainant) can be called as an unlawful assembly, is difficult to perceive. Labelling such a meeting, even called in late hours at the residence of the Chief Minister, attended by Chief Minister, Deputy Chief Minister and eleven other MLAs, as unlawful assembly or part of any criminal conspiracy, can seriously hamper the smooth functioning of the Government and public interest would suffer ultimately."*

Without doubt, the petitioner was the principal bureaucrat and the other persons present in the meeting were the Chief Minister, Deputy Chief Minister and elected members of Delhi Legislative Assembly and if a meeting was called by the Chief Minister to question the petitioner about certain issues, it could not be labelled as being in pursuance of any criminal conspiracy, more so as the petitioner himself had stated that

he was discharging his official duties. It was argued on behalf of the petitioner that the Ld. ACMM had miserably failed to appreciate that merely being elected by the public did not grant immunity or prevent such elected representatives from indulging in unlawful and criminal activities but the observation of the Ld. ACMM was rather in the context of the meeting being called by the Chief Minister to question the petitioner on certain issues, which meeting was attended by the Chief Minister, Deputy Chief Minister and by elected representatives and that such a meeting could not be said to be pursuant to any criminal conspiracy or an unlawful assembly. It was also argued that the observation in the impugned order that 'labelling such a meeting….can seriously hamper the smooth functioning of the Government and public interest would suffer ultimately" was misplaced and erroneous as it was not for the Court to look into the functioning of the government but to see if the offences were made out against the accused persons. However, such an interpretation is clearly not made out on a reading of the impugned order as the Ld. Trial Court was only observing that a meeting which was official in nature, if termed as an unlawful assembly or part of any criminal conspiracy could have its repercussions.

191. The Ld. Sr. Counsel for the petitioner had relied on the judgment in **Mohmed Amin** v. **CBI (supra)** to contend that the circumstances proved before, during and after the occurrence show the complicity of all the accused persons in the commission of the offences. However, in the instant case, all the circumstances, before, during and after

the occurrence do not point, even prima facie to any criminal conspiracy having been hatched by the accused persons or their complicity in the offence of criminal conspiracy. In the said judgment, reference was made to the judgment in **Damodar** v. **State of Rajasthan** (2004) 12 SCC 336 wherein it was observed as under:

> *"15….The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does."*

In the present case as well, it is evident that A-1 and A-2 were pursuing the alleged acts independently and there is nothing to show that they had come together with the other accused persons to pursue an unlawful object. Further, it is not discernible from the material on record that the acts of A-1 and A-2 were pursuant to any agreement to do any illegal act as their acts were sudden, on the spur of the moment and as such the charge for the offence under Section 120 B IPC has rightly been held not to be made out against A-1 and A-2.

192. It may be mentioned that it was argued on behalf of the petitioner that the Ld. Trial Court had misapplied the ratio by usage of selective extract of the judgment in **Noor Mohd**. v. **State of Maharashtra (supra)** to negate the arguments on conspiracy. The Ld. Trial Court had referred to the following para of the said judgment:

> *"7. So far as Section 34 IPC is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability*

> *being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 IPC on the other hand may be attracted even if the abettor is not present when the offence abetted is committed, provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission."*

It was argued that the Ld. Trial Court had not considered the relevant part of the same para and only selectively cited/ relied upon the judgment and reference was made to the following para:

> *"A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto."*

While the said para as quoted on behalf of the petitioner lays down the law regarding conspiracy and it was also observed that surrounding circumstances and antecedent and subsequent, among other factors, constitute relevant material for an inference regarding criminal conspiracy, it cannot be said that the Ld. Trial Court had misapplied the ratio by selective usage of extract of the judgment as it is seen that the Ld. Trial Court had

referred to the said judgment in the context of Sections 34 and 109 IPC and not in the context of offence of criminal conspiracy. Further, in terms of the said judgment, it can be said that in the present case, there is even no reasonable ground demonstrated from the record, for believing that the accused persons had conspired to commit an offence.

UNLAWFUL ASSEMBLY

193. It is the case of the petitioner and the prosecution that the accused persons constituted an assembly, the common object of which was to compel (by means of criminal force or show of criminal force) the Chief Secretary to do what he was not legally bound to do, and as such the accused persons were members of an unlawful assembly and the accused persons were also charge sheeted for the offence under Section 149 IPC. Reference may be made to Section 149 IPC which stipulates as under:

> "**149.** *Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."*

Thus the prosecution under Section 149 IPC is for vicarious liability or constructive liability. What would be an unlawful assembly is laid down in Section 141 IPC as under:

> *"141. Unlawful assembly.- An assembly of five or more persons is designated an "unlawful assembly", if the common object of the*

persons composing that assembly is—

(First) — To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(Second) — To resist the execution of any law, or of any legal process; or

(Third) — To commit any mischief or criminal trespass, or other offence; or

(Fourth) — By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

Thus to constitute an unlawful assembly, there must be an assembly of five or more persons and in the present case, there were 15 persons present in all in the meeting on 19.02.2018, out of which one was the petitioner and Shri V.K. Jain has been joined as a prosecution witness. Besides them, there were 11 MLAs and the Chief Minister and Deputy Chief Minister who have been joined as accused in the present case. As such, clearly there was an assembly of five or more persons. To be designated as unlawful, it must have a common object and that common object must be one of the five mentioned in Section 141 IPC.

194. In the present case, it was contended that the common object of the assembly (of accused persons) was to by means of criminal force, or show of criminal force to compel the petitioner to do what he was not legally bound to do i.e. what was legal for him to omit (looking to Section 43 IPC). Reference was made to Section 43 IPC and it was argued that the moment the accused persons wanted to compel the petitioner to do what he was legally bound not to do, the act became illegal and the ingredients of Sections 141 and 149 IPC were satisfied. According to the case of the prosecution, the petitioner was legally bound not to release the advertisements in violation of the guidelines laid down by the Hon'ble Supreme Court in **Common Cause** v. **Union of India (supra)** but the accused persons had the common object to by means of criminal force, or show of criminal force compel the petitioner to release the advertisements and do their bidding. The law regarding unlawful assembly and when Section 149 IPC would be attracted has been succinctly laid down in **Waman** v. **State of Maharashtra** (2011) 7 SCC 295 wherein it was held that in order to attract Section 149 of the Code it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly. It must be within the knowledge of the other members as one likely to be committed in prosecution of common object. If members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under Section 149 IPC. Reference may be made to the judgment of the Hon’ble Supreme Court in **State of Punjab** v.

Sanjiv Kumar dated 14.06.2007 in Appeal (Crl.) 822-825 of 2001 where in paras 8, 9 and 10, the Hon'ble Supreme Court has delineated what would be 'common object' and observed as under:

> *"8. The pivotal question is applicability of Section 149 IPC. Said provision has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word object means the purpose or design and, in order to make it common, it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression in prosecution of common object as appearing in Section 149 have to be strictly construed as equivalent to in order to attain the common object. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which*

he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

9. Common object is different from a common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instante.

10. Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude,

no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected as noted above from the nature of the assembly, arms carried and behaviour at or before or after the scene of occurrence. The word knew used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of might have been known. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first part of the offences committed in prosecution of the common object would also be generally, if not always, within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object. (See Chikkarange Gowda and others v. State of Mysore AIR 1956 SC 731) (emphasis supplied)

Further, in **Rajendra Shantaram Todankar** v. **State of Maharashtra & Ors.** AIR 2003 SC 1110, in para 15 it was held as under:

"Section 149 of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause

> *embraces within its fold the commission of an act which may not necessarily be the common object of the assembly nevertheless the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of Section 149 either clause is attracted and the Court is convinced, on facts and in law both, of liability capable of being fastened vicariously by reference to either clause of Section 149 of IPC merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act. These principles are settled."*

To similar effect is the judgment of the Hon'ble Supreme Court in **Dani Singh And Ors.** v. **State of Bihar** dated 12 March, 2004 in Appeal (Crl.) 284-286 of 2003.

195. It is the settled law that an overt act is not necessary on the part of a person who is a member of an unlawful assembly to make him liable for the offences committed by others and the Ld. Sr. Counsel for the petitioner had also relied on **Yunis alias Kariya** v. **State of Madhya Pradesh (supra)** in this regard wherein it was observed that even if

no overt act is imputed to a particular person, when the charge is under Section 149 IPC, presence of the accused as part of unlawful assembly is sufficient for conviction (also **Amerika Rai** v. **State of Bihar** AIR 2011 SC 1379). The Ld. Sr. Advocate for the petitioner had also cited the judgment of the Hon'ble Supreme Court in **K. Madhavan** v. **Majeed (supra)** on which reliance was also placed by the Ld. Sr. Counsel for A-4, wherein it was observed as under:

> **"**23**.** *In the first place, the presence of an accused as part of an unlawful assembly, when not as a curious onlooker or a bystander, suggests his participation in the object of the assembly. When the prosecution establishes such presence, then it is the conduct of the accused that would determine whether he continued to participate in the unlawful assembly with the intention to fulfill the object of the assembly, or not. It could well be that an accused had no intention to participate in the object of the assembly. For example, if the object of the assembly is to murder someone, it is possible that the accused as a particular member of the assembly had no knowledge of the intention of the other members whose object was to murder, unless of course the evidence to the contrary shows such knowledge. But having participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:*
>
> *1. What was the point of time at which he discovered that the assembly intended to kill the victim?*
>
> *2. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?*
>
> *3. If he did, and failed, did he dissociate himself from the assembly by getting away?*
>
> *The answer to these questions would determine whether an accused shared the common object in the assembly. Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused*

> *disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory.*
>
> 24**.** *In the case of A4, there is no such evidence on record that having participated in the unlawful assembly which resulted in the death of Suresh Babu, he made any attempt to either stop the incident from taking place, or having found out that he could not prevent it, dissociated himself from the assembly. Therefore, he must be held liable under Section 326/149 of the Indian Penal Code."*

196. Reference was also made to the judgment in **Brathi @ Sukhdev Singh** v. **State of Punjab (supra)** wherein it was observed as under:-

> **"9.** *The general principle of the criminal liability is that it primarily attaches to the person who actually commits an offence and it is only such person that can be held guilty and punished for the offence. Sections 34 and 149 of the Indian Penal Code deal with liability for constructive criminality. Section 149 creates a specific offence and postulates an assembly of five or more persons having a common object. Section 34 has enacted a rule of co-extensive culpability when offence is committed with common intention by more than one accused. The offence of criminal conspiracy punishable under Section 120-B, IPC, consists in the very agreement between two or more persons to commit a criminal offence. Before these sections can be applied, the court must find with certainty that there were at least two persons sharing the common intention or five persons sharing the common object or two persons entering into an agreement. The principle of vicarious liability does not depend upon the necessity to convict a requisite number of persons: it depends upon proof of facts beyond reasonable doubt which makes such a principle applicable."*

It is thus settled law that to attract the offence under Section 149 IPC, there must be an unlawful assembly i.e. an assembly of 5 or more persons which has as its common object one of those specified in Section 141 IPC and thereafter in pursuance of the common object of that assembly, or such as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object, an offence is committed

by any member of the unlawful assembly. The emphasis in Section 149 IPC is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141 IPC. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149 IPC. Though prior concert is not needed, each member must have the same common object. The only thing required is that the accused should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 IPC. Further, a common object may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it and it may be modified or altered or abandoned at any stage and it can develop even at the spot. It has also been held that the expression "in prosecution of common object" as appearing in Section 149 IPC has to be strictly construed as equivalent to "in order to attain the common object" and it must be immediately connected with the common object by virtue of the nature of the object. In **Subal Ghorai & Ors.** v. **State of West Bengal** Criminal Appeal No.88/2007 decided on 02.04.2013, the Hon'ble Supreme Court sounded a note of caution and held as under:

> *"30...It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the*

> *unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution."*

Thus, the Hon'ble Supreme Court had laid down that the Court must have some material before it to form an opinion that the accused shared a common object.

197. In the present case, it is the case of the petitioner that the common object of the assembly of accused persons was to compel the petitioner, by means of criminal force or show of criminal force to release the advertisements which he was legally bound not to do. However, there is nothing in the material on record to point to such a common object of the accused persons or to show that all the accused persons were actuated by the said common object. As discussed above, as per the statement of Shri V.K. Jain, though the issue of advertisements was raised in the midnight meeting of 19.02.2018, other issues were also raised which belies the contention regarding the alleged common object of the accused persons in relation to release of advertisements. It is also discernible from the statements of the witnesses and the petitioner and the material on record that the CM had decided to follow the PSU route for release of advertisements so the question of any common object to pressurize the petitioner in relation to release of advertisements does not arise. Further, it was a meeting called by the Chief Minister,

attended by the Deputy Chief Minister and MLAs and the petitioner to put certain queries to the petitioner. The Ld. ACMM had also adverted to this aspect in para 58 of the impugned order wherein he observed:

> "58. *However, even after going through the chronology of aforesaid events, the same by no means suggests for any inference, which can be drawn of any unlawful assembly in prosecution of common unlawful object or any criminal conspiracy, as alleged, being hatched by the accused persons, who were none other than the elected members of Delhi Legislative Assembly including the then Chief Minister and Deputy Chief Minister of Delhi and who all gathered there in the meeting called by the Chief Minister himself, to question the complainant, who was the then Chief Secretary of the Government of NCT of Delhi, the principal bureaucrat, about certain issues. While the complainant alleged that meeting was called for a single agenda i.e. delay in release of advertisements. Whereas, as per Mr. V.K. Jain, another star witness of the prosecution, MLAs present there questioned the Chief Secretary (Complainant) on several issues apart from advertisement issue."*

There is no infirmity in the said finding of the Ld. ACMM as when the meeting was called by the Chief Minister and it was attended by him along with the Dy. CM and MLAs who had gathered there to question the petitioner on certain issues, it could not be said to be an unlawful assembly in prosecution of common unlawful object. The same holds true of the observations of the Ld. Trial Court in paras 59 and 60 of the impugned order that from the material on record, no inference of any unlawful assembly could be drawn. The Ld. Trial Court had also discussed the other points raised by the prosecution (which have been adverted to above in the context of the offence of criminal conspiracy) including that the meeting was called at midnight in a room where

there were no CCTVs and 11 ‘selected’ MLAs were present in the same about which the petitioner and Shri V.K. Jain were not informed to arrive at a finding that there was nothing to show any common unlawful object or that there was any unlawful assembly. Further, looking to the facts and circumstances of the case, it cannot also be said that the actions of A-1 and A-2 were in prosecution of any common object of the unlawful assembly, once there is nothing to demonstrate any common object as per the requirements of Section 141 IPC. As per the settled law, the Court must have some material to infer a common object but in the instant case, the only common object of the assembly as suggested by the material on record and the statements of witnesses was to question the petitioner over some issues and it cannot be said that the assembly of the accused persons was actuated by any premeditation as alleged or any act was done in prosecution of any common unlawful object.

198. It was then contended on behalf of the petitioner that assuming but not conceding that it was the case of the accused persons that there was no premeditation about the said assembly being unlawful, the subsequent events which unfolded sufficiently showed that the assembly became unlawful and the same got squarely covered under the Explanation to Section 141 IPC. It was submitted that an assembly which was lawful may subsequently become an unlawful assembly which aspect was ignored by the Ld. ACMM and in fact the Ld. Trial Court only looked at the punishing Section 149 IPC. It was also argued that as per Section 149 IPC, the conduct of A-3 and A-4 had to be seen

and even when they came to know of the object, they made no attempt to stop the assembly from pursuing the object and mere participating of the accused persons in such an assault would be inculpatory. In fact in **State of Punjab** v. **Sanjeev Kumar (supra)** the Hon'ble Supreme Court had also held that "u*nder the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instante."* Thus, an assembly which was lawful may subsequently become unlawful, though even in that case, there has to be a common object which may develop during the course of the incident or at the spot.

199. It would be argued that the moment the MLAs started shouting and abusing the petitioner and the assault began on the petitioner or he was threatened, the assembly of the accused persons became an unlawful assembly. In the instant case, there is nothing to show that when A-1 and A-2 allegedly started assaulting the petitioner, any common object developed at the spot by which all the accused persons were actuated i.e. of compelling the petitioner by means of criminal force or show of criminal force to release the advertisements. In fact even A-1 and A-2 cannot be said to be actuated by

any such common object. The Ld. Sr. Counsel for the petitioner in this regard had relied on the judgment in **K. Madhavan** v. **Majeed (supra)** wherein it was observed that the inference regarding whether the accused pursued the common object could be drawn from the conduct of such an accused. Several questions were pointed out in the said judgment which would arise with regard to the conduct of an accused such as what was the point of time at which he discovered that the assembly intended to kill the victim or in the instant case, to assault the petitioner and whether having discovered that, did he make any attempt to stop the assembly from pursuing the object or if he did, and failed, did he dissociate himself from the assembly by getting away. In the instant case, it would be argued that the moment the MLAs started shouting and abusing the petitioner and A-1 and A-2 assaulted the petitioner, the other accused persons would have discovered what the assembly intended to do. It is then the case of the petitioner that A-3 to A-13 made no attempt to stop the assembly from pursuing the object, however, again as discussed in detail above, it is borne out from the statement of Shri V.K. Jain that A-3 asked the MLAs not to do what they were doing and he also permitted the petitioner to leave. As such, there was a clear attempt by A-3 to stop A-1 and A-2 from assaulting the petitioner and in fact, it is demonstrated from the statements of witnesses that the alleged assault lasted for a very short time. Further, as discussed, when A-3 who was chairing the meeting asked A-1 and A-2 to stop doing what they were doing, there would be no occasion for the others to do so and in those circumstances, it cannot be

said that their conduct showed that they shared the common object of the assembly.

200. It was further held in **K. Madhavan** v. **Majeed (supra)** that "*Without evidence that the accused had no knowledge of the unlawful object of the assembly or without evidence that after having gained knowledge, he attempted to prevent the assembly from accomplishing the unlawful object, and without evidence that after having failed to do so, the accused disassociated himself from the assembly, the mere participation of an accused in such an assembly would be inculpatory"*, however, in the instant case, apart from the fact that there is nothing to show that the assembly had any unlawful object or to show that any such unlawful object developed at the spot, it is evident that A-3 had refrained A-1 and A-2 from doing what they were doing and as such there is nothing which would make the conduct of A-3 or of A-4 to A-13 inculpatory in any respect. If A-1 and A-2 had indulged in the alleged assault, even the two of them cannot be held liable to be charged for the offence under Section 149 IPC as to attract that Section, there must be five or more persons and there must be a common unlawful object. Accordingly, there is no infirmity in the finding of the Ld. Trial Court that there was nothing to show any unlawful assembly or that there was any common unlawful object. Though the Ld. Trial Court had not specifically referred to Explanation to Section 141 IPC, it is seen that the Ld. Trial Court had at length considered the allegations regarding the events during and subsequent to the assault and arrived at a finding that there was nothing to show, even prima facie that Section 149 IPC was attracted against any of the

accused persons and there is no illegality or perversity in the said finding.

SECTION 34 IPC

201. It was then argued on behalf of the petitioner that all the accused persons had common intention and in furtherance to that participated in the assault and other offences against the petitioner. The Ld. Sr. Counsel for the petitioner had relied on the judgment in **State of Rajasthan** v. **Shobha Ram (supra)** to argue that the state of mind could be inferred from the conduct of the accused and in the said judgment, Section 34 IPC was discussed and it was observed:

> *"9. A perusal of Section 34 IPC would clearly indicate that there must be two ingredients for convicting a person with the aid of Section 34 IPC. Firstly there must be a common intention and secondly, there must be participation by the accused persons in furtherance of the common intention. If the common intention is proved, it may not be necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must be arising out of the same common intention in order to attract the provision…*
>
> *10. Insofar as common intention is concerned, it is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. As observed in Hari Ram v. State of U.P. (2004) 8 SCC 146 (SCC p.622, para 21), the existence of direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. Therefore, in order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence before a person can be vicariously convicted for the act of the other."*

In the said judgment, it was thus held that there must be a common intention and further a participation by the accused persons in furtherance of the common intention and it was also observed that common intention was a state of mind of the accused which could be inferred from his conduct. Reference was made to the judgment in **Hari Ram** v. **State of U.P. (supra)** on which reliance was also placed by the Ld. Sr. Counsel for the petitioner in which judgment, it was observed as under:

> "**10.** *Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar v. State of Punjab (AIR 1977 SC 109), the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.*
>
> **xxx**
>
> **13.** *The Section does not say "the common intention of all", nor does it*

> *say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh (AIR 1993 SC 1899), Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused."*

202. It was thus emphasised that "*the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention"* and there must be a plan or meeting of minds prior to the commission of the offence. The Ld. Counsel for A-12 on the other hand had relied on the judgment in **Suresh & Ors.** v. **State of U.P. (supra)** on what would constitute the common intention wherein it was observed:

> "*22. Thus to attract Section 34 IPC two postulates are indispensable. (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons*."

The said judgments postulate common intention and participation by accused persons in furtherance of common intention to attract Section 34 IPC. The Ld. Trial Court had

relied on the judgments of the Hon'ble Supreme Court in **Ramashish Yadav and Ors.** v. **State of Bihar** (1999) 8 SCC 555 and in **Noor Mohammad Mohd. Yusuf Momim** v. **State of Maharashtra** (1970) 1 SCC 696 on the law regarding Section 34 IPC. While both Section 34 IPC and Section 120A IPC require a meeting of minds, what distinguishes the two is that in the latter, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow while in the former the gist of the offence is the commission of a criminal act in furtherance of a common intention of all the offenders, which means that there should be unity of criminal behavior resulting in something, for which an individual would be punishable, if it were all done by himself alone. There must be a plan or meeting of minds, be it pre-arranged or on the spur of the moment, but it must necessarily be before the commission of the crime.

203. In the present case, it has already been held that there is nothing to make out the offence of criminal conspiracy. Even as regards Section 34 IPC, it is pertinent that as held by the Ld. Trial Court, "*there is also no material available on record to infer that the alleged act of assault and intimidation by some of the accused persons present there was done in furtherance of common intention of all present there*" and there is nothing to show that the accused persons nurtured any common intention or it was formed on the spur of the moment or that any criminal act was done in furtherance of common intention of all the accused persons. The accused persons had gathered pursuant to a

meeting called by the Chief Minister to question the petitioner on certain issues and that could not be regarded as a culpable common intention which would make A-3 to A-13 liable even if A-1 and A-2 had allegedly assaulted the petitioner nor could it be said to have developed on the spur of the moment, moreso, as per the statement of Shri V.K. Jain A-3 had asked the said MLAs not to do what they were doing. Though it has been observed that common intention *"is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances"* there is nothing in the present case in the conduct of A-3 to A-13 or in the prior and subsequent attendant circumstances, even prima facie, which would lead to an inference of any criminal act done in furtherance of common intention so as to charge the accused persons with the offences, prima facie held to have been made out against A-1 and A-2 by the Ld. Trial Court or any other offences with the aid of Section 34 IPC. As such, prima facie, Section 34 IPC cannot be said to be attracted against A-3 to A-13 and there is no infirmity or illegality in the findings of the Ld. Trial Court in that regard.

Section 109 and 114 IPC

204. In the revision petition, the petitioner had prayed for framing of charges against A-1 and A-2 as also the other accused persons under Sections 109/ 114 IPC. Section 109 IPC reads as under:

"Whoever abets any offence shall, if the act abetted is committed in

consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

Section 114 IPC reads as under:

*"114. **Abettor present when offence is committed.** - Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."*

Thus, both Sections 109 and 114 IPC are predicated on abetment of an offence. Abetment is defined in Section 107 of the IPC. Section 107 IPC, in so far as is material, is reproduced hereunder:

*"**107. Abetment of a thing.** – A person abets the doing of a thing, who-*
First. – Instigates any person to do that thing; or
Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly. – Intentionally aids, by any act or illegal omission, the doing of that thing.
Xxxx"

Thus, abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. All three involve a mental process as observed in **Randhir Singh** v. **State of Punjab** (2004) 13 SCC 129.

205. The Hon'ble Supreme Court in **Ramesh Kumar** v. **State of Chattisgarh**, (2001) 9 SCC 618 in para 20 examined the different shades of 'instigation' and observed as under:

> *"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect, or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out."*

Further, the Hon'ble High Court of Rajasthan in **Vijay Kumar Rastogi** v. **State of Rajasthan** (2012) Crl.L.J.2342 in the case of abetment to suicide observed as under:

> *"10. The word 'urge' means to advice or try hard to persuade somebody to do something, to make a person to move more quickly or in a particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts or willful omission or conduct which may even be willful silence, until the deceased reacted, or pushing the deceased by his words or willful omission or conduct to make the deceased move forward more quickly in a forward direction. Secondly, the accused had the intention to provoke or urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly the presence of mens rea is the necessary concomitant of instigation."*

In **Cyriac & Anr.** v. **The SI of Police and Anr.** 2005 SCC OnLine Ker 346, what is instigation under Section 107 IPC was discussed at length and after referring to the

judgment in **Ramesh Kumar** v. **State of Chhatisgarh (supra)**, it was observed as under:

> *"8. It is clear from the above discussion that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward. Going by the dictionary meaning (vide Oxford Advanced Learners Dictionary, Sixth Edition) the word `goad ' means, `keep irritating or annoying somebody until he reacts.' So also, `urge' means 'to advise or try hard to persuade somebody to do something or to make a person to move more quickly in a particular direction especially by pushing or forcing' such person. `Urge forward' means in this context, `urge' a person `forward'. Thus, a person who instigates another has `to goad or urge forward' the latter, with intention to provoke, incite, urge or encourage doing of an act by the latter.*
>
> *9. A close, combined reading of the meaning of the word `instigation' with the meaning of the terms `goad' and `urge' will reveal that `instigation' involves two things. One is a physical act or omission, while the other is a mental act. The physical act or omission involved in `instigation' is, `goading or urging forward' another. Such physical act of goading can be committed either by words or deed, as the meaning of the word suggests. `Goading' can be committed also by any other willful conduct--may be, by even an adamant silence. Thus, by words, deeds willful omission or willful silence also, one can goad a person i.e, keep irritating or annoying a person until he reacts.*
>
> *10. So also, the physical act of `urging forward' or 'instigation' involves doing of an act by strongly advising, persuading to make a person do something or by pushing or forcing a person in order to make him move more quickly in a forward direction. Thus, both the physical acts in `goading or urging forward' can be committed by doing some act, either verbal or physical or even by a willful omission or conduct.*
>
> *11. But, apart from such physical act or omission, one more factor has to be established to constitute `instigation'. That is a mental act. While a person instigates another by the act of `goading or urging forward', such person must also have, the intention to provoke, incite, urge or encourage doing of an act by the other. Such intention to provoke, incite, urge or encourage doing of an act by the other is an essential factor in `instigation'. A person can be said to have instigated another, if such person, with intention to provoke, incite, urge or encourage the latter to do an act, has goaded or urged forward the other person.*

206. There must be thus either instigation as elaborated in the above cited judgments or conspiracy or intentional aiding. A person is said to abet by aiding when by any act done either prior to, or at the time of commission of an act, he intends to facilitate and does in fact facilitate the commission of the said act. The Ld. Sr. Counsel for A-12 had relied on the judgment of the Hon'ble Supreme Court in **Shri Ram** v. **State of U.P. (supra)** on what constitutes abetment wherein it was held as under:

> "*6. … Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aids, by any act or illegal omission, the doing of that thing." Explanation 2 to the section says that "Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act." Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder- of the invite. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the, third paragraph of section 107.*"

Thus, there must be intentional aiding and active complicity to constitute abetment by aiding. In the present case, on a consideration of the facts and circumstances of the case, there is nothing to show abetment either by instigation or by intentional aiding or to show that A-3 to A-13 had abetted the acts of A-1 and A-2. Further, there is also nothing to show abetment by conspiracy in view of the above discussion. There is also merit in

the contention of the Ld. Sr. Counsel for A-2 that A-2 had been charged substantively for committing some offences with the aid of Section 34 IPC and when the allegation was that A-2 had committed the act, there was no question of abetting anything when he was the performer, in fact if Sections 109 and 114 IPC were invoked, it would contradict the substantive charges. The same argument would hold true in respect of A-1. Thus, there is no infirmity in the finding of the Ld. Trial Court that there is nothing to show abetment of any offence even prima facie, either against A-1 and A-2 who have been directed to be charged for substantive offences or even against A-3 to A-13 and offences under Section 109 and 114 IPC would not, prima facie be attracted against any of the accused persons.

SECTION 342 IPC

207. It is the contention of the petitioner that Section 342 IPC is attracted in the present case as he was wrongfully confined by the accused persons in the room. It was submitted that the petitioner had clearly stated that the door was firmly shut after he entered the meeting room by one of the MLAs, he was abused, threatened, intimidated by the MLAs present in the meeting and one MLA even threatened that the petitioner would be confined in the room the entire night unless he agreed to release the advertisements and after the assault, he was able to leave the room with difficulty. It was further submitted that this was corroborated by the statement of Shri V.K. Jain

recorded on 22.02.2018 wherein he had stated that the petitioner had left the room somehow trying to save himself. It was contended that it was not required for the offence of wrongful confinement that the door be locked and mere suspicion of being confined created in the mind of the petitioner was sufficient. It was submitted that proof of actual physical obstruction was not necessary to constitute an offence of wrongful confinement and if such an impression was created in the mind of the person confined as to lead him to reasonably believe that he was not free to depart, the offence was complete. This was refuted by the Ld. Counsels for the accused persons who had argued that there was no restraint and no offence of wrongful confinement was made out as the door was never locked, Shri V.K. Jain had left in between and come back and the petitioner was not restrained when he wanted to leave the room and he was not restrained from going in any particular direction.

208. A perusal of the record shows that the petitioner in the complaint dated 20.02.2018 had stated "*One of the MLAs firmly shut the door of the room. I was made to sit in between Shri Amanatullah Khan and another person/ MLA on a three-seater sofa…One MLA, whom I can identify, threatened that I will be confined in the room for the entire night unless I agree to release T.V. campaign… With difficulty, I was able to leave the room and get into my official car and left CM residence. At no stage did I retaliate or provoke any person in the room despite confinement…*" In his statement recorded under Section 161 Cr.P.C. on the same day i.e. 20.02.2018, he had stated that

Ritu Raj Govind threatened him that he would be confined in the room for the entire night unless he agreed to release the T.V. campaign in connection with the Government's publicity programme on completion of three years of the present Government. Further in his statement dated 25.04.2018, he reiterated what he had stated about Ritu Raj Govind and he further stated "*I have tried to identify the other MLAs after searching the details of MLAs of Delhi on internet and after going through the CCTV footage as shown by you today, I am able to identify that Sh. Praveen Kumar, MLA is the person who had firmly shut the door of the said room to confine me in the said room*." Thus, the petitioner had stated about one of the MLAs firmly shutting the door of the room and thereafter in his supplementary statement he had stated about being able to identify the MLA who had firmly shut the door of the room to confine him in the said room.

209. While it was argued on behalf of the petitioner that actual proof of physical obstruction was not necessary and the impression created in the mind of the petitioner was sufficient and it would also be argued on behalf of the petitioner that the statement made by the petitioner, being the injured witness had to be given primacy but the other material which has come on record during investigation cannot also be lost sight of. It has come in the statement of Shri V.K. Jain dated 21.02.2018 (which was directed to be considered by the order of the Hon'ble High Court dated 21.10.2020) that when he and the petitioner entered the room, Shri Praveen Kumar was sitting on the sofa next to the

wall near the entry gate and he had not stated anywhere about the door being firmly shut. Further, he had stated about going to the washroom and then coming back and it is not his case that the door was locked or he had to get the door opened. Even in his other statements, he had not stated about the door being firmly shut and he had also stated about going out. Thus, merely the usage of the words ‘one of the MLAs firmly shut the door of the room’ in the FIR would not be sufficient to constitute the offence of wrongful confinement once it is not the case that the door was locked. Even as per his own case, though the petitioner had stated that he with difficulty managed to leave the room, it was not that the door was so shut that it could not be opened by him or he was restrained by anyone from leaving. Reference in this regard can be made to the judgment of Hon’ble Supreme Court in **Neelu Chopra & Anr.** v **Bharti (supra)** wherein it was observed that in order to lodge a proper complaint, mere mention of the sections and the language of the sections is not the be all and end of the matter.

210. Even the argument advanced on behalf of the petitioner that the impression created in the mind of the petitioner was sufficient to make out the offence is misplaced if the words of the relevant sections are looked at. Section 340 IPC defines ‘wrongful confinement’ in the following terms:

> *“Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.”*

Section 342 IPC provides the punishment for wrongfully confining a person. Thus, the

act contemplated by Section 340 IPC is of wrongfully restraining any person in such a manner as to prevent him from proceeding beyond certain circumscribing limits and mere impression in the mind of a person to that effect would not be sufficient. The Ld. Sr. Counsel for the petitioner had relied on the judgment in **Raju Pandurang Mahale** v. **State of Maharashtra and Ors. (supra)** wherein it was observed as under:

> *"Wrongful confinement is defined in Section 340. As observed by this Court in Shyam Lal Sharma and Anr v. The State of Madhya Pradesh, AIR (1972) SC 886 where a person is wrongfully restrained in such a manner as to prevent that person from proceeding beyond certain circumscribed limits, he is wrongfully confined within the meaning-of this Section. The essential ingredients of the offence of "wrongful confinement" are that the accused should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed. The factual scenario clearly establishes commission by the appellant as well of the offence punishable under Section 342 IPC."*

Thus, in this case as well, the ingredients of the offence of 'wrongful confinement' were referred to i.e. the accused *should have wrongfully confined the complainant and such restraint was to prevent the complainant from proceeding beyond certain circumscribed limits beyond which he/she has a right to proceed.* The reference was to a physical act and not to any impression created in the mind of the victim. Reliance was also placed on the judgment in **Piyush Chamaria** v. **Hemanta Jitani and Ors**. **(supra)** wherein it was observed as under:

> "**13.** *'Wrongful confinement' is an offence against human body. Thus, when one man compels another to stay in any given place against his will, he imprisons that other person just as much as he has locked him*

> *up in a room. The act of compelling a man to remain within a prescribed limit against his will, and without right, authority or power under the law, amounts to his imprisonment and this imprisonment is nothing, but 'wrongful confinement'."*

Here again the act which is referred to is of compelling a person to remain within a prescribed limit against his will wherein in the present case there is nothing to the effect that the petitioner was compelled to remain within a prescribed limit against his will and when he sought permission to leave, he was allowed to do so and he left the room. The Ld. Sr. Counsel had also relied upon the judgment in **Bhagwat and Ors.** v. **State (supra)** wherein it was observed as under:

> *"… It is sufficient if the evidence shows that such an impression was produced on the mind of the victim as to create a reasonable apprehension in his or her mind that he or she was not free to depart and that he or she would be forthwith seized or restrained if he or she attempted' to do so. What is important in such cases is reasonable apprehension of the use of force rather than its actual use."*

211. In this case, it was held that what was important in such cases was reasonable apprehension of the use of force rather than its actual use but, in the present case it is pertinent that when the door 'was firmly shut' there could have been no basis for any apprehension in the mind of the petitioner of use of force as even as per the arguments advanced on behalf of the petitioner, he had not gone with the idea that he could be assaulted or any force would be used on him and thereafter Shri V.K. Jain had left from the room and came back so there would be no basis for the apprehension that the door being firmly shut, the petitioner could not go out from it. In fact, it was argued on behalf

of the petitioner that if an impression was created in the mind of the person confined as to lead him to reasonably believe that he was not free to depart, the offence was complete. However, in the instant case, as per the petitioner himself, he with difficulty left the room after the incident but he had not stated in any of his statements that he reasonably believed that he was not free to depart and the fact that no one restrained the petitioner from leaving the room and he could leave the room (other than the argument regarding Nitin Tyagi following him) lends credence to the fact that even prima facie, there was no wrongful confinement. In the impugned order, the Ld. ACMM had observed in this regard as under:

> "87….*However, as demonstrated from the material on record including statement of witness Mr. V.K. Jain, the then Chief Minister (A-3) permitted the complainant to leave from there, when complainant sought his permission to leave from the meeting room. So, as such, there was no confinement of the complainant, rather, he left the meeting room, as and when he desired after seeking permission of the Chief Minister."*

Even the petitioner had not stated in any of his statements that when he sought to leave from the room, he was restrained in any manner from leaving the room or going in any particular direction. There is clearly no infirmity in the said finding of the Ld. ACMM and there is nothing on record to even prima facie make out an offence under Section 342 IPC against any of the accused persons.

212. As regards the role of A-7 Praveen Kumar, it was argued on behalf of the petitioner that the petitioner had mentioned in the complaint that one of the MLAs had firmly shut the door of the room; further, the petitioner had clarified in his subsequent Section 161 Cr.P.C. statement dated 25.04.2018 that he was able to identify that A-7 Praveen Kumar was the one who had firmly shut the door of the room to confine him in the said room and that A-7 had locked the room to give the impression to the petitioner that he was confined in the room. It was also submitted that the CCTV footage was shown to the petitioner on 25.04.2018 and with the help of CCTV footage and the internet photos, the petitioner had specifically named A-7 Praveen Kumar for the said overt act and Shri V.K. Jain in his statement dated 22.02.2018 had also corroborated the presence of Praveen in the said meeting. Per contra, the Ld. Counsel for A-7 had argued that there were no specific allegations against A-7 in the FIR or in the subsequent statements of the petitioner and it was only in the statement of the petitioner recorded on 25.04.2018 that the name of A-7 had cropped up. It was also submitted that there was no mention of shutting the door or of any restraint or confinement in the statement of Shri V.K. Jain recorded under Section 164 Cr.P.C. It was further argued that as per the case of prosecution, the presence of accused Praveen Kumar was established through CCTV footage which meant that till 25.04.2018, there was nothing to show the presence of Praveen Kumar and no prima facie case was made out against Praveen Kumar. It is true that the presence of A-7 Praveen Kumar was corroborated by the statement of Shri V.K.

Jain dated 22.02.2018 but as observed above, it cannot be said that the offence of wrongful confinement is made out even prima facie in the instant case, much less against the accused Praveen Kumar. As such there is no infirmity in the impugned order discharging A-7 Praveen Kumar, also in view of what has been held above that there is nothing to prima facie show that there was any conspiracy or unlawful assembly or common intention or abetment and only on the ground that A-7 Praveen Kumar did not prevent or intervene to stop the assault, no offence can be said to be attracted against him.

ROLE OF NITIN TYAGI

213. It was argued on behalf of the petitioner that the petitioner in his very first statement under Section 161 Cr.P.C. dated 20.02.2018 had named A-6 Nitin Tyagi (respondent No.8) and reiterated his name and role in his statement under Section 161 Cr.P.C. dated 25.04.2018. Even the PSO Satbir in his statement under Section 161 Cr.P.C. had stated about Nitin Tyagi following the petitioner when the petitioner came out of the meeting room and the same was also corroborated by the CCTV footage and also the statement of Bibhav Kumar. Per contra, it was argued on behalf of A-6 that there was no allegation in the first complaint of the petitioner against A-6 and no specific role was assigned to him and he was not even named and there was nothing about him even in the statements of Shri V.K. Jain who also did not state that he saw the

MLAs abusing or shouting or using unparliamentary language or saw any threat to life being extended to the petitioner or that he was wrongfully confined; in the statement under Section 161 Cr.P.C. of the petitioner recorded on 20.02.2018, the name of Nitin Tyagi was added for the first time and a specific role was assigned to him after the petitioner had checked the photos and as per the same, Nitin Tyagi had used abusive and unparliamentary language and also followed the petitioner.

214. A perusal of the record shows that there is no mention of A-6 or his role in the complaint on the basis of which the FIR was registered; while the petitioner had stated therein that the MLAs started shouting at him and abused him, he had not stated about use of unparliamentary language by any MLA or about being followed when he left from the meeting room; in the statement under Section 161 Cr.P.C. recorded on 20.02.2018, the petitioner had stated about checking the photographs and the names of the MLAs of Delhi Legislative Assembly available on the internet and he had stated about the presence of the accused Nitin Tyagi and that Nitin Tyagi used very abusive and unparliamentary language to him and when he somehow managed to escape from the meeting/ drawing room at CM's residence, was even followed by him to stop him; he had also stated that they used extremely filthy and unparliamentary language, which he was too embarrassed to spell out; again in the statement dated 25.04.2018, the petitioner had stated that the MLAs used abusive and unparliamentary language to threaten him and when he left the room where the incident took place, Mr. Nitin Tyagi

even followed him. Shri Bibhav Kumar in his statement recorded on 19.04.2018 had stated that he had been asked by the CM to keep a meeting at his residence at 11.00 p.m. in which 11 MLAs were to be called including Nitin Tyagi; he further stated that after some time of the meeting starting, the CS came out in a disheveled condition and behind him Nitin Tyagi came till the main gate. Insp. Satbir Singh who was the PSO attached to the petitioner had stated that when the petitioner had come out of the meeting room at the residence of the CM, one person had come behind him till the main gate and he was asking the petitioner to stop and later he came to know that the said person was Nitin Tyagi. As such, other than the petitioner himself, none else had stated about use of unparliamentary or abusive language by Nitin Tyagi. However, there is merit in the contention of the Ld. Counsel for A-6 that use of abusive and unparliamentary language *per se* does not make out any offence under IPC.

215. It was in fact argued on behalf of the petitioner in the written submissions which were filed before the Ld. Trial Court that the offence under Section 504 IPC was also attracted against the accused persons and that A-3, A-4 and other persons intentionally facilitated/ perpetrated the assault on the petitioner and provoked him to commit a breach of peace by wrongfully confining him in the residential premises of A-3. It is seen that the petitioner had stated several times about the accused persons using abusive and filthy language and unparliamentary language, about continuously threatening and provoking him and it was also submitted that self-restraint by the victim at the time of

abuse did not absolve the accused persons under Section 504 IPC. In **Fiona Shrikhande** v. **State of Maharashtra & Another** (2013) 14 SCC 44, the Hon'ble Supreme Court noticed the ingredients of Section 504 IPC and observed as under:

> *"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."*

Looking to the material on record and the facts and circumstances of the present case, though there are allegations of the accused persons using abusive language, there is nothing that would satisfy the ingredients of Section 504 IPC as laid down in the aforesaid judgment of the Hon'ble Supreme Court. There is nothing to show intentional insult and abusive language by itself cannot be construed as intentional insult, in absence of specific words being stated; there is nothing to show that the said abusive language was such as to give provocation to the petitioner and again there is nothing to show that any of the accused persons intended or knew that use of such abusive language would provoke the petitioner to break the public peace or to commit any other

offence. As such, the offence under Section 504 IPC cannot be said to be, even prima facie attracted against any accused person in the present case.

216. As regards the question of Nitin Tyagi following the petitioner out of the meeting room, the petitioner had only stated in his statement dated 20.02.2018 that Nitin Tyagi had followed him when he came out of the meeting/ drawing room at the CM's residence to stop him but it is not his case that A-6 had used any physical force or tried to restrain him or block his way or stop him in any other manner and even in the statement dated 25.04.2018, he had only stated about Nitin Tyagi following him and not about trying to stop him or restrain him in any manner. Shri Bibhav Kumar had also merely stated about Nitin Tyagi coming behind the petitioner till the main gate and did not attribute anything further to him. Further Insp. Satbir Singh had also only stated that when the petitioner had come out of the meeting room at the residence of the CM, one person had come behind him till the main gate and he was asking the petitioner to stop but he also did not state about Nitin Tyagi using any force or trying to restrain or confine the petitioner. The Ld. Sr. Counsel for the petitioner had argued that Nitin Tyagi could not do anything as he saw the PSO of the petitioner but no such assumption can be drawn when none of the witnesses have stated about A-6 doing anything other than coming behind the petitioner till the main gate and asking him to stop. Even from the CCTV footage, the petitioner has not been able to point out that A-6 had done any overt act in order to stop him. As such, even if A-6 had followed the petitioner out of the

meeting room to the main gate and also asked him to stop, no offence would be attracted even prima facie against him in the absence of there being anything on record to show that A-6 had tried to use any force or restraint on the petitioner in order to stop him from going in any particular direction or tried to confine him or in any manner extended any threat to him. It is also pertinent, as argued by the Ld. Counsel for A-6 that neither the petitioner nor Insp. Satbir had stated about the petitioner asking the latter to protect him from Nitin Tyagi if it was their case that the action of Nitin Tyagi was such that the petitioner felt threatened.

217. Regarding the role of Nitin Tyagi, the Ld. ACMM had observed in the impugned order as under:

> *"88. The allegation that he was even followed by the accused Nitin Tyagi to stop him, also finds no support from the material available on record. Complainant came at CM residence on that day in his official car driven by his official driver HC Ashok Kumar Yadav and his PSO Inspector Satbir Singh also accompanied him. PSO Inspector Satbir Singh stated in his statement u/s 161 Cr. P.C. that when CS Sahab came out of the meeting room, one person, whose name he subsequently came to know as MLA Nitin Tyagi, was asking the CS Sahab to stay there. But, that itself does not constitute any offence. It is not the case here that accused Nitin Tyagi, in any manner, was restraining, confining or threatening the complainant. Simply because an MLA asked the Chief Secretary to stay there, without any further overt act on his part, does not make him liable for any offence."*

Clearly the said findings are as per the material on record and no illegality or perversity can be found in the same.

ROLE OF A-8 AJAY DUTT (Respondent No.10) and A-10 RITURAJ GOVIND (Respondent No.12)

218. It is the case of the petitioner that threats were extended to him during the midnight meeting of 19.02.2018 by the accused persons. As regards the role of A-8 Ajay Dutt, it was argued that the petitioner in the complaint itself had mentioned that a threat was made that he would be implicated in false cases including SC/ST Act. The petitioner in his Section 161 Cr.P.C. statement dated 25.04.2018 had mentioned about going through the CCTV footage and he stated that Shri Ajay Dutt was the person who had threatened to implicate him in false cases including the case under SC/ST Act. It was argued that the filing of false complaints by Ajay Dutt and Prakash Jarwal demonstrated that they were part of the conspiracy having common intention to intimidate/ abuse/ threaten and physically assault the petitioner. Per contra, it was argued on behalf of A-8 that there were four statements of the petitioner apart from the rukka but in the first four statements, the name of A-8 was not there. Even when the petitioner made the statement on 20.02.2018 after identifying some persons on the basis of internet photographs, he had still not identified A-8 and had stated the name of A-8 for the first time on 25.04.2018 after more than two months and it was only by way of an improvement that the name of A-8 was added. Shri V.K. Jain had only stated about

the presence of A-8 and not corroborated the statement of the petitioner about A-8 giving any threat.

219. As regards the role of A-10 Rituraj Govind, it was argued on behalf of the petitioner that the petitioner had stated in the FIR that one MLA whom he could identify had threatened him that he would be confined in the room for the entire night unless he agreed to release TV campaigns who was later identified by the petitioner as Rituraj Govind and again in his statement under Section 161 Cr.P.C. dated 25.04.2018, he had referred to the role of Rituraj Govind. It was also argued that Shri V.K. Jain in his statement under Section 161 Cr.P.C. dated 22.02.2018 had stated that the petitioner had left the meeting with great difficulty so the threat of confinement was actual. The Ld. Counsel for A-10 had argued that there was no evidence at all against A-10 and the essential ingredients of the offence did not exist.

220. A perusal of the record shows that in the complaint on the basis of which the FIR was registered, the petitioner had not named either A-8 or A-10 but he had stated that one MLA, whom he could identify threatened that he (the petitioner) would be confined in the room for the entire night unless he agreed to release TV campaign. A threat was made that he would be implicated in false cases including under the SC/ST Act. In the supplementary statement recorded on 20.02.2018, the petitioner had stated about the presence of A-10 Rituraj Govind and his involvement in the incident and that

Rituraj Govind threatened him that he would be confined in the room for the entire night unless he agreed to release the TV campaign in connection with the Government's publicity programme on completion of three years of the then Government; in the statement dated 18.04.2018 of the petitioner, there was nothing specific about A-8 or A-10; in the statement dated 25.04.2018, the petitioner had stated that the MLAs used abusive and unparliamentary language to threaten him on the intervening night of 19/20.02.2018; MLA Rituraj Govind threatened him that he would be confined in the said room of CM residence for entire night unless he agreed to release the TV campaign in connection with completion of 3 years of AAP Government and he stated that he had tried to identify other MLAs after searching the details of MLAs of Delhi on internet and after going through the CCTV footage as shown to him that day, he was able to identify Shri Ajay Dutt, MLA as the person who had threatened to implicate him in false cases including the case under SC/ST Act. Shri V.K. Jain in his statement dated 21.02.2018 had stated about the presence of A-8 but not about any threat being extended in his presence; in his statement dated 22.02.2018 recorded under Section 164 Cr.P.C. he had not stated about any MLA other than Prakash Jarwal and Amanatullah Khan nor about any threat being extended in his presence; in his statement under Section 161 Cr.P.C. recorded on 22.02.2018, he had stated about the presence of A-8 but he did not state about any threat being extended in his presence; and in the statement dated 09.05.2018 he did not state about any MLA specifically. As such Shri V.K. Jain had

confirmed the presence of A-8 but did not state about any threat being extended in his presence.

221. It is thus seen that the petitioner in the complaint had stated about the threats being extended to him about keeping him confined in the room for the whole night which he reiterated in the statement dated 20.02.2018 in which he also identified A-10 as the person who extended the said threat to him and he reiterated the same in the statement dated 25.04.2018. He had stated about the threat to implicate him in false SC/ST Act cases in the complaint and it was thereafter in the statement dated 25.04.2018 that he had identified A-8 as the person who had extended the said threat to him. The question that arises is whether the offence under Section 506 IPC is prima facie made out against A-8 and A-10 or even the other accused persons on the basis of the said alleged threats. The Ld. Sr. Counsel for the petitioner had submitted that the Ld. Trial Court had wrongly placed reliance on the judgments in **Kanshi Ram** v. **State (supra)** and in **Manik Taneja** v. **State of Karnataka (supra)** and had referred to the latter wherein it was observed as under:

> *"A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.*

> ***12.*** *In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."*

The Ld. Trial Court in the impugned order had relied upon the said judgment and thereafter held that the ingredients of Section 506 IPC were not satisfied in the present case, observing as under:

> *"It is well settled that mere threat is no offence. The mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 504 or section 506 IPC. Now, if we revert back to the allegations in the complaint against the accused persons namely Rituraj Govind, Nitin Tyagi, Praveen Kumar and Ajay Dutt, the said allegations taken on their face value do not satisfy the ingredients of Sections 506 IPC, as has been enumerated by the Hon'ble Supreme Court in the aforesaid judgment of Manika Taneja (Supra)."*

222. The Ld. Sr. Counsel for the petitioner had, on the other hand, argued that the said judgment was inapplicable to the present case as it related to Facebook posts and not to a threat extended as in the present case. The emphasis in this case was on the intention

to cause alarm to the complainant. Reliance was also placed by the Ld. Sr. Counsel for the petitioner on the judgment in **Narendra Kumar and Ors.** v. **State and Ors**. **(supra)** wherein the ingredients of offence of criminal intimidation as defined in Section 503 IPC punishable under Section 506 were laid down as under:

> *"1. Threatening a person with any injury*
>
> *(i) to his person, reputation or property; or*
>
> *(ii) to the person or reputation of any one in whom that person is interested.*
>
> *(2) Threatening a person with injury*
>
> *(a) to cause alarm to that person, or*
>
> *(b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or*
>
> *(c) to cause that person to omit to do any act which that person is legally entitled to do so as the means of avoiding the execution of such threat."*

Thus, as per this judgment, threatening a person with any injury to his person, reputation or property would by itself constitute the offence of criminal intimidation.

223. The Ld. Counsel for A-1 had cited the judgments in **Kanshi Ram** v. **State (supra)** and in **Manik Taneja** v. **State of Karnataka (supra)** on what constitutes the ingredients of Section 506 IPC and the Ld. Sr. Counsel for A-2 had also relied on the judgment of the Hon'ble High Court of Delhi in **Kanshi Ram** v. **State (supra)** and it was argued that mere threat was no offence and it should have caused alarm and as such there had to be a threat and it must also cause an alarm. In **Kanshi Ram** v. **State**

(supra), the Hon'ble High Court of Delhi had observed that "*the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that mere threat is no offence. That being so, the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC.*" As such, it was held in this case that mere threat was no offence. The Ld. Counsel for A-6 had relied upon the judgment of the Hon'ble Supreme Court in **Vikram Johar** v. **The State of U.P. & Anr. (supra)** decided on 26.04.2019 wherein reference was made to the judgment of the Hon'ble Supreme Court in **Manik Taneja** v. **State of Karnataka & Another (supra)** and it was observed that in the said case, the allegation was that the appellant had abused the complainant and it was held that the mere fact that the allegation was that accused had abused the complainant did not satisfy the ingredients of Section 506 IPC. In **Vikram Johar** v. **The State of U.P. & Anr. (supra)** the Hon'ble Supreme Court further observed as under:

> "…… *For proving an offence under Section 506 IPC, what are ingredients which have to be proved by the prosecution?* ***Ratanlal & Dhirajlal on Law of Crimes****, 27th Edition with regard to proof of offence states following: -*
>
> *"…The prosecution must prove:*
>
> *(i) That the accused threatened some person.*
>
> *(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;*
>
> *(iii) That he did so with intent to cause alarm to that person; or to*

> *cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."*

In this case, it was held that the ingredients of Sections 504 and 506 IPC were not made out from the complaint filed by the complainant.

224. Qua A-8, the allegation is that he threatened to implicate the petitioner in false SC/ST cases. It would be argued on behalf of the petitioner that the same would be covered under injury to reputation and the threat was followed up by lodging of false complaint under SC/ST Act by A-8 and A-2 against the petitioner the next day. However, even though a complaint under SC/ST Act was filed by A-8 and A-2 the next day, at the time the threat was allegedly extended to the petitioner, there is nothing to show that alarm was caused thereby to the petitioner by the alleged threat. It was argued on behalf of the petitioner that whether alarm was indeed caused would be a matter of trial. However, there should be something on record which at least, prima facie shows that any alarm was caused to the petitioner by the threat which was allegedly extended which is missing in the present case. The Ld. Counsel for A-6 had placed reliance on the judgement in **Kuldeep Raj Gupta** v. **J&K and Others (supra)** wherein, it was observed that there was no prima facie material for constituting offence under Section 504 and 506 RPC because no specific allegation with regard to criminal intimidation had been levelled and a general type of allegation had been levelled that the accused had threatened that if the complainant did not vacate the plot in question he would be

eliminated from Gunda element, which allegations did not constitute the offence alleged. The same is the position in the present case where there is nothing to show that any alarm was raised by the threat allegedly extended by A-8.

225. Qua A-10 the allegation is that he threatened the petitioner that he would be confined in the said room of CM residence for the entire night unless he agreed to release the TV campaign in connection with completion of 3 years of AAP Government. However, it has already been held above that the offence of wrongful confinement is not attracted against any of the accused persons in the present case. In these circumstances and looking to the totality of the facts, the alleged utterances by A-10 would not make out the offence of criminal intimidation even prima facie as there is no allegation that A-10 made any attempt to confine the petitioner or to coerce him to release the advertisements. The said alleged utterances could not have lead to any apprehension that they could be actualised in the circumstances, more so as it is the case of the petitioner himself that he left the meeting room after the incident, albeit with difficulty and as such would not be sufficient to attract Section 506 IPC even prima facie.

226. The Ld. ACMM in the impugned order had held as under:

> *"89. Similarly, the allegations against the accused Rituraj Govind and Ajay Dutt also do not make out any offence of criminal intimidation or any other offence against them… A plain reading of the allegations in the complaint or in his subsequent statements, does not satisfy all the ingredients of section 506 IPC. On the principles as enumerated by the Hon'ble Supreme Court in Manik Taneja (supra), I am satisfied that*

ingredients of Sections 506 are also not made out from the complaint filed by the complainant."

Looking to the ingredients of the offence of criminal intimidation under Section 506 IPC, there is no perversity or infirmity in the aforesaid findings of the Ld. Trial Court.

227. The petitioner had also stated in the complaint that the MLAs whom he could identify became more aggressive and abusive extending threat to his life and further that at no stage did he retaliate or provoke any person in the room despite confinement, criminal intimidation by extending threat to his life, and assault by several MLAs while he was discharging his official duties. In the supplementary statement dated 20.02.2018, the petitioner had stated that the persons involved had assaulted and intimidated him in such a manner that anything could have happened, including death, had his good fortune not helped him and in the statement dated 25.04.2018 he also stated about the MLAs threatening him and extending threat to his life. It was argued on behalf of the petitioner that the records/ materials on record indicated that the accused persons had intimidated/ assaulted the petitioner and had given threats to his life and as such the offence under Section 506 (Part II) was made out. It is however, seen that the petitioner had stated about the MLAs extending threat to his life but only omnibus allegations had been made in that regard and while the petitioner had identified the MLAs who had allegedly extended threats to him about confining him in the room for the night and about lodging false SC/ST cases against him, he had not pinpointed even one MLA who had extended

threat to his life nor even stated what were the words used by the MLAs while extending the alleged threat to his life. As such the offence under Section 506 (ii) IPC would not be made out, even prima facie against any of the accused persons nor can it be said that any threats were extended to the petitioner as part of any conspiracy.

CONCLUSION

228. On a perusal of the impugned order and in light of the above discussion, there is no merit in the submission made on behalf of the petitioner that the impugned order is against the settled principles of law applied at the stage of framing of charge or that the Ld. Trial Court had conducted a fishing and roving enquiry into the allegations in the charge-sheet and had drawn erroneous inferences and conclusions without having the benefit of examination of prosecution witnesses. While the principles to be borne in mind at the stage of framing of charge are well established, it cannot be lost sight of that in matters such as the present where detailed arguments are advanced by both the sides and the statements of witnesses are referred to in detail, the Court would have to consider them and give its findings on the arguments raised. It cannot be said to be a case where the Ld. Trial Court had committed any error apparent on the face of record by wrongly accepting the version set up by accused persons while ignoring and disregarding the entire case of the prosecution and the vital material collected during the course of investigation including statements of witnesses under Section 161 Cr.P.C. or

that the Ld. Trial Court had selectively relied on and considered the material available on record or that the Ld. ACMM had gravely erred by failing to consider that the material on record established that A-3 and A-4 were architects of the entire conspiracy which was perpetrated by all the accused persons including A-3 and A-4 or that A-3 and A-4 had intentionally aided and abetted the criminal intimidation and physical assault on the petitioner by their instigation and also by omissions at the time of such assault. It is also not borne out that the Ld. Trial Court had failed to appreciate the genesis of the entire case including the preceding and subsequent events of the incident and in fact it is seen that all the factors which have been raised by the petitioner even in the present revision petition as pointing to a criminal conspiracy or unlawful assembly or common intention or abetment have been duly considered in the impugned order by the Ld. Trial Court.

229. It cannot also be said that the Ld. Trial Court had exceeded its jurisdiction at the stage of framing of charges or misapplied the test that whether the material on record was sufficient to frame charges or not or that the Ld. Trial Court unconscionably and selectively applied the yardsticks laid down by the Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra).** It was argued on behalf of the petitioner that para 39 of the impugned order demonstrated the preconceived mindset with which the Ld. ACMM had proceeded in the entire matter and the Ld. Trial Court had recorded that *"... Even at the initial stage it cannot be expected to accept all that the prosecution*

states as gospel truth. It is also well settled that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the Accused" which demonstrated that the Ld. Trial Court had already made up its mind even prior to analysing, considering and dealing with the material on record to discharge the accused persons and to dilute the charge against A-1 and A-2 and further there was an inversion of principles to be followed at the stage of charge as reflected in the said para. However, the said contention falls flat on its face if the paras preceding para 39 and subsequent to para 39 are seen and it would be clear that the Ld. Trial Court was therein only discussing the legal position before going to the facts of the case including when the Court would be empowered to discharge the accused. Even the observation that even at the initial stage, it cannot be expected to accept all that the prosecution states as gospel truth would only imply that the Court has to look at the totality of the material and not just proceed on the basis of the material favourable to the prosecution. Even otherwise, a few stray observations cannot make the entire order perverse. It cannot even be said that the Ld. Trial Court had already made up its mind even at the initial stage to discharge A-3 to A-13 and to dilute the charges against A-1 and A-2 or that despite there being no finding or observation in the impugned order to hold that any part of the prosecution case was false or not being the gospel truth, the Ld. Trial Court had arbitrarily proceeded to discharge A-3 to A-13 as it is seen that the Ld. Trial Court had, at length discussed the

contentions raised on behalf of the prosecution. It cannot also be said that the Ld. ACMM had not considered the test laid down under Section 239 and Section 240 Cr.P.C. that whether the charge was groundless or there was a ground for presuming that the accused had committed an offence or had instead arrived at conclusions as if the material available before him had already undergone the test of cross-examination. It is pertinent that Section 239 Cr.P.C. itself stipulates that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. The Ld. Trial Court, in the impugned order, having considered the charge against A-3 to A-13 to be groundless discharged them and had recorded its reasons for doing so. It is also the settled law that for framing of charge detailed reasons are not required to be given but when the accused is to be discharged, it is incumbent on the Court to record its reasons for the same.

230. There is also no merit in the submission that the analysis of the Ld. ACMM appeared to be premised on the purported defence of A-3 and A-4 which was not to be considered at this stage and there is nothing in the impugned order which would lead to the inference that the defence of the accused persons was considered in any manner, rather the observations of the Ld. Trial Court are based on the material brought on record by the prosecution itself. Further, contrary to the submissions made on behalf of the petitioner, the antecedent and subsequent events were clearly adverted to by the Ld. Trial Court and duly dealt with in the impugned order. It was also contended on behalf

of the petitioner that the Ld. Trial Court even while selectively relying on and considering the material available on record had arrived at divergent findings qua the accused persons, without any basis or justification, by applying different yardsticks for different accused persons in relation to their role and involvement in the crime. In particular, the Ld. Sr. Counsel had referred to the fact that the Ld. Trial Court had relied on the statements of Shri V.K. Jain to direct framing of charge against A-1 and A-2 and on the basis of the same statements, more particularly the statement under Section 164 Cr.P.C. of Shri V.K. Jain had held that no offence was made out against A-3 to A-13 and it was thus contended that the Ld. Trial Court had selectively used the statements of Shri V.K. Jain. The observation of the Ld. ACMM "*moreover, it is only during the trial, a witness can have an opportunity to explain any inconsistencies as appearing in his previous statements and such statements can be used during the course of trial, in accordance with law. Hence, in my considered view, the aforesaid inconsistency in the statements of witness Mr. V.K. Jain, alone is not sufficient to discard the allegations against the accused persons namely Amanatullah Khan and Prakash Jarwal at this stage*" was referred to and it was argued that the statements of the petitioner had been read out of context without giving him an opportunity to explain any inconsistencies whereas the statements of Shri V.K. Jain were considered to charge A-1 and A-2. However, there is no merit in the said contention as at the stage of consideration of charge, the Court has only to see if the material on record gives rise to a grave suspicion

and not merely suspicion that the accused had committed an offence and in the instant case, allegations levelled against A-1 and A-2 by the petitioner were corroborated by the statements of Shri V.K. Jain as is also borne out by the further observation of the Ld. ACMM in para 96 "*allegations levelled by the complainant against accused persons Amanatullah Khan and Prakash Jarwal, finds corroboration from the statement of star witness Mr. V.K. Jain recorded u/s 164 Cr.P.C., which is sufficient at this stage, to prima facie show their complicity in the commission of offence*". Thus, the Court has to see the totality of the material before it and based on it, the Ld. Trial Court had come to the conclusion that charge for certain offences was liable to be framed against A-1 and A-2 while the other accused persons were discharged and it cannot be the case of the petitioner that A-1 and A-2 had been charged wrongly on the basis of the statements of Shri V.K. Jain.

231. It was also argued on behalf of the petitioner that the import of the entire impugned order was as if the petitioner was on trial but the said contention is clearly misplaced as what the Ld. Trial Court had done was to see if a prima facie case was made out against the accused persons looking to the statements of the witnesses including those of the petitioner and of Shri V.K. Jain and it cannot be construed as putting the petitioner on trial, if on certain aspects, the Court had based the findings on the statements of Shri V.K. Jain. It was also contended that the complaint had to be given primacy but it is settled law that the complaint on the basis of which the

registration of FIR was sought must disclose essential ingredients of the offence and as observed by the Hon'ble Supreme Court in **Neelu Chopra & Anr.** v **Bharti (supra)**, mere mention of the language of the sections is not the be all and end of the matter; what is required to be brought to the notice of the Court is the particulars of the offence committed by the accused and the role played by the accused in committing of that offence.

232. The petitioner in the written submissions in rebuttal, had given a table of specific contentions in the revision petition which the accused persons had not been able to rebut, including that the concerned departmental officers were not called along with the petitioner for the midnight meeting; repeated calls were made to secure the presence of the petitioner which revealed the desperation of the accused persons to ensure the presence of the petitioner for the midnight meeting; fixing of the meeting at midnight; request of the petitioner to reschedule the meeting to the next day was rejected by the CM/ Dy. CM; there was a prescheduled Cabinet meeting on 20.02.2018 when any important issue could have been discussed with the petitioner by A-3 and A-4 before or after the meeting; Shri V.K. Jain was permitted to enter the meeting room only after the arrival of the petitioner and the presence of the MLAs was kept a secret and not informed to both Shri V.K. Jain and the petitioner; the timing of arrival/ meeting of the MLAs at CM residence was kept one hour prior to the midnight meeting time of the petitioner; two fake complaints were filed against the petitioner under SC/ ST Act by

two of the MLAs present in the midnight meeting; meetings with more than 5-6 participants were normally scheduled in the meeting hall/ porta cabin; change of draft minutes of the meeting dated 14.02.2018; medical examination report of the petitioner supported the version of the petitioner and the statements of Shri V.K. Jain under Section 161 Cr.P.C. and Section 164 Cr.P.C. were selectively applied qua the accused. However, at the cost of repetition, it may be stated that at the stage of consideration of charge, the defence of the accused persons is not to be looked at and it is not for the accused persons to rebut the case of the prosecution at that stage except on the basis of the material produced by the prosecution, as they cannot bring forth any evidence at that stage and only the material put forth by the prosecution has to be considered. Hence, the said contention is without merit. The points so raised had been duly dealt with by the Ld. Trial Court in the impugned order. Even as regards the medical examination report of the petitioner, it is seen that A-1 and A-2 had been directed to be charged for certain offences vide the impugned order.

233. It is the settled law that at the stage of framing of charge, the court is only to see if there is strong suspicion that the accused had committed an offence and not whether the material on record would lead to conviction or not. At the stage of framing of charge, the Court is required to evaluate the material and documents only to the extent and with a view to finding out if the facts taken on their face value disclosed the existence of a prima facie case. In the present case, the Ld. Trial Court had duly applied

the said yardsticks and the parameters laid down by the Hon'ble Supreme Court in **Union of India** v. **Prafulla Kumar Samal (supra)** and other judgments to be considered at the stage of framing of charge and thereafter passed the impugned order. There is no infirmity, illegality or perversity or impropriety in the impugned order passed by the Ld. Trial Court and the same has been passed after considering the material on record including the statements of witnesses. Applying the test for framing of charge laid down in a catena of decisions, no ground has been made out by the petitioner for interfering with the order of the Ld. Trial Court or for directing framing of charge against A-3 to A-13 for any offence or for directing framing of charges against A-1 and A-2 for the offences under Sections 342/506(ii)/120-B/109/114 IPC.

234. The Ld. Trial Court had rightly discharged Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8), Sanjeev Jha (A-9), Rituraj Govind (A-10), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13) and further correctly did not charge Amanatullah Khan (A-1) and Prakash Jarwal (A-2) for the offences under Sections 342/506(ii)/120-B/109/114 IPC. The revision petition is accordingly without merits and the same is dismissed.

235. Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8), Sanjeev Jha (A-9), Rituraj Govind (A-10), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13) who are

respondents No.5 to 15 in the present revision petition are directed to furnish bonds under Section 437 Cr.P.C.

236. File be consigned to record room. Trial Court record be sent back along with a copy of the order.

Announced In The Open Court
On This 8th Day Of June, 2022

(GEETANJLI Goel)
Asj/Spl. Judge (PC Act) (CBI)-24
(MPs/MLAs Cases),
Rouse Avenue District Court, New Delhi