

**IN THE COURT OF MS. SUJATA KOHLI, PRINCIPAL DISTRICT &
SESSIONS JUDGE-CUM-SPECIAL JUDGE (PC ACT) (CBI), ROUSE
AVENUE DISTRICT COURT COMPLEX, NEW DELHI**

Ct. Case No. 05/2019

Mobashar Jawed Akbar Vs. Priya Ramani

23.10.2020

ORDER

1. This file has been received on the orders dated 13.10.2020, passed by Sh. Vishal Pahuja, Ld. ACMM-1, Rouse Avenue District Court, New Delhi. In the said order Ld. Trial Court has requested for passing appropriate orders in the matter, submitting that in terms of order passed by Hon'ble Supreme Court of India in writ Petition (Civil) No. 699/2016 in 'Ashwani Kumar Upadhyay v. UOI and Anr.', special Courts were created for the trial of the cases **against** Member of Parliament/Member of Legislative Assembly and in view of the said order the Hon'ble High Court vide circular No. 760-804/DHC/Gaz./G-1/V.I.E.2(a)/2018 dated 23.02.2018 designated the Special Courts for trial of the cases **against** MP/MLA. It has been requested that as this matter is not filed **against** MP/MLA, hence, cannot be tried by the said Court and needs to be transferred to the Competent Court of Jurisdiction.

2. Contentions raised on behalf of the complainant:-

Ms. Geeta Luthra, Ld. Sr. Counsel for the complainant has raised several contentions, against transfer of the case, at the final stage of the case and some of the same are as follows:-

- (i) The matter should not be transferred, in as much as the notification designating the special courts for cases against MP/MLAs was based upon the order passed by Hon'ble Supreme Court of India in writ Petition (Civil) No. 699/2016 in 'Ashwani Kumar Upadhyay v. UOI and Anr.'" and nowhere it can be interpreted that the cases which are only against the MP/MLAs are supposed to be tried by those designated courts.
- (ii) Going by the underlying object of the said order of Hon'ble Supreme Court i.e. to clear the names of the MP/MLAs involved in any criminal cases or in any accusations of moral turpitude, the said case also deserves a priority to be tried by a designated Court.
- (iii) That even otherwise the notification itself, when read, on the face of it, does not create any bar that the designated Courts cannot be assigned any other matters and they cannot try any other cases. All that the notification states, is that, the cases with respect to MP/MLAs must be tried only by the courts designated thereunder; but the notification nowhere says that no other matters can be assigned to the said courts and they cannot try any other case.

- (iv) It has been further contended by Ld. Sr. Counsel for the complainant that this case was pending for the last 2-3 years and the entire proceedings in the case are already over, even the trial is over and the case is at the stage of final arguments. Final arguments were almost concluded and only some arguments were remaining to be addressed in rebuttal. It is at this stage that Ld. Trial Court, of its own, expressed the view that the case should not be tried by the designated Court and that it should be sent for transfer.
- (v) Ld. Sr. Counsel for the complainant expressed her grievance about the immense delay and the miscarriage of justice that may result therefrom.
- (vi) However, as regards, the entire trial being vitiated by a Court lacking jurisdiction, Ld. Sr. Counsel for the complainant referred to and relied upon the provisions of Section 462 Cr.P.C. which says:-

“Proceedings in wrong place. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

It has been submitted by Ld. Sr. Counsel for the complainant that irrespective of her submissions and the stand taken, even in case the matter is transferred to another court, it would not imply that the trial would have to be denovo as per provisions of Section 462 Cr.P.C.

(vii) Ld. Sr. Counsel for the complainant further contended that even though the word used in the notification, is, with respect to cases pending 'against' MP/MLAs, however, literal interpretation should not be given to the word 'against' and it should be read 'involving' or 'with respect to'.

3. **Contentions raised on behalf of accused:-**

(i) It was informed by the Ld. Counsel for the complainant that Ld. Counsel for the accused on the previous day, out of court, had conveyed that he was not going to oppose this stand and that he was sharing the same view, however in court, when Ld. Counsel for accused appeared, his submissions were quite different and in as much as it was contended on behalf of accused that it would be more appropriate to transfer the matter to ordinary courts.

(ii) It has been contended by Ld. Counsel for the accused that the matter should be transferred to ordinary Court as in view of the notification of Hon'ble High Court, the cases against MP/MLA should be tried by the designated Court, however, as this matter is not '**against**' and is '**by**' an MP, therefore, this matter needs to be transferred to ordinary court. Ld. Counsel had supported the order of Ld. Trial Court.

4. I have heard both Ld. Counsels and given my thoughtful consideration to the matter.

5. **Brief facts of the case:**

- (i) The complainant in the present case is an Indian Politician, who is the Minister of State for External Affairs and a Member of Parliament in the Rajya Sabha from Madhya Pradesh. He was inducted into the Union Council of Ministers by the Hon'ble Prime Minister in July, 2016. The complainant is also a veteran Indian Journalist and author of several renowned books. He is married and having two children.
- (ii) The accused is a journalist, by profession.
- (iii) The present complaint has been preferred against the accused for defaming and damaging the reputation of the complainant in terms of Section 499 IPC, 1980, by way of tweets, articles etc. published as well as distributed and disseminated at the behest of the accused in the print media as well as on online platforms such as Vogue Magazine, twitter, Firstpost etc.
- (iv) It has been alleged that the accused has made false, derogatory and malicious imputations against the complainant, in order to defame the complainant with the sole ulterior motive of maligning the reputation and political standing of the complainant in furtherance of her own vested interests and underlying agenda.
- (v) It has been further mentioned in the complaint that the accused herself,

while putting forward the defamatory statements, relating to incidents which allegedly occurred 20 years ago, simultaneously admits that the complainant has not done anything to her.

- (vi) The complainant, by way of the present complaint, seeks due and appropriate punitive action against the accused in terms of Section 500 IPC, 1860.

6. Ld. Trial Court, in the order dated 13.10.2020 has referred to the notification dated 23.02.2018 No.35/DHC/Gaz./G-1/VI.E.2(a)/2018 of Hon'ble High Court whereby the Hon'ble High Court directed as under :-

*“in compliance with the directions of the Hon'ble Supreme Court dated 01.11.2017 and 14.12.2017 in Writ Petition (Civil) No. 699/2016 titled “Ashwani Kumar Upadhyay V. UOI & Anr., the Court presided over by Mr. Arvind Kumar, Special Judge (PC Act) CBI, PHC, an officer of Delhi Higher Judicial Service and the Court presided over by Mr. Samar Vishal, ACMM-2, New Delhi, PHC, an officer of Delhi Judicial Service have been designated as Special Courts to deal with cases **against** elected MPs/MLAs to be made functional in Patiala House Courts Complex with effect from 1st March, 2018.*

*Hon'ble the Acting Chief Justice and Judges of this Court have further been pleased to order that the cases pending **against** MPs/MLAs in different Courts be transferred to the above said two Courts before 1st March, 2018 and to put such cases on fast track and endeavor be made to dispose of the same within one year.”*

7. Before moving in any direction, in context of this case, it would be appropriate to

discuss the main object of the order of Hon'ble Supreme Court in writ Petition (Civil) No. 699/2016 "Ashwani Kumar Upadhyay v. UOI and Anr. based on which the notification, being relied upon by the Ld. Trial Court, was issued.

8. In my considered view, the main object for setting up fast track courts to deal with the criminal cases involving MP/MLAs, was to get such cases decided, either way, on fast track mode, so as to clear out the blot/shadow against the name and reputation of an MP/MLA while he sits in Parliament/Assembly, if it is clearable. In case, he is found guilty, then also the decision should be fast that he should not be occupying a seat in the parliament or assembly. The object behind this order was very clear; and a literal view, in this context, should not be taken, as seems to have been taken by Ld. Trial Court.
9. Furthermore, this complaint was filed initially in October, 2018, thereafter, pre-summoning evidence was led, accused was summoned, notice was framed, CE was completed, DE was completed and the matter was fixed for final arguments, that too were nearing conclusion. This entire trial took a long time span of two years and after that this matter has been sent by Ld. Trial Court of its own, for seeking orders for transfer of the matter.
10. Further, it should also be kept in mind that, the trial of this complaint case is nearing conclusion, even the final arguments have been heard and the case is at the stage of rebuttal arguments, if any, and, if at this stage, it is transferred

to some other court, it would amount to miscarriage of justice and inordinate delay, which cannot be treated as conducive to the concept of timely justice.

11. Even inspite of the provisions of Section 462 Cr.P.C., even if it is assumed that, the proceedings which were conducted before the concerned court would not stand vitiated for want of jurisdiction, and matter may not call for a denovo trial, but even so, the transferee court would be reasonably expected to start hearing final arguments in the matter, all over again, which again, at the end of the day would only cause an unreasonable delay in the disposal of the case.
12. Coming back to the object of the order of Hon'ble Supreme Court leading to the notification based thereupon, the object seems clearly that if there is a question mark on the reputation of an MP/MLA, it should be cleared fast, if it is clearable and the case should not linger for long. Similarly, if he is indeed guilty, the truth should come out expeditiously, even in that situation.
13. Keeping in view this object, and going back to the facts of the case a little and touching them in brief, the campaign of 'Me too' which was carried on, involved several allegations of sexual/immoral conduct committed by several high up persons of society including MP/MLAs or film personalities and similar top personalities of the society and their names were in a cloud on

account of several complaints arising, one after another, filed by different women of the society. The accused of the present case, though did not file any complaint, as such but on account of the accusations made by her in the social media and other media, it cannot be said that the name of the complainant herein was not in a cloud and that it does not need to be cleared.

The moment, the complainant lodged a complaint for the offence of defamation, it implied that his name was very much under a cloud which, by this complaint, he wanted his name to be cleared. It is only through this complaint case, that it could be found out whether there was any force and substance in the accusations leveled in the 'Me too' campaign by the accused against the complainant, or otherwise, it was only a malicious campaign.

14. In the above context, reference is had to the following settled principles of jurisprudence, particularly with respect to interpretation of statute:-

- (i) *“The essence of law lies in the spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it.” - Salmond*
- (ii) *“The term ‘Interpretation’ is derived from Latin term ‘interpretari’ which means, to explain, or to understand or translate. Interpretation is a process through which one ascertains the true and correct intention of the law making bodies as is laid in the form of statutes.”*

- (iii) *“Salmond defines interpretation as “Interpretation or construction is the process by which the courts seek to ascertain the meaning of legislation through the medium of the authoritative form in which it is expressed.”*
- (iv) In the landmark case of ***Keshavnanda Bharti v. State of Kerela, (1973) 4 SCC 225***, it was held that :-

“..a word gets its ‘colour’ in the context in which it is used. The word gathers its meaning not only in the context that it has been used but from the words used in similar conditions.”

- (v) In case of ***Heydon’s Case 1854) EWHC Exch J36***, it was held, interpreting the statute, that four things are to be considered:-
- *What was the common law before the making of the Act.*
 - *What was the mischief and defect for which the common law did not provide.*
 - ***What remedy the parliament had resolved and appointed to cure the disease of commonwealth***
 - ***The true reason of the remedy.***

“This principle is used by the courts to interpret the intention of the legislators.”

Though Ld. Counsel for the complainant herself, raised a point that in the present case, it is not the legislature who has created any statute, but, Ld.

Counsel for the complainant probably lost sight of the fact that the orders/judgments of Hon'ble Supreme Court, have an equal binding force like a statute and they form the Law of the land. As such, applying the same principles as for interpretation of statutes, to the order of the Hon'ble Supreme Court, would be quite justified.

(vi) *“THE GOLDEN RULE:-*

This rule is the modification of the principle of grammatical interpretation. According to this rule, ordinarily the words used in the statute should be given their natural meaning but if it leads to inconvenience, hardship or injustice, the courts must modify the meaning to such an extent so as to remove such inconvenience or injustice. So as this rule solves all problems this is known as Golden Rule. This rule is based on the assumption that the legislature does not intend certain objects and any construction leading to any of such objects deserves to be rejected.”

(vii) In the case of ***Uttar Pradesh Bhoodan Yagna Samiti v. Brij***

Kishore AIR 1981 SC 1656 the supreme court held that :-

“...the expression “landless person” used in Section 14 of U.P. Bhoodan Yagna Act, 1953 which made provision for grant of land to persons, was limited to “landless laborers”. A landless labour is he who is engaged in agriculture but having no agricultural land. The Court further said that “any landless person” did not include a landless businessman residing in a city. The object of the Act was to implement the Bhoodan movement, which aimed at distribution of land to landless labors who were verged in agriculture. A

businessman though landless cannot claim the benefit of the Act.”

(viii) *“A beneficial statute confers benefit on individuals if any provision is ambiguous so that is capable of two meanings, one of which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The basis of this rule is that the courts should be generous towards the persons on whom benefits has been conferred by the statute. It involves giving widest meaning to statute.”*

(ix) In case of *Hindustan Lever Ltd v Ashok Vishnu Kate AIR 1998 SC 237*, Hon’ble Supreme Court held that:-

“...in a case related to prevention of unfair labor practice, during interpreting social welfare legislation, a construction should be placed on the relevant provisions which further the purpose for which such legislation was enacted.

(x) *“Everyday working of the courts involves interpretation of statutes because it is the duty of the judiciary to act according to the true intention of the legislature. So statutes are to be interpreted to enforce the law and also to avoid miscarriage of justice. But if any interpretation results in injustice, hardship, inconvenience it should be avoided and the one which supports the justice should be adopted.”*

In brief, meaning thereby, that, interpretation of a statute or a judgment of the Apex court, having its deep rooted objects in minds of the

Legislators or the Hon'ble Judges, as the case may be, should be liberal and not literal.

15. Relevant portion of the order dated 01.11.2017 of Hon'ble Supreme Court in 'Ashwani Kumar Upadhyay v. UOI and Anr.' case need to be referred here, which would make things further clear for the purpose of the present case as under:-

*“the Union Government would not be averse to setting up of Special Courts to try criminal cases/offences **involving political persons** and for utmost expeditious disposal of the same....”*

This order nowhere speaks about cases only against the MP/MLAs. It is simply talking about cases involving MP/MLAs.

Once again in the same order it is extracted hereunder:-

“How many of 1581 cases involving Members of Legislative Assembly (MLAs) and Members of Parliament (MPs.)....”

Throughout, the emphasis is on the cases involving MP/MLAs and nowhere, it is the intent, that it is only the cases against the MP/MLAs which should be within the purview of the designated courts. Even though, it is stated in the notification, the words against

the MP/MLAs, however, if there is a contradiction between the notification and the main order of Hon'ble Supreme Court pursuant to which the notification had been issued, it is needless to say that it is the order of the Hon'ble Supreme Court which would be the guiding path, and not the notification.

16. Applying the settled legal principles above discussed in detail, to the order of Hon'ble Supreme Court in 'Ashwani Kumar Upadhyay v. UOI and Anr.' case, it is very clear that the underlying object appears to be that the names of the MP/MLAs involved in any criminal cases should be cleared away fast and the decisions should be rendered expeditiously, either way, so as to remove the blot/shadow against the name and reputation of an MP/MLA while he sits in Parliament/Assembly, if it is clearable. In case, he is found guilty, then also the decision should be expeditious, so that he should not be occupying a seat in the parliament or assembly.
17. In the present situation, though the order of the Hon'ble Supreme Court throughout, and clearly, used the words '**involving**' the MP/MLAs, somehow, the notification issued in compliance with the said order, used word '**against**'. This is what probably led, Ld. Trial Court, to refer to the notification, ignoring the foundational order passed by Hon'ble Supreme

Court.

18. Therefore, adopting a wider view of the notification and in the light of the order of Hon'ble Supreme Court in 'Ashwani Kumar Upadhyay v. UOI and Anr' (supra), and treating the case as involving the name and reputation of an MP, I am of the considered view that the matter should be tried and disposed off by the designated court itself.
19. Accordingly, this case is directed to be sent back to the designated Court of Sh. Vishal Pahuja, Ld. ACMM, RADC, New Delhi for disposal in accordance with law.

Ld. Counsel(s)/parties are directed to appear before Ld. Trial Court on **02.11.2020 at 10.30** am through VC.

A copy of this order be provided to Ld. Counsel(s) for the parties electronically.

Ahlmad is directed to send the case file, complete in all respects, to Ld. Trial Court after completion of due formalities.

**Announced through VC
today on 22.10.2020**

(SUJATA KOHLI)
Principal District & Sessions Judge-cum-Spl. Judge
(PC Act)(CBI)/RADC/ND