

**IN THE COURT OF SH. M. K. NAGPAL
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE
(PC ACT), CBI 09 (MPs/MLAs CASES), ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

Raghav Chadha

S/O Sh. Sunil Chadha,
R/O 473, Double Storey,
New Rajinder Nagar,
Central Delhi – 110060

...Revisionist/Accused

Versus

1. Chhail Bihari Goswami

S/O Sh. Om Prakash Goswami,
R/O H-57, DDA Flats, Naraina Vihar,
New Delhi – 110028.

2. Satyendra Jain

S/O Late Sh. Ram Sharan Jain,
Bungalow No. 2/8 Raj Niwas Marg,
Delhi – 110054.

3. Atishi Marlana

D/O Sh. Vijay Kumar Singh,
K-67, Jangpura Extension,
New Delhi – 110014.

4. Durgesh Pathak

S/O Sh. Mathura Prasad,
A-768, Gali No. 10,
A1 Block Sonia Vihar,
Delhi – 110090.

5. Saurabh Bharadwaj

S/O Sh. Rajender Pal,

H. No. 678, Chirag Delhi,
New Delhi – 110017.

...Respondents

Cr. Rev. No. 43/2022
Filing No. 769/2022
CNR No. DLCT11-000789-2022

AND

Satyendra Kumar Jain
(In Judicial Custody)
S/O Late Sh. Ram Sharan Jain,
Through Pairokar Smt. Poonam Jain
W/O Sh. Satyendra Kumar Jain,
R/O Bunglow No. 2/8,
Raj Niwas Marg,
New Delhi – 110054.

...Revisionist/Accused

Versus

Chhail Bihari Goswami
S/O Sh. Om Prakash Goswami,
R/O H-57, DDA Flats, Naraina Vihar,
New Delhi – 110028.

...Respondent

Cr. Rev. No. 46/2022
Filing No. 782/2022
CNR No. DLCT11-000802-2022

Date of institution of Cr. Rev. No. 43/2022 : 14.12.2022

Date of Institution of Cr. Rev. No. 46/2022 : 20.12.2022

Date of conclusion of arguments in

Cr. Rev. No. 43/2022 : 02.11.2023

Date of conclusion of arguments in

Cr. Rev. No. 46/2022 : 09.10.2023

Date of decision

: 09.11.2023

ORDER

1. By this common order, I shall dispose of the above two connected revision petitions filed U/S 397 r/w 399 r/w 401 Cr.P.C. and these petitions are being taken up for disposal together as these arise out of the same case i.e. Complaint Case No. 02/2021, titled as ‘Chhail Bihari Goswami Vs. Satyendra Kumar Jain & Ors.’, filed U/S 200 Cr.P.C., for offences punishable U/S 499/500 r/w 34 r/w 120B IPC and pending before the court of Ld. ACMM-01, Rouse Avenue District Court, New Delhi.

2. Besides both the revisionists, the complainant Sh. Chhail Bihari Goswami of the said complaint case had also impleaded three more persons namely Atishi Marlana, Durgesh Pathak and Saurabh Bhardwaj as accused therein and these three persons are even found to have been impleaded as respondents no. 3, 4 and 5 respectively in Crl. Rev. No. 43/2022, though vide order dated 20.03.2023 passed therein, it has been observed by this court that they as well as their other co-accused Satyendra Kumar Jain impleaded as respondent no. 2 therein were only proforma respondents in the said petition.

3. The complainant Sh. Chhail Bihari Goswami has been impleaded as respondent no. 1 in Crl. Rev. No. 43/2022 and he is

the sole respondent in Crl. Rev. No. 46/2022. As claimed by him, he is an Advocate by profession, was also a Municipal Councillor in Delhi having been elected on the symbol of Bhartiya Janta Party (BJP) and further, the Chairman of Standing Committee of the North Delhi Municipal Corporation (North MCD) at the relevant time, besides having worked at different posts and in different responsibilities in various bodies and organizations affiliated to Rashtriya Swyam Sewak Sangh (RSS) and BJP. The revisionists herein as well as the other three persons impleaded with them as accused in the above said complaint case are all leaders of the Aam Aadmi Party (AAP) and except Durgesh Pathak, who is stated to be a member of National Executive of the AAP, the other four accused are Members of Legislative Assembly (MLAs) of AAP having being elected on party ticket from different assembly constituencies.

4. As per allegations made in above complaint case, the complainant Sh. Chhail Bihari Goswami, i.e. respondent in both these petitions, claims to have been defamed publically by the respondents herein by statements made through different modes, i.e. press conferences, social media platforms like Twitter and publication through newspapers etc. These statements pertain to alleged misappropriation of funds of around Rs. 2400-2500 crores belonging to North MCD being controlled or ruled by the BJP. It was alleged by the above respondent in said criminal complaint that all these statements attracted the provisions of

Section 499 IPC as the same amount to imputations within the meaning of said Section and were made by the revisionists herein and the other co-accused with the requisite intention as stated in the said Section to defame him or to harm his reputation and hence, they all have committed an offence punishable U/S 500 IPC.

5. In both these petitions, the revisionists have challenged the order dated 09.11.2022 passed by Ld. ACMM-01, vide which she had dismissed the separate applications filed by all the persons made accused therein seeking their discharge from the said case and had directed for serving of notices of accusation U/S 251 Cr.P.C. upon them for commission of the above said offence of defamation. Besides the above, the revisionist Raghav Chadha of Crl. Rev. No. 43/2022 has also challenged the earlier order dated 16.02.2022 of the Ld. ACMM-01, RADC, New Delhi directing summoning of all the persons impleaded as accused in the said case for commission of the above said offence of defamation. It is necessary to mention here that after passing of the order dated 09.11.2022 of the Ld. ACMM-01, which is under challenge in both these petitions, separate notices of accusation U/S 251 Cr.P.C. for commission of the above said offence punishable U/S 500 IPC also stand served upon all the accused persons on 17.11.2022 and even the said notices are under challenge in these revision petitions. It is further necessary to mention here that after service of the said notices, evidence of the complainant, i.e. respondent Sh. Chhail Bihari Goswami, in the said case is also

being led before the Ld. ACMM-01, though vide interim order dated 20.03.2023 passed in both these petitions, this court had earlier directed that the same may continue, but cross examination of the witnesses being examined by complainant shall not be insisted upon by the Ld. Trial Court or by Ld. Counsels representing the complainant/respondent till the next date given in these revision petitions and the above interim order of this court has been extended from time to time and it is still in force.

6. I have heard the arguments advanced by Sh. Mohit Mathur, Ld. Senior Advocate representing the revisionist Raghav Chadha, assisted by Sh. Prashant Manchanda and Sh. Diwakar Advocates, in Crl. Rev. No. 43/2022 and Ms. Rebecca M. John, Ld. Senior Advocate representing the revisionist Satyendra Kumar Jain in Crl. Rev. No.46/2022, assisted by Sh. Bhavook Chauhan, Sh. Tushar Yadav, Sh. Syed Atif, Ms. Anushka Baruah and Sh. Rajat Gautam Advocates and Sh. Pavan Narang, assisted by Sh. Himanshu Sethi and Ms. Aishwarya Chhabra Advocates, representing the respondent Sh. Chhail Bihari Goswami (R-1) in Crl. Rev. No. 43/2022 and Sh. Amit Tiwari, Sh. Neeraj and Ms. Jyoti Taneja, Ld. Counsels for the said/sole respondent in Crl. Rev. No. 46/2022), Ms. Rebecca M. John, Ld. Senior Advocate also representing the respondent Satyendra Kumar Jain (R-2) in Crl. Rev. No.43/2022, Sh. Ritesh Shrivastava and Sh. Manish Kumar, Ld. Counsels representing the respondents Atishi Marlana (R-3), Durgesh Pathak (R-4) & Saurabh Bhardwaj (R-5) respectively of

Crl. Rev. No. 43/2022.

7. Before appreciating the contentions of Ld. Senior Advocates representing the parties, it is first necessary to reproduce herein the alleged defamatory statements made by the two revisionists herein, which led to their summoning as accused in the above criminal complaint No.02/2021 vide the impugned order dated 16.02.2022 of the Ld. ACMM-01 and also the service of notices of accusation U/S 251 Cr.P.C. upon them for commission of the offence of defamation punishable U/S 500 IPC.

8. It is observed from perusal of the above criminal complaint that two tweets dated 13.12.2020 from his official Twitter account and one statement published in a Hindi daily newspaper dated 14.12.2020 have been attributed to the revisionist Raghav Chadha and the contents of these tweets are as under :-

1. "BJP शासित MCD ने क्कि ल्के इतिहास का सबसे बड़ा ₹2500 करोड़ का घोटाला किया। हमने गृह मंत्री अमित शाह जी से मिलने का समय मांगा तो उन्होंने मुझे मेरे आवास से ही गिरफ्तार कर लिया है। अमित शाह जी, आप अपनी पुलिस के दम पर अपनी पार्टी का भ्रष्टाचार क्यों दबाना चाहते हैं?"

2. "भाजपा की MCD को जितना पैसा दो वो सब डकार जाते हैं। अब भाजपा के मेयर और पार्षद मुख्यमंत्री जी के घर के बाहर बैठे हैं कि हमें 13000 करोड़ और दो ताकि हम वो भी डकार जाएं। पुलिस उन्हें धरना करने देती है, हम अमित शाह जी से मिलने जाना चाहते हैं तो हमें घर से ही हिरासत में ले लिया जाता है।"

9. The other statement of this revisionist allegedly published in Dainik Jagran, Hindi dated 14.12.2020 is stated to be to the following effect :

“There has been a scam of Rs. 2400/- crores in the North Delhi Municipal Corporation. Most probably this has been the biggest scam in the history of Delhi. This Scam is even bigger than the Commonwealth scam.

I was stopped from meeting the Union Home Minister and Lt. Governor. I went to seek appointment from them, but the police took me into their custody. We have been stopped from staging a peaceful protest. Does this happen in a democratic country? Now it is clear that many high-profile names of BJP leaders are involved and BJP is trying to save its leaders.”

10. Similarly, the defamatory statement of revisionist Satyendra Kumar Jain published in Dainik Jagran dated 12.12.2020 is as under :

“It is being said that North MCD is facing financial problems and not able to pay the salaries of teachers and doctors. But, through newspapers, I came to know that North MCD misappropriated funds of over Rs. 2,400 crore that the South MCD was supposed to give to it. Who is responsible for this misappropriation? How can such a huge amount like Rs. 2,400 crores be misappropriated? I have ordered enquiry against it. The BJP government is only levelling false allegations against the Delhi government.”

11. The tweet dated 11.12.2020 made by this revisionist from his official Twitter account is as under :

“Orders have been issued to investigate the misappropriation of 2400 crores by BJP run North MCD. On the one hand, they are incapable of paying salaries, but on the other hand they are misappropriating a hefty amount such as 2400 crores. It is quite unbelievable.”

12. It is the contention of Ms. Rebecca M. John, Ld. Senior Advocate representing the revisionist Satyendra Kumar Jain that as is clear from the contents of above statements being attributed to his client, the same are not at all defamatory in view of provisions contained U/S 499 IPC and the Ld. ACMM-01 had

erred in holding these statements defamatory and in summoning the said revisionist as an accused vide order dated 16.02.2022 for commission of the offence U/S 500 IPC. It is also argued by her that in light of the above, the subsequent order dated 09.11.2022 of Ld. ACMM-01 directing service of a notice of accusation upon her client, as well as the notice of accusation dated 17.11.2022 served upon him in consequence thereof, are not legally tenable as contents of the above statements being attributed to her client are not defamatory and rather, the same highlighted the fact about misappropriation of government funds and brought it to the knowledge of general public and thus, the above statements were made purely for the said purpose and not to defame the respondent or any other person.

13. It is also the contention of Ld. Senior Advocate representing this revisionist that the above order dated 09.11.2022 of Ld. ACMM-01 directing service of notice of accusation and dismissing the application for discharge filed by the revisionist is not even legally tenable and the same has been passed in a mechanical manner and without due application of mind and it being manifestly an erroneous order not founded on facts and law is liable to be set aside by this court in exercise of its revisional powers. It is also her contention that even if the above imputations or statements are taken as true, the same do not satisfy or meet out the ingredients of Section 499 IPC and hence, no offence U/S 500 IPC can be said to have been

committed by the revisionist. It is further her submission that the above order of Ld. ACMM-01 is demonstrably wrong and since there is an error apparent on the face of record and resulting in miscarriage of justice to the revisionist, the said order as well as the earlier order dated 16.02.2022 of the Ld. ACMM-01 are both liable to be set aside and the complaint filed by the respondent herein is liable to be dismissed.

14. It is also the contention of Ld. Senior Advocate for this revisionist that no specific allegations or imputations have been made against the respondent in the above said publication or tweet made by the revisionist herein as the respondent has not been named therein and the said imputations do not even refer to an individual or a specific or identifiable group of persons and rather, the same refer to the North MCD or BJP run North MCD and hence, the contents thereof cannot be taken as defamatory against the respondent herein. It is further her submission that North MCD is a huge body or group consisting of Councillors from different parties and other officers and officials and hence, the persons constituting the said body or group are unidentifiable persons and simply because the revisionist also happens to be a Councillor of North MCD or a member of the said group, he being an individual cannot be considered as a person 'aggrieved' of the allegations contained in above publications or imputations within the meaning of Section 199 Cr.P.C. and therefore, he had no *locus standi* to file the above criminal complaint before the Ld. ACMM-01 and even no cognizance of the said complaint

could have been taken by the Ld. ACMM-01 as per provisions of the above said Section.

15. Besides the above, while referring to contents of para no.15 of criminal complaint filed by the respondent, it is also the contention of Ld. Senior Advocate for this revisionist that in the said para, the respondent alleged that while he and his party leaders were sitting on protest, he came to know from the people that accused persons were indulging in such tactics of making defamatory allegations through different modes and on 16.12.2020, a person namely Sh. Ashish Rathore, Advocate also visited him on the said place, where he was sitting on *dharna*, and told him about the damage or injury allegedly caused to his reputation because of the above imputations. However, it has been argued that the revisionist did not even examine the above Sh. Ashish Rathore, Advocate during his pre-summoning evidence and thus, the essential ingredients of Section 499 IPC were not made out as the allegations and material placed on record before the Ld. ACMM-01 were not sufficient to even *prima facie* hold that the reputation of revisionist was harmed, damaged or lowered in the estimation of other persons. Judgment in case of **Manoj Kumar Tiwari Vs. Manish Sisodia & Ors., 2022 SCC Online SC 1434** has also been relied upon by Ld. Senior Advocate in support of her submission that if ingredients of the above offence of defamation are not satisfied in the present case, then the revisionist herein should not be made to undergo

the ordeal of a trial and the mistake and error committed by Ld. ACMM-01 in summoning him as an accused and also serving a notice of accusation upon him is liable to be corrected by this court in exercise of its revisional powers.

16. Further, she has also relied upon judgments of the Hon'ble Supreme Court in cases **Girish Kumar Suneja Vs. Central Bureau of Investigation (2017) 14 SCC 809**; **Om Kumar Dhankar Vs. State of Haryana (2012) 11 SCC 252** and **Rajender Kumar Sitaram Pandey Vs. Uttam & Anr. (1999) 3 SCC 134** in support of her submission that the above order dated 09.11.2022 of the Ld. ACMM-01, just like the order of summoning dated 16.02.2022, is an interim order and not merely an interlocutory order and hence, this revision petition filed by revisionist Satyendra Kumar Jain is maintainable. Reference has also been made by her to an order dated 30.11.2022 passed by the Hon'ble High Court in Crl. M.C. No. 6394/2022 and Crl. M.As. No.24937-24938/2022 filed on behalf of the revisionist, vide which the Hon'ble High Court had directed the revisionist to approach this court for the desired relief.

17. Sh. Mohit Mathur, Ld. Senior Advocate representing the revisionist Raghav Chadha has also advanced similar arguments about impugned order dated 09.11.2022, as well as the other impugned order dated 16.02.2022, passed by Ld. ACMM-01 being factually as well as legally incorrect and unsustainable and

also about the scope of revisional powers and jurisdiction of this court to correct and set aside the said orders. It is also his contention that even though the earlier order dated 16.02.2022 of Ld. ACMM-01 directing summoning of the accused persons for the offence of defamation punishable U/S 500 IPC was not challenged by his client or the other accused persons within the prescribed period of limitation, but still, since they all had filed applications for discharge before the Ld. ACMM-01 and the same came to be dismissed only vide the other impugned order dated 09.11.2022, which also directed serving of notices of accusation upon them, by application of the 'doctrine of merger', the order dated 16.02.2022 stood merged in the order dated 09.11.2022 and hence, the present revision petitions are maintainable against both the above orders. It is also his contention that even otherwise, since the revisionist herein had filed the above application for discharge before the Ld. ACMM-01 and was pursuing it with due diligence, the time spent by him in pursuing the said application is liable to be excluded for calculating the period of limitation of 90 days prescribed for filing of a criminal revision petition as per Section 14 of the Limitation Act, 1963.

18. It is also the contention of Ld. Senior Advocate representing this revisionist that though the accused persons were directed to be summoned by the court of Ld. ACMM-01 for commission of the offence punishable U/S 499/500 r/w 34 IPC vide its impugned order dated 16.02.2022, but a bare perusal of

the contents of complaint will show that all the accused were alleged to have made some defamatory imputations against the complainant on different dates and through different modes of communication and since the alleged acts of the accused persons constituting the offence of defamation punishable U/S 500 IPC were not done by them together or even in close proximity with the other co-accused, Section 34 IPC could not have been invoked by the complainant/respondent and hence, the revisionists or other accused could not have been summoned for the offence punishable U/S 499/500 IPC with the help of Section 34 IPC and the above order dated 16.02.2022 of the court of Ld. ACMM-01 is not legally tenable on this ground alone. It is also his contention in alternative that since Section 34 IPC is not attracted, there is also mis-joinder of parties in the above criminal complaint as five different accused could not have been prosecuted by the respondent no. 1 at one place for their acts committed separately and independently of each other and also on different dates, at different places and by different modes. It is also argued by him that even otherwise, due to non examination of above Sh. Ashish Rathore in pre-summoning evidence of the respondent, the evidence or material available before Ld. ACMM-01 was not sufficient to summon the accused persons.

19. While referring to the contents of above tweets and publications containing the alleged defamatory imputations being attributed to the revisionist Raghav Chadha, it is also the

contention of Ld. Senior Advocate representing him, as has also been made by Ld. Senior Advocate representing the other revisionist, that even if the contents of said imputations are taken as true, the same fail to meet out the ingredients of Section 499 IPC and to constitute the offence of defamation defined by the said Section and as made punishable by Section 500 IPC as the above imputations and allegations have not been made in respect of the above respondent or even of any other individual or identifiable group of persons or body and rather, the same were made against an unidentifiable or vague group or body being the BJP or the Mayors and Councillors etc. of North MCD or other MCDs in Delhi. It is also his contention that in view of above, the respondent Sh. Chhail Bihari Goswami could not have been considered to be a person 'aggrieved' of the above allegations or imputations as per provisions contained U/S 199 Cr.P.C. and thus, he had no *locus standi* to file the above criminal complaint. He has also argued that a criminal complaint for the offence of defamation filed by an individual is maintainable only when he has been defamed individually and not otherwise and in case the person defamed is a group, association or collection of persons, then action has to be initiated by the said association or group or anyone on its behalf and not by an individual constituting a part of the said group. It is further his submission that since the above criminal complaint was not filed by the above said respondent on behalf of BJP or the concerned MCD of which he was a Councillor or held any other position in it, the same was not

maintainable and hence, the impugned orders dated 16.02.2022 and 09.11.2022 could not have been passed and the same are not legally sustainable. Judgments in cases **Manoj Kumar Tiwari (Supra)**; **Vinod Dua Vs. Union of India & Ors., 2021 SCC OnLine SC 414**; **Arnab Ranjan Goswami Vs. Union of India & Ors., (2020) 14 Supreme Court Cases 12**; **V. Radhakrishna & Ors. Vs. Alla Rama Krishna Reddy & Anr., 2018 SCC OnLine Hyd 98**; **Aroon Purie & Anr. Vs. Sukhbir Sing Wahla, CRM. No. M-12372/2016** decided by the Hon'ble High Court of Punjab & Haryana on 17.01.2017; **Shri Kalyan Bandyopadhyay Vs. Shri Mridul De., CRR/1856/2009** decided by the Hon'ble High Court at Calcutta on 13.10.2015; **A.C. Narayanan Vs. State of Maharashtra, (2014) 11 Supreme Court Cases 790**; **Charmesh Sharma Vs. State of Rajasthan & Anr., 2012 SCC OnLine Raj 815**; **S. Khushboo Vs. Kanniammal & Anr., (2010) 5 Supreme Court Cases 600**; **Y. Vijayalakshmi @ Rambha Vs. Manickam Narayanan, 2005 (3) CTC 480**; **Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (Dead) by Lrs., (2004) 12 Supreme Court Cases 509**; **Fr. Thomas Maniankerikalam Vs. State of Kerala, 2002 SCC OnLine Ker 351**; **M.S. Jayaraj Vs. Commissioner of Excise, (2000) 7 Supreme Court Cases 552**; **Prabhu Chawla Vs. Shivnath Soni, Rlw. 1988 (2) 359**; **Laxminarayan Singh & Anr. Vs. Shriram Sharma, 1985 M.P.L.J. 187**; **Smt. Aruna Asaf Ali & Ors. Vs. Purna Narayan Sinha, 1983 SCC**

OnLine Gau 35; Ganesh Anand Chela Vs. Swami Divyanand, 1980 SCC Online Del 66; Prem Pal Singh & Ors. Vs. Phool Singh & Ors., Manu/RH/0149/1980; Raj Kapoor Vs. Narendra & Ors., MANU/GJ/0138/1973; G. Narsimhan Vs. T.V. Chokkappa, (1972) 2 Supreme Court Cases 680 etc. have also been relied upon by Ld. Senior Advocate for the revisionist in support of his above submissions.

20. It is also the contention of Ld. Senior Advocate for this revisionist that *mens rea* is a *sine qua non* for commission of any offence and the same is absent in the present case because the alleged imputations being attributed to this revisionist nowhere show that he had any intention to defame or harm the reputation of respondent no. 1 or he had made the said imputations or allegations knowingly or having reasons to believe that the same will harm the reputation of said respondent. It is also his submission that even otherwise, the above imputations or allegations are general in nature and not specific. Judgment in case **Shah Rukh Khan Vs. State of Rajasthan & Ors., 2007 SCC Online Raj 733** is also being relied upon on this issue.

21. The next contention of Ld. Senior Advocate representing this revisionist is that even if the above imputations being alleged to have been made by his client are taken as true, the same do not attract the provisions of Section 499 IPC as the same come within the purview of 1st, 2nd and 6th Exceptions to

the said Section because these allegations or imputations were made by the revisionist herein in good faith and for public good as he was trying to highlight the financial irregularities and bunglings in accounts of MCDs and it was his duty to do so as a Member of Parliament (MP) as the money alleged to have been appropriated by the BJP ruled MCD was public money. It is further his submission that since the above imputations were made under a bonafide belief and in discharge of public functions by the revisionist as a MP, no offence can be said to have been committed by the revisionist. It is also his submission that the provisions contained in Exceptions U/S 499 IPC should have been considered by the Ld. ACMM-01 at the time of summoning of accused, and also at the time of directing the service of notices upon them, to find out if the alleged offence of defamation was actually made out against the accused or not, but the Ld. ACMM-01 has failed to do so. It is further his submission that the alleged acts of the revisionist were even covered by the General Exceptions contained U/S 79, 81 and 95 IPC and the impugned orders of Ld. ACMM-01 failed to take note of the provisions contained U/S 6 IPC, which lays down that every definition of an offence or illustration thereof etc. have to be understood subject to the General Exceptions contained in the said Code. Judgments in cases **Subramanian Swamy Vs. Union of India, (2016) 7 Supreme Court Cases 221; Narottamdas L. Shah Vs. Patel Maganbhai Revabhai & Anr., 1984 SCC OnLine Guj 100; Dhirendra Nath Sen &**

Anr. Vs. Rajat Kanti Bhadra, 1969 SCC OnLine Cal 81 etc. have also been relied upon by Ld. Senior Advocate in support of his above submissions.

22. It is further the contention of Ld. Senior Advocate for this revisionist that the prequel and sequel of the alleged imputations are also to be seen and taken into consideration by this court and the alleged imputations could not have been taken out singly to determine the commission of offence of defamation by the revisionist and when the above imputations are seen in the said sequence, no offence of defamation can be said to have been committed by the revisionist. It is also his contention that the revisionists were within their constitutional right of free speech and expression guaranteed by Article 19 of the Constitution in making the above imputations and hence, no offence of defamation can be said to have been committed by them and judgments in cases **Nirmaljit Singh Narula Vs. Yashwant Singh & Ors., 2012 (132) DRJ 370** and **S. Rangarajan Vs. P. Jagjivan Ram & Ors., (1989) 2 Supreme Court Cases 574** have also been referred in support of the above submission.

23. It is also the contention of Ld. Senior Advocate for this revisionist that the above criminal complaint filed by the respondent herein in his individual capacity was not even otherwise maintainable in view of the provisions contained U/S 199(2) Cr.P.C. as the respondent no. 1 was admittedly a public

servant and since the alleged imputations pertained to discharge of his public functions as a Municipal Councillor and Chairman of Standing Committee of the North MCD, the complaint on his behalf should have been filed by the Public Prosecutor and before a court of Sessions and further with the prior permission of the appropriate government authority, as provided in Section 199 Cr.P.C. itself. It is also his contention that summoning of an accused in a criminal case is not a formality and hence, the court has to be *prima facie* satisfied that sufficient material was placed before the court for issuance of summons to the accused as otherwise it would amount to abuse of process of the court. Judgments in cases **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., (1998) 5 Supreme Court Cases 749** and **Punjab National Bank Vs. Surendra Prasad Sinha, 1993 Supp (1) Supreme Court Cases 499** were also relied upon in support of this submission. It is further his contention that without summoning the concerned journalists or authors of the above defamatory publications, the imputations contained in the said publications or news items were not admissible in evidence.

24. Sh. Pavan Narang, Ld. Counsel representing the respondent Chhail Bihari Goswami in Cr. Rev. No. 43/2022 filed by accused Raghav Chadha and Sh. Amit Tiwari, Ld. Counsel representing the said respondent in the other petition bearing Cr. Rev. No. 46/2022 filed by accused Satyendra Kumar Jain have both argued that the present revision petitions are not

maintainable as the impugned order dated 09.11.2022 of the Ld. ACMM-01 dismissing the applications for discharge of the revisionists and other accused and directing service of notices of accusation upon them suffers from no illegality or impropriety etc. and the same is based on correct facts and is also perfectly legal. It is their submission that once the court of Ld. ACMM-01 had taken cognizance of the alleged offence of defamation made punishable by Section 500 IPC against the accused persons vide its earlier order dated 16.02.2022, as per the procedure contained in Chapter XX of Cr.P.C. governing the trial of a summons case, Ld. ACMM-01 had no option to discharge the accused persons and he was bound to serve notices of accusation upon them as per provisions contained U/S 251 Cr.P.C. It is further their submission that the Ld. ACMM-01 in her order dated 09.11.2022 had given detailed reasons and had also discussed the relevant law on this subject and thus, she rightly came to a conclusion that in view of law laid down by the Hon'ble Supreme Court in case of **Adalat Prasad Vs. Roop Lal Jindal, (2004) 7 SCC 338**, which was reiterated subsequently by another Bench of the Hon'ble Supreme Court having similar strength and also by the Constitution Bench of the Hon'ble Supreme Court in cases of **Subramanian Seturaman Vs. State of Maharashtra & Anr., (2004) 13 SCC 324** and **Suo Motu Writ Petition (Crl.) No. 2 of 2020 In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881** decided on 16.04.2021 respectively, and further followed by the Hon'ble High Court in case **Court On Its Own**

Motion Vs. State, Crl. Ref. 4/2019 decided by the Hon'ble High Court on 20.04.2022, the said court in a summons case had no power to discharge an accused once the accused had been summoned by it.

25. It is further the submission of Ld. Counsels representing the respondent Chhail Bihari Goswami in these revision petitions that a bare perusal of the above imputations contained in tweets or other statements made by the revisionists and published in the media are sufficient to show that the said imputations were made solely with the intent to defame and to harm or damage the image or reputation of not only the BJP ruled MCDs in Delhi, but also of every individual Councillor or other office bearer of these MCDs and hence, every individual Councillor or other office bearers of these MCDs, including the respondent Chhail Bihari Goswami herein, could have been within his rights to initiate proceedings against the revisionists and other accused for harming or destroying his reputation by making the above false defamatory allegations.

26. It is also the contention of Ld. Counsels representing the above respondent that these imputations by the revisionists were made recklessly and without caring for correctness of the facts stated therein and the only impression which these allegations or imputations gave to the general public was that Mayors, Councillors and BJP ruled MCDs had inappropriate public

funds of around Rs. 2400-2500 crores and they were in the process of misappropriating even further funds and hence, the imputations contained in these publications fully satisfy and meet out the ingredients of Section 499 IPC and the revisionists and other accused were guilty of the offence of defamation and were rightly summoned to face a trial for the said offence. It is further their contention that since the above respondent was defamed in his individual capacity also, he being an 'aggrieved' person was a competent person to present the above complaint individually in view of provisions contained in Section 199 Cr.P.C. and there was no requirement or need of filing it on behalf of a body or association of persons or the North MCD.

27. Further, in respect to challenge made to the order dated 09.11.2022 of the court of Ld. ACMM-01 in the present revision petition, it is also the contention of Ld. Counsel for the above said respondent that the scope of revisional powers of this court as conferred by Section 397 Cr.P.C. is very limited and this court is required to intervene only if the impugned order is incorrect, illegal or improper and if no such incorrectness or illegality etc. is there in the said order and the order is perfectly sound on facts as well as on law, then the same is not required to be interfered with. It is also his contention that the contents of above imputations as contained in tweets and other statements made by the two revisionists clearly show that the same were defamatory and these were made with the only intention of harming or lowering down the reputation or image of the Councillors,

Mayors and other persons associated with affairs of the three MCDs in Delhi, which were being ruled by the BJP. It has also been specifically submitted that the allegations of misappropriation of public funds of around Rs. 2400-2500 crores as made against the above officers/officials of MCDs were false allegations and the same were made purely for deriving some political benefits out of it and the prequel and sequel of the said allegations will rather show that the same were not substantiated by any facts, figures or records.

28. It is also the contention of Ld. Counsels for respondent that since the class or body of persons defamed by the revisionists was a determinable class or body, every individual number of the said class was defamed because of the above allegations levelled by the revisionists and hence, every such member was entitled to initiate criminal proceedings for commission of the offence of defamation against the respondent.

29. Judgments in cases **Mathrubhoomi Illustrated Weekly & Ors. Vs. P. Gopalankutty & Anr., 2022 SCC OnLine Ker 137; S. Khushboo (Supra); V. Radhakrishna (Supra); M.A. Rumugam Vs. Kittu alias Krishnamoorthy, (2009) 1 Supreme Court Cases 101; O. Varadarajan & Ann Etc. Vs. G.K. Mani, 2006 SCC OnLine Mad 1217; John Thomas Vs. Dr. K. Jagadeesan, (2001) 6 Supreme Court Cases 30; G. Narsimhan (Supra); Sahib Singh Mehra Vs. State of Uttar Pradesh,**

(1965) 2 SCR 823; Tek Chand Gupta Vs. R. K. Karanjia and Ors. 1967 SCC OnLine All 282; Emperor Vs. Wahid Ullah Ahrari, 1935 (ILR) Vol. LVII Pg. 1012 Allahabad have also been referred to by Ld. Counsel for respondent in Crl. Rev. 43/2022 on the above aspects.

30. Sh. Pavan Narang, Ld. Counsel representing the above respondent in Cr. Rev. No. 43/2022 has also argued that since the revisionist of this petition has not earlier challenged the order dated 16.02.2022 passed by the court of Ld. ACMM-01 directing his summoning for the above said offence within the prescribed period of limitation of 90 days, the above order has attained finality and this court cannot determine or decide the legality thereof in the present revision petition. It is also his contention that the said order cannot be challenged by revisionist or reviewed by this court in the present petition even for the reason that except the two revisionists of these petitions, the other three accused who have been made as respondents no. 3 to 5 in the present revision petition did not assail the said order. It is further his contention that the 'doctrine of merger' being referred to by Ld. Counsel for the revisionist of this petition has got no applicability to the present case and thus, the above order dated 16.02.2022 cannot be taken to have been merged with the subsequent order dated 09.11.2022 of the Ld. ACMM-01, vide which notices of accusation have been directed to be served upon the accused while dismissing their discharge applications. He

has also referred to the judgment in case **Kunhayammed and Others Vs. State of Kerala and Another, (2000) 6 SCC 359** on the issue of application of 'doctrine of merger' being argued by Ld. Counsel for the revisionist.

31. Regarding the contention of Ld. Senior Advocates representing the revisionists for service of individual notices of accusations upon respondents and the other accused for the offence punishable U/S 500 IPC and not serving of a joint notice of accusation for the said offence with the help of Section 34 IPC, as per the terms of summoning order dated 16.02.2022, it is the contention of Ld. Counsel for respondent that the same cannot be said or termed as an illegality or impropriety etc. and no prejudice has been caused to the respondents because of the same. It is also his submission that even otherwise, as per powers conferred by Section 216 Cr.P.C., the court of Ld. ACMM-01 is empowered to alter the above charge or notice of accusation at any point of time, if the said court considers it necessary to do so in the interests of justice and as per the terms contained in the said Section. Judgments in cases **Jasdeep Singh alias Jassu Vs. State of Punjab, (2022) 2 Supreme Court Cases 545; Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh & Ors., (2020) 12 Supreme Court Cases 467; Sh. P. Kartikalakshmi Vs. Sri Ganesh & Anr., (2017) 3 Supreme Court Case 347; Virendra Singh Vs. State of Madhya Pradesh, (2010) 8 Supreme Court Cases 407** are also found

cited in support of the above submission of Ld. Counsel for the respondent.

32. It is further the contention of Ld. Counsel for respondent that as per provisions contained U/S 6 IPC, the court of Ld. ACMM-01 could have only considered the General Exceptions contained in the said Code to find out or determine the commission of above offence of defamation punishable U/S 500 IPC and not the Exceptions provided in Section 499 IPC defining the said offence as the Exceptions to the said offence contained in the above Section could have been considered only during the course of trial of the case. It is also his contention in alternative that even otherwise, the case of accused or the revisionists herein is not covered by any of the exceptions contained U/S 499 IPC.

33. Sh. Mohit Mathur, Ld. Senior Advocate for revisionist Raghav Chadha of Crl. Rev. No. 43/2022 in rebuttal has reiterated the submissions earlier made by him about the revisional powers of this court to correct any type of mistake, illegality or impropriety in the impugned order of a court of Metropolitan Magistrate and it is his submission that whatever could have not been done by the court of Ld. ACMM-01, can be done by this court in exercise of its revisional jurisdiction conferred by Sections 397 Cr.P.C.

34. It is also the submission of Ld. Senior Advocate for this revisionist that the power to discharge an accused is inbuilt in

provisions of Section 251 Cr.P.C. and while serving a notice of accusation upon an accused under the above provisions in a summons case, it is incumbent upon the court to see if the ingredients of the alleged offence are made out against the accused or not and in case the same are not made out, then the accused is entitled to be discharged even though there is no express provision in Cr.P.C. to discharge an accused in a summons case. He has also referred to the provisions of Section 211 Cr.P.C. in support of his above contention.

35. Further, while referring to some of the observations made in the judgment in case **Kunhayammed and Others (Supra)** being referred to on behalf of the respondent Sh. Chhail Bihari Goswami, it is also submitted by him again that the ‘doctrine of merger’ is very much applicable to the present case and on passing of the impugned order dated 09.11.2022 by the Ld. ACMM-01, the previous order dated 16.02.2022 summoning the petitioner as accused stood merged with the subsequent order dated 09.11.2022. It is further his submission that the facts and circumstances of the present case clearly establish that there was no meeting of minds between the two petitioners herein or the other accused persons in making the alleged defamatory statements or imputations and hence, Section 34 IPC could never have been invoked by the respondent in above criminal complaint and further that once the petitioner stood summoned for the offence of defamation punishable U/S 500 IPC with the

help of Section 34 IPC vide the above summoning order dated 16.02.2022, separate notices of accusation U/S 500 IPC served upon them are not legally tenable. It has also been reiterated by him that, even otherwise, the alleged allegations or imputations pertain to an unidentifiable group of persons or body and the above criminal complaint filed by the respondent in his individual capacity was not maintainable.

36. Sh. Bhavook Chauhan, Ld. Counsel for the revisionist Satyendra Kumar Jain in Cr. Rev. No. 46/2022 has argued in rebuttal that even though the court of a Magistrate has no powers to review or recall his order of summoning in a summons case and he may be bound to serve a notice of accusation upon an accused, but a court of Sessions or the Hon'ble High Court acting in a revision petition filed against the said order has certainly the powers to set aside such an order passed by the court of a Magistrate directing service of notice of accusation if on facts or on law the said order is found not sustainable or no offence is made out against the accused. Judgments in cases **Suresh Batra and Ors. Vs. Securities and Exchange Board of India, Crl. Rev. Petition No. 88/2010** decided by the Hon'ble High Court on 30.05.2011; **Pratap Singh Yadav and Ors. Vs. Atal Bihari Pandey, CRLR 481/2002** decided by the Hon'ble High Court on 05.09.2002 and **Bhongiri Kiran Kumar and Ors. Vs. State of A.P., Crl. Rev. Case No. 380 and 563 of 2000** decided by the Hon'ble High Court of Andhra Pradesh on 27.07.2000

have also been referred to by him in support of his above submissions.

37. Further, he has also referred to the judgment of the Hon'ble High Court for Telangana and Andhra Pradesh in case **Paul Sellers and Ors. Vs. State of Andhra Pradesh and Ors., Crl. P. Nos. 805 and 864 of 2014** given on 11.11.2014 in support of his another submission that the contents of alleged imputations being attributed to his client were not defamatory as his client in his capacity of a Minister of Health of the Delhi Government had only talked about ordering of an inquiry into the matter to which these allegations pertained. It is further his submission that if two views are equally possible at the stage of charge, one raising suspicion and one raising grave suspicion, then charge is not liable to be framed and in this regard judgment of the Hon'ble Supreme Court in case **Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135** has also been relied upon by him.

38. As discussed above, though in Crl. Rev. No. 46/2022 filed by the revisionist Satyendra Kumar Jain, the order dated 16.02.2022 of Ld. ACMM-01 summoning both the revisionists herein, as well as the other accused persons in the above criminal complaint, is not formally under challenge, but in the other Crl. Rev. No. 43/2022 filed by the revisionist Raghav Chadha, the same has been challenged and its legality or propriety has also

been disputed, besides the other order dated 09.11.2022 passed by the Ld. ACMM-01 directing service of notices of accusation upon the accused and also the notices of accusation dated 17.11.2022 served upon them in pursuance thereof.

39. Admittedly, a limitation period of 90 days only is available for filing of revision petition against any such order of a criminal court and the Crl. Rev. No. 43/2022 qua the impugned order dated 16.02.2022 is found to have been filed by the revisionist Raghav Chadha before the court on 12.12.2022, i.e. after around 10 months from passing of the said order and after a delay of around 7 months from the expiry of above period of limitation. The revisionist did not even care to file any formal application seeking condonation of the above period of delay in challenging the impugned order dated 16.02.2022 by him and hence, in the above background, the Crl. Rev. No. 43/2022 filed by him is outrightly liable to be dismissed qua the said order being barred by the law of limitation.

40. Moreover, no legitimate or plausible explanation has also been furnished by Ld. Senior Advocate representing the revisionist to justify the conduct of said revisionist in not challenging the said order within the above prescribed period of limitation or even for not filing of a formal application for condonation of delay for the above said period. Hence, in absence thereof, this court cannot condone the above huge and inordinate delay of around 7 months in challenging of the above

said order in the CrI. Rev. No. 43/2022.

41. Though, it has also been contended by Ld. Senior Advocate representing the above revisionist that since the revisionist had preferred an application for his discharge before the court of Ld. ACMM-01, after passing of the said order and after putting his appearance before the said court, and the said application was dismissed by the court of Ld. ACMM-01 only vide the above impugned order dated 09.11.2022, the period spent by the revisionist in pursuing the said application is liable to be ignored and exempted in calculating the above period of limitation of 90 days as has been prescribed for filing of a revision petition, but in considered opinion of this court the above argument of Ld. Senior Advocate is not tenable and hence, it cannot be accepted as by no stretch of imagination, the above filing of application for discharge by the revisionist can be considered to be a litigation which the said revisionist was pursuing in good faith or with due diligence in the above said court of Ld. ACMM-01. It cannot be ignored that the revisionist is not an ordinary person, but an educated person and also a MP and he was even having the best possible legal assistance during the said proceedings before the court of Ld. ACMM-01 and was being represented by a battery of Advocates, including Senior Advocates. Moreover, when he had even not cared to formally file an application for condonation of the above period of delay, the question of exclusion of the period spent by him in pursuing

the above application for discharge should not arise.

42. Further, as already discussed, Ld. Senior Advocate for this revisionist has also referred to the common law 'doctrine of merger' in support of his submission that since the summoning order dated 16.02.2022 passed by the Ld. ACMM-01 stood merged with the subsequent order dated 09.11.2022 of the said court dismissing the discharge applications of accused persons and directing service of notices of accusation upon them, there was no need of challenging both these orders separately and it is sufficient if the said revisionist has challenged the subsequent order dated 09.11.2022 of the court of Ld. ACMM-01. However, in considered opinion of this court, even this submission of Ld. Senior Advocate is not legally tenable as the 'doctrine of merger' does not operate in above sense and it operates in a different context. Ld. Counsel for respondent no. 1 of this revision petition has rightly referred to judgment of the Hon'ble Supreme Court in case **Kunhayammed and Others (Supra)** dealing with the scope of application of the said doctrine and as per propositions of law laid down in the said case, which also reiterates the law laid down in some earlier judgments of the Hon'ble Supreme Court, the above 'doctrine of merger' operates in the sense that once a decree or order of a subordinate court is reversed or affirmed by a higher court, then the order of subordinate court merges with the order of higher court and only the order of higher court exists in the eyes of law. Hence, even by applying the

above 'doctrine of merger', the challenge made by the revisionist of this petition to the summoning order dated 16.02.2022 passed by the court of Ld. ACMM-01 cannot be entertained.

43. As already discussed, the other revisionist Satyendra Kumar Jain of Crl. Rev. No. 46/2022 has not even challenged the above summoning order dated 16.02.2022.

44. Therefore, in light of the above discussion, this court holds that the correctness, legality and propriety etc. of the impugned order dated 16.02.2022 passed by Ld. ACMM-01 in the above criminal complaint cannot be tested or determined in the present revision petitions and the same is, thus, being upheld.

45. Now coming to the other order dated 09.11.2022 directing dismissal of discharge applications of the revisionists and other accused and service of notices of accusation upon them, it can be observed by this court on a bare perusal of the above order dated 09.11.2022 of the court of Ld. ACMM-01 that extensive arguments were addressed before the said court on behalf of all parties to the above criminal complaint on various aspects involved therein, including as to whether the respondent/complainant Sh. Chhail Bihari Goswami was an aggrieved person or not in terms of Section 199 Cr.P.C. as he was not specifically named in the above defamatory statements or imputations; whether the above allegations or imputations were in fact defamatory or not in view of provisions contained in

Section 499 IPC; whether the said statements or imputations referred to an identifiable body or group of persons or not and also as to whether there were any grounds for proceeding further in the matter or not and for summoning the persons made accused in the said complaint, including the two revisionists herein.

46. However, the Ld. ACMM-01 had rightly observed in her impugned order dated 09.11.2022 that the prime question for consideration before the court was none of the above said questions and rather, it was as to whether in a summons case the court could have discharged the accused persons or not once they had been summoned by the court to face trial for the alleged offence of defamation. After discussing the law laid down by the Hon'ble Supreme Court in the case of **Adalat Prasad (Supra)**, which was reiterated in the cases of **Subramaniam Seturaman (Supra)** and **In Re.: Expeditious Trial of Cases under Section 138 of N.I. Act 1881 (Supra)**, Ld. ACMM-01 had answered the said question in negative and was of the view that it was not within the competence of her court to discharge the accused persons or to review the previous order of the court dated 16.02.2022 directing their summoning for the above said offence and hence, she had directed for service of notices of accusation U/S 251 Cr.P.C. upon the accused for commission of the said offence. The relevant extracts of the above order dated 09.11.2022 passed by Ld. ACMM-01 are also being reproduced

herein below for the sake of referral and better understanding of the reasons behind passing of the said order and also the legal position on this aspect :-

“10. While Accused persons are strongly pushing for their discharge from the case, Complainant has pressed upon putting them to trial. The answer to the question as to whether the Accused persons should face trial in this matter or not simply depends on the answer to the question as to *whether in a summons case Accused persons can be discharged or not after having been summoned in the court.* The answer to this question can be found in several leading judicial authorities which clearly provide that in a summons triable case, once summons have been issued, neither can the summoning order be recalled nor can the Accused be discharged by a trial court.

10.1 At the outset, reference must be made here to the three judge bench decision of the Supreme Court of India in the matter titled as ***Subramaniam Seturaman v. State of Maharashtra & Anr.*** [(2004) 13 SCC 324] wherein, upholding the law laid down in the case titled as ***Adalat Prasad v. Roop Lal Jindal*** [(2004) 7 SCC 338], it was held that:

'From the above, it is clear that the larger Bench of this Court in Adalat Prasad's case did not accept the correctness of the law laid down by this Court in K.M.Mathew's case. Therefore, reliance on K.M.Mathew's case by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad's case requires reconsideration be accepted. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion. As observed by us in Adalat Prasad's case the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.'

10.2. Further, Constitution Bench of the Supreme Court of India in its decision dated 16.04.2021 titled as ***In Re.: Expeditious Trial of Cases under Section 138 of N.I. Act 1881(supra)*** upholding the ***Adalat Prasad Judgment*** and ***Subramanium Sethuraman judgment*** has held that :

'Judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.'

11.3. Also, recently, in its **order dated 20.04.2022**, a Division Bench of the High Court of Delhi has specifically held in the matter titled as ***Court On Its Own Motion vs. State (Supra)*** that:

'A plain reading of the paragraphs extracted hereinabove leaves no manner of doubt that in terms of the judgment of the Hon'ble Supreme Court in Adalat Prasad Vs. Rooplal Jindal and Others (2004) 7 SCC 338 and Subramanium Sethuraman Vs State of Maharashtra and Another, (2004) 13 SCC 324, the Trial Court cannot be conferred with inherent powers, either to review or recall the order of issuance of process. As held in Adalat Prasad (supra) and Subramanium Sethuraman (supra), the Magistrate is deluded with the power to revisit the order of issue of process, except to the limited extent that the Court has no jurisdiction to try the case. In other words, the Trial Court has no inherent jurisdiction to revisit the order of issue of process within the meaning of the provisions of Section 258 Cr.P.C.

.....

In view of the foregoing, we are of the considered view that Question No.1 in the present reference is to be answered in the negative. The Court of a Magistrate does not have the power to discharge the accused upon his appearance in Court in a summons trial case based upon a complaint in general, and particularly in a case under Section 138 of the N.I. Act, once cognizance has already been taken and process issued under Section 204 Cr.P.C.'

From bare reading of the above extract, it is amply clear that there is no scope of discharge in summons triable cases be it under IPC or under any special law.

11.4. From the above quoted decisions of the Apex Court of India and the Delhi High Court, there remains no scope of doubt that law is settled on this aspect that this court has no power to discharge the Accused at the stage of serving of notice u/s 251 Cr.P.C.”

47. It can be seen that the legislature in its wisdom in laying down the procedure for trial of different kinds of criminal cases by different courts has laid down different sets of procedure governing the trial of such cases and hence, in Cr.P.C. different procedures have been prescribed for dealing with the trial of cases before a court of Sessions and also for trial of warrant cases as well as summons cases before the court of a Magistrate. Even different types of procedures have been prescribed in the said Code for trial of warrant cases instituted on a police report and those instituted through complaints. Apart from the above, even a separate set of procedure is found prescribed therein for dealing with cases requiring summary trials.

48. Chapter XX of Cr.P.C. deals with the trial of summons cases by Magistrates and this Chapter starts with Section 251 itself, which deals with service of a notice of accusation upon an accused in a summons case, after appearance has been filed by him before the Magistrate on being summoned for commission of an offence under IPC or any other enactment having applicability of the provisions contained in Cr.P.C. and which falls in the category of summon trial cases. Section 251 Cr.P.C. requires that when in such a case the accused appears or is brought before the court of Magistrate, the particulars of the offence of which he is

accused shall be stated to him and he shall be asked as to whether he pleads guilty to the said offence or he has a defence to make. This Section or any of the following Sections contained in the said Chapter of the Code do not contain any provision or eventuality for discharge of the said accused and as per Section 252 Cr.P.C. if the accused pleads guilty to the said offence, his plea of guilt shall be recorded by the Magistrate and he may be convicted as per discretion vested in the court. Section 253 Cr.P.C. deals with cases where a Magistrate is empowered to convict an accused in his absence, on the basis of his plea of guilt in some petty cases, and Section 254 of the said Code lays down the procedure which the Magistrate has to follow in trial of the accused in case he is not convicted U/S 252 Cr.P.C. or Section 253 Cr.P.C. Section 255 Cr.P.C. deals with the acquittal or conviction of an accused on conclusion of the above trial and Sections 256 to 259 Cr.P.C. deal with some other eventualities, but of course not with discharge of the accused.

49. Thus, it is clear from the above discussion about legal provisions and judicial pronouncements on subject that there is no provision for discharge of an accused in summons trial cases, as per procedure laid down for trial of such cases in Chapter XX of Cr.P.C., once summons have been issued to the accused by the court of a Magistrate and the accused had put in his appearance before the court. But, as held by the Constitution Bench of Hon'ble Supreme Court **In Re.: Expeditious Trial of Cases**

under Section 138 of N.I. Act 1881 (Supra), the Magistrate in exercise of powers vested in him U/S 322 Cr.P.C. may revisit his order of summoning in such a case when he has no jurisdiction to try the said case. However, admittedly, the issue of jurisdiction was never raised before the Ld. ACMM-01 nor it is even found involved in the present case and hence, Section 322 Cr.P.C. has got no applicability to the facts and circumstances of this case.

50. Apart from the above, one other provision dealing with eventualities where the trial of a summons case cannot progress further even after appearance has been put by an accused before the court of a Magistrate is as provided by Section 258 Cr.P.C. contained in above Chapter XX of the Code itself and it deals with cases where the Magistrate is empowered to stop the proceedings. However, it is clear from the plain language of the said Section itself that even this Section or provision cannot be applied to a summons case instituted upon a complaint and the same is applicable only in respect to those cases which are instituted on the basis of a police report. This legal aspect is also found to have been duly dealt with by the Ld. ACMM-01 in her impugned order dated 09.11.2022 and the relevant extracts thereof are being reproduced herein below :-

“12. While arguing for the Accused persons, Ld. Senior Counsel had also pressed upon invoking of powers u/s 258 Cr.P.C. seeking *stopping of proceedings*. **Section 258 Cr.P.C. titled as *Power to stop proceedings in certain cases*** provides as follows:

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief

Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.'

From the bare reading of the section itself, it is manifest that the provision for stopping of proceedings is not applicable to summons cases instituted on a complaint. The case at hand is a summons case instituted on a complaint and thus, no recourse to section 258 Cr.P.C. can be taken by defence. *Dr. Kamala Rajaram Judgment* relied upon by the Accused persons does not lay down any law pertaining to stopping of proceedings in summons triable complaint cases and as such, the same has no applicability to the present case.”

51. Hence, in light of above discussion, this court is of considered opinion that even the impugned order dated 09.11.2022 passed by Ld. ACMM-01 does not suffer from any mistake, illegality or impropriety, which is required to or can be corrected by this court in exercise of its revisional jurisdiction conferred by Sections 397 or 399 Cr.P.C. As also emerges from the propositions of law laid down in the above said cases, the Ld. Trial Court, or even this court, does not have any inherent powers to direct discharge of an accused in such a case at the stage of service of notice of accusation upon him, after he has been summoned by the Magistrate in a summons triable case, and the appropriate remedy available to an accused in such a situation is only the extraordinary remedy provided by Section 482 Cr.P.C. to approach the Hon'ble High Court for exercise of the inherent powers vested in it for seeking the desired relief, as was also held by the Hon'ble Supreme Court in the case of **Adalat Prasad**

(Supra). The judgments being relied upon on behalf of the revisionists to the contrary are, thus, of no help to their case.

52. As far as the order dated 30.11.2022 passed by the Hon'ble High Court in Crl. M.C. No. 6394/2022 and Crl. M.As. No. 24937-24938/2022 filed by revisionist Satyendra Kumar Jain of Crl. Rev. No. 46/2022 being referred to by Ld. Senior Advocate for the said revisionist is concerned, it is observed that nowhere in the said order the Hon'ble High Court has observed that this court has jurisdiction or powers U/S 397 or 399 Cr.P.C. to discharge an accused in such a case and it has only permitted the Ld. Senior Counsel for petitioner/revisionist to withdraw his petition and to approach this court by way of appropriate proceedings. Moreover, once this power does not exist in this court by virtue of legal provisions contained in Cr.P.C. or even in light of the above judicial decisions of the Hon'ble Supreme Court, it could not have been conferred by such an order of the Hon'ble High Court and even if the Hon'ble High Court in any case permits a party to approach a court of Sessions or even the trial court for the appropriate relief, the grant of such relief is always subject to and liable to be governed as per provisions of law and the judicial pronouncements on the said subject.

53. Further, as also discussed above, Ld. Senior Advocates for the revisionists have also advanced extensive arguments before this court touching upon certain other aspects like the *locus-*

standi of the respondent Sh. Chhail Bihari Goswami to file the above criminal complaint against them and also merits of the case etc., as were addressed by them before the court of Ld. ACMM-01 too, but even this court is of the considered opinion that it is not necessary for it to deal with such aspects as this court concurs with the findings given by the court of Ld. ACMM-01 in its impugned order dated 09.11.2022 that the prime question for consideration before it was not the above aspects, but as to whether it had any powers or not to discharge the accused in such a case at the stage of service of a notice of accusation U/S 251 Cr.P.C. Once this court has already upheld the findings arrived upon by the Ld. Trial Court on this aspect and has observed that it could not have discharged the accused persons in such a case, there is no need even for this court to go into facts or merits of the case for finding out as to whether the alleged statements or imputations being attributed to the revisionists or other three accused were defamatory or not in view of provisions contained U/S 499 IPC or whether the respondent Sh. Chhail Bihari Goswami was a person aggrieved or not as per Section 199 Cr.P.C. It is so because the Ld. Trial Court has already arrived at a *prima facie* view on all these aspects while directing summoning of the revisionists and other accused for the above said offence of defamation punishable U/S 500 IPC vide its previous order dated 16.02.2022. Moreover, this order dated 16.02.2022 passed by the Ld. ACMM-01 was not challenged in Cr. Rev. No. 46/2022 and even though the same

was challenged in the other Cr. Rev. No. 43/2022, this challenge has also been held to be not maintainable and being barred by limitation.

54. The factum of existence of a *prima facie* case against the revisionists to satisfy their summoning as accused in the above criminal complaint case is also found to have been specifically observed by the Ld. ACMM-01 in her impugned order dated 09.11.2022 and the relevant extracts thereof are also being reproduced herein below:-

“Moreover, the issue whether *prima facie* case is made out against the Accused persons or not has already been answered by this Court vide its summoning order dated 16.02.2022 stating that *prima facie* Accused persons namely Satyender Jain, Aatishi Marlana, Raghav Chadha, Durgesh Pathak and Sourabh Bhardwaj have committed the offence punishable U/s 499/500 IPC read with Section 34 IPC, whereafter they were summoned in the court. The said summoning order has already attained finality since the same has not been challenged by the Accused persons and as already mentioned above, this court does not have any power to review its order or recall the summoning order and thus, there is no occasion to go into the question as to whether *prima-facie* case is made out against the Accused persons or not.”

55. The above findings of Ld. ACMM-01 are also equally good for some other issues raised by Ld. Senior Advocates for revisionists relating to the alleged official cover of public duties of the revisionists in making the above statements or imputations and the necessity for obtaining of any prosecution sanctions qua him before filing of the above criminal complaint etc. Even otherwise, one of such issues pertaining to the requirement of filing of the above criminal complaint through the Public

Prosecutor was also answered in negative by the Ld. ACMM-01 while making the following observations:-

"14. Questioning the summoning order, yet another argument was raised by Ld. Senior Counsel that since the Complainant is a government servant, as per provisions of section 199 Cr.P.C., complaint of defamation could have been filed by him only through the Public Prosecutor. Covering this aspect, **on 17.10.2022**, it has been held by the Supreme Court of India in the matter titled as Manoj Kumar Tiwari vs. Manish Sisodia & Ors. [2022 LiveLaw (SC) 853] that:

51. The long history of the evolution of the legislation relating to prosecution for the offence of defamation of public servants shows that the special procedure introduced in 1955 and fine-tuned in 1964 and overhauled in 1973 was in addition to and not in derogation of the right that a public servant always had as an individual. He never lost his right merely because he became a public servant and merely because the allegations related to official discharge of his duties. Sub-section (6) of Section 199 which is a reproduction of what was recommended in the 41st Report of the Law Commission to be made sub-section (13) of Section 198B, cannot be made a dead letter by holding that persons covered by sub-section (2) of Section 199 may have to invariably follow only the procedure prescribed by sub-section (4) of Section 199. Therefore, the common ground raised by both the appellants is liable to be rejected. A person falling under the category of persons mentioned in sub-section (2) of Section 199 can either take the route specified in sub-section (4) or take the route specified in sub-Section (6) of Section 199.

In view of the above, the arguments taken by defence that complainant, being a public servant, must have filed the case through a public prosecutor does not carry much weight. Moreover, as already discussed above, the summoning order has already attained finality and this court cannot go into the merits of the same."

56. As far as the submission made by Ld. Senior Advocates for revisionists regarding framing and serving of individual notices of accusation upon the accused for commission of the offence U/S 500 IPC only and without the help of Section 34 IPC is concerned, the same also cannot be considered to be a mistake or illegality of such a nature which is required to be interfered with under the provisions of Sections 397 Cr.P.C. or 399 Cr.P.C. as no prejudice is found to have been caused to the revisionists or

the other three accused as a result thereof. Moreover, it will still be within the powers of Ld. Trial Court to modify or amend the charge to this effect in exercise of powers vested in it by virtue of Section 216 Cr.P.C., either *suo-moto* or on an application moved on behalf of parties to the said complaint which is pending before it.

57. As a result of the above discussion, both these criminal revision petitions are dismissed and the impugned orders dated 16.02.2022 and 09.11.2022 are upheld being perfectly correct and legal on facts as well as in law. The subsequent notices of accusations served upon the revisionists in pursuance of the above order on summoning dated 09.11.2022 are also accordingly upheld. Let a copy of this order be placed in files of both the revision petitions and a copy of the order be also sent to the court of Ld. ACMM-01 for information, records and further proceedings. Files of revision petitions be consigned to record room.

**Announced in open court
on 09.11.2023**

**(M. K. NAGPAL)
ASJ/Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi.**