

IN THE COURT OF SH. SACHIN GUPTA,
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE-03,
ROUSE AVENUE COURTS COMPLEX, NEW DELHI

CNR No. DL CT 12-000017-2019
State Vs Amanatullah Khan & Ors.
FIR No. 54/2018
PS: Civil Lines
Case No. 02/2019

11.08.2021

ORDER

Vide this order, I shall decide on the point of Charge against the accused persons in the present case.

1. In the present case, FIR was registered upon the complaint dated 20.02.2018 of the complainant Sh. Anshu Prakash, the then Chief Secretary, Govt. of NCT of Delhi. Briefly stated the facts of the present case, as discernible from the complaint of the complainant and other documents/statements filed alongwith the charge-sheet, are that on 19.02.2018 at around 8.45 p.m. complainant was informed telephonically by Sh. V.K. Jain, advisor to the then Chief Minister (CM) that he had to reach at CM's residence at 12.00 midnight to discuss with Chief Minister and Deputy Chief Minister, the issue of difficulty in release of certain T.V. advertisements relating to completion of three years of current Government in Delhi; that complainant suggested that meeting could be held on 20.02.2018 in the morning, however, it was reiterated by Advisor to CM at 9.00 p.m. and again at around 10.00 p.m. that the meeting had been scheduled by CM at 12

midnight; that prior to that message from Advisor to CM, the Deputy CM had also called him at around 6.55 p.m. and informed him that if the matter of release of T.V. advertisement was not resolved by the evening, he should reach CM residence at 12.00 midnight to discuss the issue and he had already explained to Deputy CM that any advertisement to be released should not be in contravention of the guidelines of the Hon'ble Supreme Court.

2. It is further the case of prosecution that the Advisor to CM again called the complainant at around 11.20 p.m. to confirm if he had left for CM's residence for the meeting; that thereafter, complainant left his residence in his official car along with his driver HC Ashok Kumar Yadav and PSO Inspector Satbir Singh and reached CM residence at midnight; that on arrival at CM's residence, he met Sh. V.K. Jain, advisor to CM and thereafter both of them were taken to the front room where Chief Minister (Shri Arvind Kejriwal) and Deputy Chief Minister (Shri Manish Sisodia) and around 11 MLAs were present; that CM told him that the persons present in the room were MLAs and they had come to ask him about Government's publicity programme on completion of three years; that one of the MLA namely Praveen Kumar (whom complainant identified later, as transpired from his supplementary statement dated 25.04.2018) firmly shut the door of the room; that complainant was made to sit in between MLA Amanatullah Khan and another MLA namely Prakash Jarwal (whom complainant identified later, as transpired from his supplementary statement dated 20.02.2018) on a three seater

sofa; that CM directed him to answer the MLAs and explain the reasons for delay in release of T.V. campaign; that complainant explained to them that the officers were bound by the guidelines laid down by the Hon'ble Supreme Court and any advertisement to be released must be in consonance with the said guidelines.

3. It is further the case of prosecution that the MLAs started shouting at complainant and abused him while blaming him and the bureaucracy for not doing enough for publicity of the Government; that one MLA namely Rituraj Govind (whom complainant identified later, as transpired from his supplementary statement dated 20.02.2018) threatened to confine him in the room for the entire night unless he agreed to release T.V. campaign; that MLA Ajay Dutt (whom complainant identified later, as transpired from his supplementary statement dated 25.04.2018) threatened to implicate him in false cases including the cases under SC/ST Act; that suddenly MLAs namely Amanatullah Khan and Prakash Jarwal, without any provocation from his side, started hitting and assaulting the complainant and hit several blows with fists on his head and temple and his spectacles fell on the ground; that he was in the state of shock; that with difficulty, complainant was able to leave the room and get into his official car and left CM residence; that MLA namely Nitin Tyagi (whom he identified later, as transpired from his supplementary statement dated 20.02.2018) used very abusive and unparliamentary language to him and when he, anyhow managed to escape from the meeting/drawing room at the CM's residence, was even followed by Nitin Tyagi to stop

him. It is further stated that at no stage, did complainant retaliate or provoke any person in the room despite confinement, criminal intimidation by extending threat to his life and assault by several MLAs while he was discharging his official duties and none of the persons present in the room made any effort to save him. The other MLAs who were present during the meeting were Dinesh Mohania, Rajesh Rishi, Sanjeev Jha, Rajesh Gupta and Madan Lal. In his complaint, complainant requested for taking action as per law as the assault was premeditated and in conspiracy of all present with intention to criminally intimidate, cause hurt with motive to deter him from discharge of his lawful duty and compel him to follow unlawful directions.

4. After registration of FIR upon the complaint of complainant, investigation of case was taken up by the investigating agency and after concluding the investigation, IO filed the charge-sheet in the Court for offences under section 186/353/332/323/342/504/506(ii)/120-B/109/114/34/36/149 of the Indian Penal Code (IPC) against the thirteen accused persons namely Amanatullah Khan (A-1), Prakash Jarwal (A-2), Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8), Sanjeev Jha (A-9), Rituraj Govind (A-10), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13). Complaint u/s 195 Cr. P.C. of the complainant was also filed on 13.08.2018.

5. Vide order dated 18.09.2018, Ld. Predecessor of this Court took cognizance of the offences under Section

186/332/353/342/323/506(ii) read with Section 149 and 34 of Indian Penal Code, for criminal conspiracy under Section 120-B of Indian Penal Code for commission of offences under Section 186/332/353/342/323/506(ii) as well as for abetment under Section 109/114 of the Indian Penal Code to commit offences under Section 186/332/353/342/323/506(ii) IPC.

6. Hon'ble High Court vide its order dated 21.10.2020 passed in the case titled ***"Mr. Arvind Kejriwal & Anr. vs. State NCT of Delhi, in CRL. M.C. 1867/2020"***, has directed the Trial Court to consider statement dated 21.02.2018 of V.K. Jain, which is part of 'Case Diary' and placed on record by the accused, at the time of passing the order on Charge. The aforesaid statement dated 21.02.2018 of Sh. V.K. Jain is reproduced as under: -

"Case FIR No.54/18, Dated 20/02/18, U/s. 186/332/353/120-B/342/504/506(II)/323/34 IPC, PS Civil Lines, Delhi.

Examination of Sh. Vinod Kumar Jain S/o. Late Sh. Kalu Ram Jain R/o H. No. 57, Mera Bai Institute of Technology Campus Maharani Bagh, Delhi, age 60 years, Mobile No. XXXXXXXXXXXX (Note: - Number is marked by the Court).

बयान किया है कि मैं पता उपरोक्त पर अपने परिवार के साथ रहता हूँ और August 2017 में IAS सेवानिवृत्त हुआ हूँ। मैं 1984 Batch का DANCS officer हूँ और 2001 Batch का IAS officer हूँ। मैं पिछले Sep. 2017 से Hon'ble CM साहब के office में Adviser-cum-Consultant appointed हूँ। जो दौराने examination Sh. V.K. Jain ने दिनांक 19/02/18 की details बतलायी जो इस प्रकार से है :-

(1): - दिनांक 19/02/18 को समय करीब 7.56 PM पर Dy CM Sh Manish Sisodia जी का फ़ोन आया की Chief Secretary Sh Anshuman Prakash से meeting करनी है।

- (2): - समय करीब 8.19 PM पर Dy CM की बात को Sh. Vibhav PA to CM को phone किया और C.S से मीटिंग के बारे में पूछा।
- (3): - समय करीब 8.21 PM पर Pravesh Ranjan Jha को phone किया और कहा की C.S को इन्फॉर्म कर दो कि CM 12 बजे रात को meeting लेना चाह रहे हैं।
- (4): - समय करीब 8.24 PM पर Pravesh Ranjan Jha का call आया जो मैं call attend नहीं कर पाया मैंने call back किया तो उसने बताया की CS phone नहीं उठा रहे हैं।
- (5): - समय करीब 8.44 PM पर CS को मैंने call किया और CM साहब की meeting के बारे में बताया।
- (6): - समय करीब 9.00 PM पर मैंने Dy CM साहब को meeting के confirmation के बारे में बताया और 9.04 PM Bibhav PA to CM को भी meeting के बारे में बताया।
- (7): - समय करीब 9.05 PM पर मैंने CS साहब को meeting के बारे में दोबारा बताया की meeting 12 बजे रात में होनी है।
- (8): - समय करीब 10.00 PM पर मेरे पास CS साहब का फोन आया की वे meeting के लिए आ जाएंगे।
- (9): - समय करीब 11.21 PM पर CM साहब का phone आया और पूछा की CS से बात हो गयी क्या तो मैंने कहा की CS साहब से बात हो गयी है और वो meeting के लिए आ जाएंगे।
- (10): - समय करीब 11.26 PM पर अपने घर से CM office के लिए निकला था और CS को भी कॉल किया था। मैं समय करीब 12.00 बजे मैं CM residence पर पहुंच गया था मैं waiting room में wait कर रहा था।
- (11):- समय करीब 12.05 A.M. पर CS साहब CM residence पर meeting के लिए आ गए थे और Bhivav मुझे और CS साहब को लेकर meeting room में गए थे। जहाँ पर पहले से ही CM Sh. Arvind Kejriwal, Dy CM Sh Manish Sisodia और Sh Rajesh Gupta MLA, Sh Nitin Tyagi MLA, Madan Lal MLA कमरे में entry gate की सामने वाली दीवार के साथ chairs पर बैठे हुए थे और कमरे में entry gate के right side पर सोफे पर Sh Amanat-Ulla Khan MLA और Sh Parkash Jarwal MLA बैठे हुए थे। entry gate के साथ वाली दीवार के साथ सोफे पर Ajay Dutt MLA, Sh. Praveen Kumar MLA बैठे हुए थे। मुझे

मालूम नहीं था कि meeting में MLAs भी आये हुए हैं। meeting room में CS साहब Sh. Amanat-Ulla Khan MLA और Sh. Prakash Jarwal MLA के बीच में उसी सोफे पर बैठ गए थे और मैं Sh. Rajesh Gupta MLA आदि के साथ बैठ गया था।

जो CM साहब ने meeting शुरू करते हुए CS साहब से कहा की MLAs आये हुए हैं और उनकी कुछ problems/issues हैं जिनके बारे में MLAs आपसे बात करना चाहते हैं। जो 4-5 MLAs CS साहब से एक साथ पूछना शुरू कर दिया था जो Door Step Delivery of Ration और Advertisement Fund release के बारे में और slow processing of files के बारे में बात कर रहे थे। इसी दौरान मैं washroom चला गया था और जब वापिस आया तो CS meeting से निकलकर जा रहे थे और CM साहब ने मुझे भी कहा की मैं भी meeting over हो चुकी है और मैं जा सकता हूँ। मैं वापिस घर आ गया।

Question:- क्या आपके सामने CS साहब के साथ किसी प्रकार की बदसलूकी या हाथापाई हुई थी ?

Ans:- मैं meeting के दौरान कुछ समय के लिए washroom गया था उस दौरान क्या हुआ था मैं कह नहीं सकता।”

7. After compliance of Section 207 Cr. P.C., arguments on the point of charge, addressed by Id. APP for State on behalf of Prosecution and by Id. Senior Counsels and other Id. Counsels for the accused persons respectively, have been heard. Arguments in rebuttal addressed by Ld APP for the State also heard.

8. Ld. APP for State argued that in the complaint dated 20.02.2018 given by the complainant at PS Civil Lines, he had narrated the incident during the intervening night of 19/20.02.2018; that the complainant specifically named accused Amanatullah Khan, MLA in his complaint dated 20.02.2018 and later on, in his supplementary statements, complainant also identified other accused persons (MLAs), who assaulted,

threatened him and committed offence against him, while specifically describing the manner of assault and the role of each assailant. He further submitted that in his supplementary statement dated 20.02.2018, complainant has specifically named five accused persons namely Amanatullah Khan, Prakash Jarwal, Rajesh Rishi, Nitin Tyagi and Rituraj Govind and described specific role of accused persons in the commission of offence. It is further submitted that as per the allegations of complainant, accused Amanatullah Khan and Prakash Jarwal, who were sitting by his both sides on a sofa, started hitting and assaulting the complainant and hit several blows with fist on his head and temple and his spectacles falls on the ground; accused Rituraj Govind threatened the complainant that he will be confined in the room for the entire night unless he agreed to release the T.V. campaign in relation with Government's publicity programme; accused Nitin Tyagi used very abusive and unparliamentary language to him and when he, anyhow managed to escape from the meeting/drawing room at the CM's residence, was even followed by Nitin Tyagi to stop him. It is also submitted that complainant in his supplementary statement also described the specific roles of accused Praveen Kumar and Ajay Dutt.

9. Ld. APP for State also argued that on the basis of the complaint of the complainant, FIR in the present case was registered at PS Civil Lines and medical examination of the complainant was got conducted at Aruna Asaf Ali hospital on 20.02.2018 and the description and nature of injuries caused to the complainant is clearly mentioned in the MLC, which has

been filed alongwith the charge-sheet. It is further argued that statement of eye-witness Sh. Vinod Kumar Jain, which was recorded by the IO u/s. 161 Cr. P.C. dated 22.02.2018 during the course of investigation as well as the statement u/s. 164 Cr. P.C., dated 22.02.2018 of the said witness, are also very relevant for the prosecution case, wherein the said witness Mr. V.K. Jain has specifically named two MLAs Amanatullah Khan and Prakash Jarwal, who were assaulting the complainant and the same fully corroborated the statement of the complainant. It is further submitted that statement of another witness Pravesh Ranjan Jha was also got recorded u/s. 164 Cr. P.C., which also corroborated the case of the prosecution. He further submitted that in the present case, there are 71 witnesses and after a thorough investigation, IO has prepared the charge-sheet for the offences u/s 186/353/332/342/323/504/506(ii)/120-B/109/114/34/36/149 of the Indian Penal Code, against the thirteen accused persons named in column no 11 of the charge-sheet and on the basis of material available on record, prima facie case for the aforesaid offences is made out against all accused persons named in the charge-sheet.

10. Per contra, ld. Senior Counsels as well as other ld. counsels appearing for the accused persons respectively have vehemently argued that accused persons have been falsely implicated in the present case, who deserve to be discharged in this case, since no prima facie case is made out against them. It is argued that FIR in the present case was registered after the delay of about 12 hours, which is unexplained and unnatural in the

given set of circumstances, especially when, the complainant is none other than the senior most bureaucrat of the State and such delay itself shows that the complaint made after 12 hours of the incident is full of embellishments, which is a creature of an afterthought. It is further argued that complaint of complainant is a computer-generated typed complaint, which is not even supported by a certificate as required under Section 65-B of the Indian Evidence Act.

11. It is also argued that MLC in the present case was got conducted even after 9 hours of the 'Tehrir', which is again uncommon and unexplained, especially when the hospital was at a distance of about half kilometer away from the place of alleged incident; FIR does not describe injuries attributed in the MLC of the complainant; there is no mention of injuries in 'Rukka', which is also silent about the visit of complainant to the Hon'ble Lieutenant Governor (LG); even HC Ashok Kumar Yadav, driver of complainant and his PSO Inspector Satbir Singh, in their statements recorded on 03.04.2018, had not stated of noticing any such injuries to the complainant, which further falsify the stand of the complainant. It is also argued that if complainant would have suffered any such injuries or assaulted or threatened, as alleged, he would have called at 100 number immediately and also informed his PSO about the same, but since, there was no such incident took place, there was no occasion for him to call at 100 number, lodge police complaint, inform his PSO or getting his medical examination done. Rather, he visited the Hon'ble LG, who did not notice any such injuries upon the complainant, since

there were no such injuries and therefore, the question of noticing them by anyone did not arise.

12. It is also argued that conduct of the complainant, who was the top bureaucrat and not an ordinary person, does not satisfy the test of a prudent man; IO has not even recorded the statement of the Hon'ble LG, whom the complainant is stated to have first visited after the incident. It is submitted that since there were no injuries on the person of complainant, it was not noticed by the Hon'ble LG nor he reported the matter to the police. It is also submitted that if the Hon'ble LG would have been examined, it would be the best evidence being first in point of time and as per the illustration (g) of section 114 of The Indian Evidence Act, the Court may presume that the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

13. It is also argued that it was an official meeting; that there was no question of any confinement and even as per the version of the prosecution's star witness Sh. V.K. Jain, complainant left the meeting after seeking permission of the CM. It is submitted that it was a meeting called by CM, which was attended by the Deputy CM and other MLAs, who were not criminals but rather elected representatives of the people and responsible for them; that even as per the supplementary statement of complainant dated 18.04.2018, complainant also attended a meeting in the same room at CM's residence on 12.02.2018, hence, it was not uncommon to call meeting at that place and therefore, the

contention of the prosecution that meeting was deliberately held in the room not covered by CCTV camera, is without any merits.

14. It is also argued that even as per the statement of Mr. V.K. Jain recorded u/s 164 Cr. P.C, various issues of public interest like door step delivery of ration, slow processing of files were raised by the MLAs present there in the said meeting, apart from the issue of advertisement, however, complainant has only mentioned the issue of advertisement, in order to falsely implicate the accused persons in the present case. It is submitted that even as per the statement of Mr. V.K. Jain dated 22.02.2018 u/s 161 Cr. P.C, some of the MLAs present there greeted the complainant upon his arrival in the meeting; there is absolutely no material on record to infer that such meeting was an unlawful assembly or presence of CM, Deputy CM and other accused MLAs was part of or acting under a criminal conspiracy or sharing common intention or even abetting commission of any offence in any manner.

15. It is also argued that complainant in his supplementary statement dated 20.02.2018 had stated that he informed his OSD Sh. Ramvir Singh about the incident, however, surprisingly, in the statement of Ramvir Singh recorded by IO on 02.04.2018, there is no such reference of any such incident, which further falsify the story of complainant. It is submitted that on 14.07.2018, after about 5 months of the alleged incident, statement of Mr. Ashwani Kumar, an official from LG House was recorded, who also did not notice any such injury upon the

complainant on the date of the incident, which further fortifies the fact that no such injuries were caused to the complainant.

16. In addition, Id. Senior Counsel for A-3 also argued that even as per the complaint of complainant, the alleged incident of assault happened suddenly, which itself shows that there was no complicity of the accused in the commission of the alleged offence nor there was any premeditation or an element of meeting of mind. It is further submitted that as per the statement of prosecution's star witness Sh. V.K. Jain, CM asked both the MLAs to refrain from any unruly behaviour and permitted the complainant to leave from there. Moreover, CM expressed his displeasure over the conduct of the MLAs and as per the statement of witness Bibhav Kumar, CM was sitting in the drawing room after the said meeting and he was upset. It is also submitted that if the accused would have had any criminal intentions, then there was no reason for him to allow the presence of Mr. V.K. Jain in the meeting room, to make a witness against himself. This itself shows that there was no criminal intent on the part of accused and no prima facie case for any offence whatsoever is made out against the accused.

17. In addition, Id. Senior Counsel for A-4 also argued that the allegations that Chief Secretary was being pressurized to clear the advertisement campaign or to do something contrary to law, is completely baseless; that there is no noting by the complainant in the file on record which demonstrates the complainant's objection to the proposed advertisement campaign; that the ad

campaign *per se* was not contrary to the guidelines of Hon'ble Supreme Court and there was nothing illegal in the ad campaign. It is also argued that to work late and to make a phone call to complainant is not a crime; that there was nothing unusual in making of a call by Deputy CM to complainant, while he was at CM's residence and there was specific reasons for him to be present there as they were invited and went to attend the same wedding reception, scheduled at 7.00 p.m. at Rajokri. It is also argued that the police had to record or re-record the statement of the complainant in order to string together a bogus story; that there is no compliance of Section 195 Cr. P.C. and the proceedings as a whole are liable to be set aside. It is further argued that as per the statement u/s. 164 Cr. P.C. of Sh. V.K. Jain, the Chief Minister asked two MLAs to refrain from any unruly behaviour and once the Chief Minister did so, there was no occasion for the Deputy Chief Minister to do the same specially when the complainant himself left the meeting immediately and therefore there is no question of any instigation by the accused either. It is submitted that any inference of conspiracy in the present circumstances is farfetched and not born out of material on record and no offence, as alleged, has even *prima facie* been made out from the material on record against the accused.

18. In addition, ld. Senior Counsel for accused Prakash Jarwal (A-2) also argued that no case of any strong suspicion is made out against the said accused, who deserve to be discharged. It is argued that complainant did not even mention the name of said accused in his first complaint dated 20.02.2018, citing that he

was under state of shock, even after 12 hours of the incident, however, it remained unexplained as to how the state of his shock went away in few minutes or hours, when he named the accused Prakash Jarwal on the same day in his supplementary statement; that complainant was holding highest bureaucratic position, however, progressive delay was shown by him in lodging the complaint in order to implicate more and more MLAs, for his ulterior motives. It is also argued that IO deliberately concealed the first statement dated 21.02.2018 of witness Mr. V.K. Jain, who had no business of concealing the same and in the said statement, the witness had not stated anything against the accused Prakash Jarwal. It is also submitted that so far as the accused Prakash Jarwal is concerned, at the most, it is a case of suspicion only and not grave suspicion and therefore, accused deserves to be discharged in this case.

19. In addition, Id. Senior Counsel for accused Madan Lal (A-12) and Ld. Counsels for accused Rajesh Rishi (A-5), accused Sanjeev Jha (A-9), accused Rajesh Gupta (A-11), accused Dinesh Mohania (A-13) also argued for the discharge of the aforesaid accused persons. It is argued that except presence of aforesaid accused persons, no overt act has been attributed to them, who have been falsely implicated in the present case, by invoking section 34/36/109/114/120-B IPC, however, no prima facie case is made out against them for the aforesaid offences or any other offence in the present case and ingredients of none of the offences are attracted in the present case. It is further argued that there was no wrongful confinement of the complainant, who left

the meeting of his own after seeking permission of the Chief Minister and therefore, there was no occasion for any accused to intervene. It is also submitted that eye-witness Mr. V.K. Jain has not stated anything against the aforesaid accused persons and since, there is no evidence on record to prima facie show the complicity of the aforesaid accused persons in the commission of alleged offence(s), they deserve to be discharged in the present case.

20. In addition, Id. Counsel for accused Rituraj Govind (A-10) also argued that certain offences were even added in the FIR without getting the MLC of complainant done and statement of material witnesses were also recorded belatedly, which itself raises doubt over the fairness in the investigation conducted in the present case. It is also argued that there was no question of any threat or confinement of the complainant, who left the room of his own after seeking permission of the CM. It is also submitted that the persons present there in the meeting called by the CM were elected members of the Legislative Assembly and they were not criminals. It is also argued that there is no material on record to prima facie show the complicity of the accused in the commission of alleged offence nor a case of strong suspicion made out against the accused, who deserves to be discharged in the present case.

21. In addition, Id. Counsel for accused Nitin Tyagi (A-6) also argued that first statement dated 21.02.2018 of material witness Sh. V.K. Jain was suppressed by the IO; this witness did not state

that MLAs were shouting or abusing, who did not even name the accused Nitin Tyagi nor attributed any role to him and therefore statement of Sh. V.K. Jain falsified statement of the complainant. It is also argued that complainant did not even say in his original complaint that accused Nitin Tyagi followed him or stopped him; that there is systematic improvement in the statement of the complainant; that Inspector Satbir Singh, PSO of complainant stated in his statement that accused Nitin Tyagi was asking the complainant to stay there, which is not an offence nor complainant raised any alarm at that time or called his PSO Satbir Singh to save him from the so-called threat to his life from the accused, which itself shows that the allegations levelled by the complainant are baseless and motivated to falsely implicate the accused and in the absence of any prima facie case, accused deserves discharge in the present case.

22. In addition, Id. Counsel for accused Ajay Dutt (A-8) also argued that the said accused was named by the complainant after about two months of the alleged incident in his supplementary statement dated 25.04.2018, which itself shows that the story portrayed by the complainant was an afterthought to falsely implicate the accused. It is further submitted that even sanction u/s 197 Cr. PC was not taken; prime witness Sh. V.K. Jain has not supported the allegations of the complainant; there is no motive on the part of the accused to commit the offence as alleged and there is no prima facie case made out against the accused, who deserves discharge in this case.

23. In addition, Id. Counsel for accused Praveen Kumar (A-7) argued that complainant named the said accused after two months of registration of FIR to fill lacuna in the prosecution case and to falsely implicate the accused. It is also argued that allegation against the accused Praveen Kumar that he shut the door of the room firmly after complainant entered the meeting room, is not even substantiated by the star witness Sh. V.K. Jain, who allegedly accompanied the complainant in the meeting room on the date of the incident and none of the ingredients of any offence as alleged are attracted in the present case. It is also submitted that even presence of accused Praveen Kumar is not established at the place of incident; that no prima facie case has been made out against the said accused, who deserves to be discharged in the present case.

24. In addition, Id. Counsel for accused Amanatullah Khan (A-1) also argued that there is no compliance of section 195 Cr. PC; complainant, who was head of State machinery, made several statements and made improvements in his subsequent statements and police had acted arbitrarily in choosing the accused and witnesses in this case. It is also argued that complaint was made by the complainant after about 12 hours of the incident, and such delay itself shows that the complaint was full of embellishments, which is a creature of an afterthought. It is further submitted that there was further delay of about 9 hours in getting the medical examination of the complainant conducted, which remained unexplained; that complainant allegations about shouting, abusing, confinement, extending threats were not even

corroborated by the witness Sh. V.K. Jain; that complainant was not restrained or obstructed as alleged and no offence whatsoever as alleged was committed. It is further argued that statements of witness PSO Inspector Satbir Singh and HC Ashok Kumar are also not corroborating the version of the complainant; present case is full of deliberation and afterthought on the part of the complainant; that ingredients of none of the offences are made out and it is a clear-cut case for discharge of the accused, as no prima facie case is made out against him.

25. In rebuttal, Id. APP for State argued that he has already covered all the aspects of the prosecution case during his opening arguments; that there was no delay in registration of FIR in the present case and supposedly, even if there was any delay, the same can only be better explained by the concerned witnesses during the course of trial and the same is not relevant at this stage. He further argued that complainant has stated in his statement given to IO that due to the said incident, he was in the state of extreme shock and therefore, it took some time in getting his medical examination conducted on the very next day of incident; that MLC shows the injuries upon the complainant and that his B.P. and pulse rate were also high at that time and there was no delay in getting the medical examination of the complainant conducted. He further argued that since computer was only used for the purpose of tying of the complaint of the complainant, hence, there is no requirement for a certificate u/s 65B of the Indian Evidence Act and moreover, even if any such certificate would have been required, the same can be filed

subsequently and the argument of the ld. defence Counsel for non-filing of such certificate alongwith complaint is not sustainable. He also submitted that since complaint of complainant u/s 195 Cr.P.C. was already submitted in the Court on 13.08.2018, hence there was compliance of section 195 Cr.P.C. in this case.

26. Ld. APP for State also argued since there was no incriminating material against Mr. V.K. Jain, hence, he was not made an accused in this case and contentions of the ld. defence Counsel in this regard also does not survive. He further submitted that since, the Hon'ble Lieutenant Governor was not an eyewitness of the incident in question, hence, he was not made a witness in this case and therefore, arguments of ld. defence Counsel in this regard are also not sustainable. He further submitted that argument of the ld. defence Counsel that PSO of the complainant did not notice any injury upon the complainant, is also not sustainable as it is a matter of trial and the same is not relevant at this stage of the case. He further submitted that rarely, there is any direct evidence of conspiracy, however, from the material on record, it is clear that meeting was called late in the night of 19.02.2018 under a preplanned conspiracy; that the very calling of the meeting and presence of complainant there is not disputed; that in the present case, there are 71 witnesses, out of whom complainant and Mr. V.K. Jain are the most material witnesses for the prosecution and after a thorough investigation, IO has prepared the charge-sheet against the accused persons in this case and on the basis of material available on record, prima

facie case for the offences, as per the charge-sheet, is made out against all the accused persons.

27. Ld. Counsel for A-1 has placed reliance on the following judgments i.e. (1) Union of India Vs. Prafulla Kumar Samal, 1979 AIR 366, (2) Dilawar Balu Kurane Vs. State of Maharashtra 2002 (2002) 2 SCC 135, (3) Sushil Sharma & Anr. Vs. State & Anr. CRL. REV. P.-418/2008 dated 27.02.2015, (4) Gurinder Singh Vs. State 1996 IIIAD Delhi 96, (5) Noble Mohandas Vs. State, dated 29.02.1988 (Madras High Court), (6) Kanshi Ram Vs. State, 2000 IV AD Delhi 495, (7) Hajee Abdul Rehman & Ors. Vs. Gulam Nabi, 1964 CriLJ 40, dated 21.06.1963, (8) Manik Taneja & Anr. Vs. State of Karnataka & Anr., SLP. (Crl)-6449/2014 dated 20.01.2015, (9) Ashok Kumar Nayyar Vs. State, Judgment dated 01.05.2007, (10) Sunil Bansal Vs. The State of Delhi, Judgment dated 24.04.2007 and (11) Prashant Bhaskar Vs. MCD through its Commissioner, Judgment dated 22.11.2009 of the Hon'ble Delhi High Court.

28. Ld. Counsel for A-2 has placed reliance on the following Judgments i.e. (1) Deepa Bajwa Vs. State and Ors. 2004 SCC OnLine Del 961, (2) M.S. Gayatri @ Apurna Singh Vs. State & Anr. 2017 SCC OnLine Del 8942, (3) Manoj Bajpai Vs. State of Delhi 2015 SCC OnLine Del 9751, (4) Kanshi Ram Vs. State 2000 SCC OnLine Del 385, (5) Puran Chandra Vs. State of Uttaranchal, MANU/UC/0207/2004, (6) State of AP Vs. M Madhusudan Rao (2008) 15 SCC 582, (7) Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135 and (8) Arvind

Kejriwal Vs. State (NCT of Delhi), Crl MC 1867/2020, dated 21.10.2020.

29. Ld. Counsel for A-3 has placed reliance on the following Judgments i.e. (1) L.K. Advani v CBI, 1997 (41) DRJ, (2) Court on its motion Vs. State, 2012 SCC Online Del 2681, (3) Satyapal Singh Vs. State (NCT of Delhi) 2018 SCC Online Del 7905, (4) Kanshi Ram Vs. State, 2000 (54) DRJ and (5) Union of India Vs. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4.

30. Ld. Counsel for A-4 has placed reliance on the following Judgments i.e. (1) Common Cause Vs. Union of India, 2015 7 SCC 1, (2) State of Karnataka Vs. Common Cause, 2016 13 SCC, (3) Arvind Kejriwal & Anr. Vs. State (NCT of Delhi), Crl MC 1867 of 2020, (4) CBI Vs. K. Narayana Rao, 2012 9 SCC 512, (5) State of Bihar Vs. Ramesh Singh 1977 4 SCC 39, (6) Mauvin Godinho Vs. State of Goa 2018 3 SCC 358, (7) Court on its own Motion Vs. State, 2012 (3) JCC 174 and (8) Gurinder Singh Vs. State, 1996 (37) DRJ 598.

31. Ld. Counsel for A-6 has relied upon the following Judgments i.e. (1) Onkar Nath Mishra Vs. State (NCT of Delhi) (2008) 2 SCC 561, (2) Vikram Johar Vs. The State of Uttar Pradesh & Anr., 2019 AIR (SC) 2109 and (3) Kuldeep Raj Gupta Vs. State of J&K and Ors., MANU/JK/0198/2017.

32. Ld. Counsel for A-10 has relied upon the following Judgments i.e. (1) Harjit Singh & Ors. Vs. State of Punjab (2002) 6 Supreme Court Cases 739, (2) Ramashish Yadav & Ors. Vs. State of Bihar (1999) 8 Supreme Court Cases 555 and (3) M.E.

Shivalingamurthy Versus Central Bureau of Investigation,
Bengaluru, Criminal Appeal No. 957 of 2017.

33. Ld. Counsel for A-11 has relied upon the following Judgments i.e. (1) Sachin & Ors. Vs. State of NCT of Delhi 2019, LawSuit (Del) 1901, (2) Nayan Harishbhai Kanakhara Vs. State of Gujarat, R/CR.MA/23009/2015 and (3) Mohan Kukreja Vs. State Govt. of NCT of Delhi & Anr., 2019 LawSuit (Del) 33.

34. Ld. Counsel for A-12 has placed reliance on the following Judgments i.e. (1) Niranjana Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors, AIR 1990 SC 1961, (2) Yogesh Vs. State of Maharashtra, AIR 2008 SC 2991, (3) Prashant Bhaskar Vs. State, 2014 (1) JCC 750, (4) State of Maharashtra & Ors. Vs. Som Nath Thapa & Ors, AIR 1996 SC 1744, (5) Baliya Vs. State of M.P., 2013 (2) RCR (Crl) 98, (6) Saju Vs. State of Kerala, AIR 2001 SC 175, (7) Shri Ram Vs. State of U.P. 1975 (3) SCC 495, (8) Suresh & Ors. Vs. State of U.P AIR 2001 SC 1344, (9) Ezajhussain Sabdarhussain and Ors. Vs. State of Gujarat, AIR 2019 SC 1525, (10) Ram Dular Rai & Ors. Vs. State of Bihar 2004 (1) RCR (Criminal) 187, (11) Muthuramalingam & Ors Vs. State, AIR 2017 SC 50, (12) Vijendra Singh & Ors. Vs. State of UP, AIR 2017 SC 860, (13) Noor Mohammad Vs. State of Maharashtra, AIR 1971 SC 885, (14) Aypdhyabai Krishna Gaikwad Vs. Gokul Anna Deokar & Ors, 1985 CriLJ 1018 and (15) Pagla Baba & Ors Vs. State, AIR 1957 Ori 130.

35. Ld. Counsel for complainant has relied upon the following

Judgments i.e. (1) Amir Hamza Shaikh Vs. State of Maharashtra, (2019) 8 SCC 387, (2) Dhariwal Industries Limited Vs. Kishore Wadhwani, (2016) 10 SCC 378, (3) J.K International Vs. State (Govt of NCT Delhi), (2001) 3 SCC 462, (4) Shiv Kumar Vs. Hukam Chand, (1999) 7 SCC 467, (5) Bhawna Bai Vs. Ghanshyam & Ors., (2020) 2 SCC 217, (6) Akbar Hussain Vs. State of Jammu and Kashmir & Anr., (2018) 16 SCC 85, (7) Palani Vs. State of Tamil Nadu, (2020) 16 SCC 401, (8) Hardeo Singh Vs. State of Bihar & Ors., (2000) 5 SCC 623, (9) K. Madhavan Vs. Majeed, (2017) 5 SCC 568, (10) Munishamappa & Ors. Vs. State of Karnataka, (2019) 3 SCC 393, (11) Shreekantiah Ramayya Munipali Vs. State of Bombay, AIR 1955 SC 287, (12) Harihar Singh Vs. Emperor, 1924 SCC OnLine Pat 228, (13) Hitender Singh Vs. NCT of Delhi, 2016 SCC OnLine Del 2671, (14) Durgacharan Naik & Ors. Vs. State of Orissa, AIR 1966 SC 1775, (15) Nafar Sardar Vs. Emperor, AIR 1932 Cal 871 and (16) Om Prakash Tilak Chand Vs. State, 1958 SCC OnLine P&H 104.

36. I have heard the arguments addressed by ld. APP for State on behalf of prosecution and arguments addressed by ld. Senior Counsels as well as other ld. counsels appearing for the accused persons respectively. I have also heard the arguments in rebuttal addressed by ld. APP for State and carefully perused the record including the aforesaid statement of Mr. V.K. Jain dated 21.02.2018. I have also carefully perused the written submission filed on behalf of complainant as well as written submissions filed on behalf of accused.

37. In the case of ***“Union of India vs. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4”***, the Hon'ble Supreme Court has laid down the following principles as under: -

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge under which the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basis infirmities appearing in the case and so on. This however, does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

38. In the case of ***“Kanshi Ram vs. State, 2000 SCC Online Del 385”***, the Hon'ble High Court held as under: -

“The charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the court has to look into the law and the allegations made in the charge-sheet and then consider whether or not there is a ground for presuming the commission of the offence by the accused. It is well settled

that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court cannot act as a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the documents produced before the Court, any basic infirmities appearing in the case and so on. In *Satish Mehra vs. Delhi Administration* JT 1996 (7) SC 6, Hon'ble Supreme Court held that if the Court is almost certain that there is no prospect of the case ending in conviction and the trial would be an exercise in futility or sheer wastage of time, it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself...”

39. Therefore, it is well settled that the Court is not to merely act as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. The judge has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The material placed before the Court should disclose grave suspicion against the accused. Even at the initial stage it cannot be expected to accept all that the prosecution states as gospel truth. It is also well settled that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused.

40. In the present case, which was registered upon the complaint of the complainant (the then Chief Secretary, Govt. of NCT of Delhi), dated 20.02.2018, the complainant has attributed specific overt acts to some of the accused persons during the

course of incident in question, through his aforesaid complaint dated 20.02.2018, supplementary statements u/s. 161 Cr. P.C. given to IO on 20.02.2018 and 25.04.2018 respectively. In his first complaint dated 20.02.2018, the complainant *inter alia* has specifically named one of the accused namely Amanatullah Khan, who allegedly assaulted him on 20.02.2018 alongwith one another accused. In his aforesaid complaint, he has stated as under :-

“3. On arrival at CM’s residence, I met Sh. V.K. Jain, Advisor to CM and thereafter both of us were taken to the front room where Chief Minister (Shri Arvind Kejriwal) and Deputy Chief Minister (Shri Manish Sisodia) and around 11 MLA’s/persons were present. CM told me that the persons present in the room were MLAs and they had come to ask him about Government’s publicity programme on completion of three years. One of the MLAs firmly shut the door of the room. I was made to sit in between Shri Amanatullah Khan and another person/MLA on a three-seater sofa. CM directed me to answer the MLAs and explain the reasons for delay in release of T.V. campaign. I explained to them that the officers were bound by the guidelines laid down by Hon’ble Supreme Court and any advertisement to be released must be in consonance with the said guidelines.

4. The MLAs started shouted at me and abused me while blaming me and the bureaucracy for not doing enough for publicity of the government. One MLA, whom I can identify, threatened that I will be confined in the room for the entire night unless I agree to release T.V. campaign. A threat was made that I will be implicated in false cases including SC/ST Act. The MLAs whom I can identify became more aggressive and abusive extending threat to my life. Then suddenly Shri Amanatullah Khan, MLA and the person/MLA on my left side, whom I can identify, without any provocation from my side, started hitting and assaulting me and hit several blows with fists on my head and temple. My spectacles fell on the ground. I was in a state of shock. With difficulty, I was able to leave the room and get into my official car and left CM residence. At no stage did I retaliate or provoke any person in the room despite confinement, criminal intimidation by extending threat to my life and assault by several MLAs while I was

discharging my official duties.”

41. In his subsequent Supplementary statement u/s. 161 Cr. P.C. given on the same day i.e. 20.02.2018, to the IO during the course of the investigation, complainant further specifically named some of the accused persons, who allegedly committed offence against him. The said statement is reproduced as under: -

“I reiterate my earlier statement given in my type-written complaint. Upon repeated message of CM conveyed by Mr. V.K. Jain, Advisor to CM, I reached CM residence at about 12.00 midnight and immediately thereafter within about 5 minutes, incident happened with me. Due to the said incident, I was in a state of extreme shock and I could not give the names of other MLAs involved in the incident in my complaint. I have checked the photographs and names of the MLAs available on the internet. Since, I had seen them at the CM residence at the time of the incident and in other formal and informal occasions, I checked the photographs and names of the MLAs of Delhi Legislative Assembly available on the internet. After cross-check, I clearly recollect that following were among those present and involved in the incident. 1. Sh. Amanatullah Khan, MLA 2. Sh. Prakash Jarwal, MLA 3. Sh. Rajesh Rishi, MLA 4. Sh. Nitin Tyagi, MLA 5. Ritu Raj Govind, MLA. MLA Amanatullah and Prakash Jarwal who were sitting by my both sides, had assaulted me and intimidated me in conspiracy with others. Ritu Raj Govind threatened me that I will be confined in the room for the entire night unless I agree to release the T.V. campaign in connection with the Government's publicity programme on completion of three years of the present Government. Nitin Tyagi used very abusive and unparliamentary language to me and when I, anyhow managed to escape from the meeting/drawing room at CM's residence, was even followed by him to stop me. These are persons involved in the incident along with others whose name I will inform as and when I recollect further. They have assaulted and intimidated me in such a manner that anything could have happened, including death had my good fortune not helped me. They used extremely filthy and unparliamentary language, which I am too embarrassed to spell out. Such sort of demeaning and intimidating incident had never happened to me in my life. I will reach Aruna Asaf Ali Hospital for my medical examination as per your request today later in the

evening itself. I have also informed my OSD Sh. Ramvir Singh regarding this incident. You have recorded my statement and read over the contents to me which are correct.”

42. In his one another Supplementary statement dated 25.04.2018, given to the IO u/s. 161 Cr. P.C., after more than two months of the incident, complainant further specifically added names of two other accused persons namely Praveen Kumar, MLA and Ajay Dutt, MLA, who also allegedly committed offence against him. The relevant portion of the said statement is reproduced as under: -

“... I have already communicated to you that the MLAs, who assaulted on me are Amanatullah Khan and Prakash Jarwal. MLAs used abusive and unparliamentary language to threaten me on the intervening night of 19/20.02.18 during the meeting at CM residence in presence of CM, Dy. CM and Sh. V.K. Jain. When I left the room where the incident took place, Mr. Nitin Tyagi even followed me. MLA Ritu Raj Govind threatened me that I will be confined in the said room of CM's residence for the entire night unless I agree to release the T.V. campaign in connection with completion of three years of AAP Government. During the meeting, the MLAs shouted at me, threatened and abused me while blaming me and bureaucracy for not doing enough for publicity of the Government and also extended threat to my life. I have tried to identify the other MLAs after searching the details of MLAs of Delhi on internet and after going through the CCTV footage as shown by you today, I am able to identify that Sh. Praveen Kumar, MLA is the person who had firmly shut the door of the said room to confine me in the said room. Sh. Ajay Dutt, MLA is the person, who had threatened to implicate me in false cases including the case under SC/ST Act. The other MLAs who were present during the meeting in the drawing room at CM residence are Dinesh Mohania, Rajesh Rishi, Sanjeev Jha, Rajesh Gupta and Madanlal. CM and Dy. CM also did not intervene. You have recorded my statement which I have read over and found correct.”

43. Hence, it is clear from the abovementioned complaint

dated 20.02.2018 and subsequent Supplementary statements dated 20.02.2018 and 25.04.2018 respectively given by the complainant to the IO during the course of the investigation that the complainant has attributed specific overt acts, during the course of incident, to some of the accused persons namely Amanatullah Khan (A-1), Prakash Jarwal (A-2), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8) and Rituraj Govind (A-10), who were present at the place of incident (i.e. meeting/drawing room at the CM's residence) along with other accused persons namely Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Sanjeev Jha (A-9), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13).

44. So far as the accused persons namely Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Sanjeev Jha (A-9), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13) are concerned, they have been roped in the present case on the basis that they formed part of the unlawful assembly, hatched criminal conspiracy along with the other accused persons namely Amanatullah Khan, Prakash Jarwal, Praveen Kumar, Nitin Tyagi, Ajay Dutt and Rituraj Govind to whom some overt acts have been attributed by the complainant during the course of incident in question, and that they shared common intention with them and also abetted the commission of offences in the present case. Hence, it is also to be seen whether on the basis of material available on record, a prima facie case has been made out against these accused persons or not.

45. It is well settled that Section 149 IPC creates a specific offence and deals with the punishment of that offence. To constitute an “unlawful assembly” there must be: -

- a) an assembly of five or more persons;
- b) they must have a common object; and
- c) the common object must be one of the five specified in Section 141 IPC.

46. Thus, before there can be an unlawful assembly or rioting, there must be five persons who have common object and that object is one of those set out in Section 141 IPC. The object should be common to the persons who composed the assembly, that is to say, they should all be aware of it and concur in it. The word 'assemble' implies the meeting of persons animated by the same purpose with the intention of furthering it. But the mere combination or assemblage of five or more men does not render their meeting unlawful, unless the meeting was in pursuance of common unlawful object.

47. In the case of **“Gulam Sarbar Vs. State of Bihar, (2014) 3 SCC 401”**, it was held as under: -

“11. The essential ingredients of criminal conspiracy are:

- (i) an agreement between two or more persons;
- (ii) agreement must relate to doing or causing to be done either
 - (a) an illegal act, or
 - (b) an act which is not illegal in itself but is done by illegal means.

What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal

act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence....”.

48. It is also well settled that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence. (In this regard, reference is craved to the law laid down in the case of **“CBI Vs. K. Naryana Rao, 2012 9 SCC 512”**).

49. In the case of **“Natwarlal Shankarlal Mody vs. The State of Bombay, Vol. LXV-1963 Bombay Law Reporter 660 (at page 667)”**, it was observed as under: -

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

50. Thus, entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence to the offence of conspiracy. It is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. Generally, a conspiracy is hatched in a secrecy and it is difficult to adduce direct evidence of the same. The prosecution will often rely on the evidence of acts of various parties to infer that they were done in reference to common intention. The prosecution will also more often rely upon circumstantial evidence. But the relative acts or conduct of the parties must be conscientious and

clear to mark their concurrence as to what should be done. Irrelevant, innocuous, innocent or inadvertent events and incidents cannot be artfully added together to give an appearance of coherence.

51. A conspiracy consists not merely in the intention of two or more but in the agreement of two or more, to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. Mere evidence of association is not sufficient to lead an inference of conspiracy. Since, direct evidence to prove conspiracy is rarely available, the circumstances before, during and after the occurrence have to be considered to decide about the complicity of the accused.

52. In the case of ***“Ramashish Yadav and Ors. Vs. State of Bihar, (1999) 8 SCC 555”***, the Hon’ble Supreme Court held as under:

“3.Section 34 lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of section 34 is the element of participation in action. The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a prearranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of mind may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. It can also be developed at the spur of the moment but there must be pre-arrangement or premediated concert...”

53. In the case of ***“Noor Mohammad Mohd. Yusuf Momin***

Vs State Of Maharashtra, (1970) 1 SCC 696”, the Hon’ble Supreme Court held as under:

“7. So far as Section 34, I.P.C. is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 IPC on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission....”

54. In the case of **“Common Cause vs. Union of India, (2015) 7 SCC 1”**, the Hon’ble Supreme Court held as under: -

“Advertisements highlighting completion of a fixed period of the Government’s tenure

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

55. Coming back to the facts of the present case, as discernible from the charge-sheet, statements of complainant and witnesses and other documents filed therewith, the then Chief Minister of Delhi (A-3), was very keen for release of proposed TV

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

should not be in contravention of Hon'ble Supreme Court guidelines.

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

57. Further, as per the version of complainant, upon his arrival at CM's residence, he met Sh. V.K. Jain, advisor to CM and thereafter both of them were taken to the front room, where the Chief Minister and Deputy Chief Minister and around 11 MLAs/persons were present; CM told him that the persons present in the room were MLAs and they had come to ask him about Government's publicity programme on completion of three years; CM directed him to answer the MLAs and explain the reasons for delay in release of T.V. campaign, to which he explained to them that the officers were bound by the guidelines laid down by Hon'ble Supreme Court and any advertisement to be released must be in consonance with the said guidelines; MLAs started shouting and abused him while blaming him and

the bureaucracy for not doing enough for publicity of the government. Thereafter, some of the MLAs present there allegedly committed the offence, assaulted and intimidated the complainant.

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

59. Be that as it may, from the conduct of all the persons present there and surrounding circumstances, as discernible from the charge-sheet and documents filed therewith including the statement of witnesses, no inference as to any unlawful assembly or any criminal conspiracy, as alleged, can be drawn, much less to infer that accused persons in any manner abetted the

commission of any offence, allegedly committed by some of the accused present there, upon response given by the complainant to the questions put to him. There is also no material available on record to infer that the alleged act of assault and intimidation by some of the accused persons present there was done in furtherance of common intention of all present there or that there was any pre-arranged plan or prior meeting of minds or prior concert amongst the accused persons present there.

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

present there. It also prima facie negates the plea of complainant that meeting was called to discuss the issue relating to the advertisements only.

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

62. Moreover, in the meeting room at the CM's residence,

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

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

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

64. Furthermore, as per the prosecution case, the said meeting, deliberately and under pre-planned conspiracy, was held in the drawing room at CM's residence, where no CCTV cameras were installed so as to avoid having any CCTV coverage of the incident. However, the said theory of prosecution also holds no ground. As per the supplementary statement of complainant dated 18.04.2018, he also attended a meeting in the same room on 12.02.2018, where he was later allegedly assaulted in the night of 19.02.2018. Hence, it is clear that it was not uncommon to hold the meetings in the said room at CM's residence, where the alleged incident took place and it cannot be inferred that meeting at that place was deliberately held in conspiracy of accused persons to assault and intimidate the complainant.

65. Moreover, even calling of such meeting at 12 midnight by the Chief Minister, in which the complainant, was asked to attend and answer the MLAs, cannot be considered as part of criminal

conspiracy or design amongst the accused persons, to assault and threaten the complainant, in order to pressurize him to release the T.V. campaign. Complainant was none other than the senior most bureaucrat of the Government of NCT of Delhi. Even complainant himself stated in his complaint that he was discharging his official duties, while he attended the said meeting at the CM residence. If that be so and complainant admittedly attended that meeting in discharge of his official duties, then how come such a meeting consisting of CM, Deputy CM, MLAs and Chief Secretary (complainant) can be called as an unlawful assembly, is difficult to perceive. Labelling such a meeting, even called in late hours at the residence of the CM, attended by CM, Dy. CM and eleven other MLAs, as unlawful assembly or part of any criminal conspiracy, can seriously hamper the smooth functioning of the Government and public interest would suffer ultimately.

66. Even otherwise, it was a close door meeting called by Chief Minister, where elected representatives of people were also present apart from complainant. It was not a public meeting, which should have been called only in a daylight. Nothing would have prevented the accused persons to do in a meeting, which would have been called in daylight, which they wanted to do or achieve in a meeting called at midnight. Thus, because meeting was called at 12 midnight by the Chief Minister, does not give rise to the proposition that it was under a pre-planned conspiracy. Hence, plea raised on behalf of complainant that meeting was intentionally scheduled at midnight under a preplanned

conspiracy, whereas no such issue was raised during the day time meetings, which he attended with the Chief Minister and Deputy CM, is also not sustainable.

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

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

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

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

70. Sh. Shurbir Singh, the then Managing director, DTTDC, Govt. of NCT of Delhi, who also attended the said meeting, stated in his statement u/s 161 Cr. P.C. that Chief Minister directed the Chief Secretary to ensure that the advertisements come out the next day; he also made some more inappropriate remarks that if Chief Secretary cannot do that, he should give the same in writing. Now, if that be so and even the aforesaid two

witnesses cited by the prosecution have also stated that in the aforesaid meeting dated 12.02.2018, Chief Minister asked the complainant to ensure that the advertisements come out the next day and if he cannot do that, he should give the same in writing, then complainant could have always expressed his objections to the proposed advertisement campaign through proper noting. However, there is no noting by the complainant in the file on record which demonstrates the complainant's objections to the proposed advertisement campaign. In the background of these facts and circumstances, the plea of the complainant that since he was not agreeing to the directions of the Chief Minister for release of advertisements and it led to hatching of conspiracy to physically assault him, is also not sustainable.

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

72. Moreover, the circumstances and conduct of the accused

persons, which is manifested from the material on record itself, even during and after the occurrence is also very relevant to be considered so as to decide about their complicity, if any in the commission of offence as alleged. As per the statement of prosecution star witness Mr. V.K. Jain recorded u/s 161 Cr. P.C. on 22.02.2018, some of the MLAs greeted the Chief Secretary (complainant) upon his arrival (in the meeting). Further, in his statement u/s 164 Cr. P.C., Mr. V.K. Jain stated that when he came back from the washroom, he saw two MLAs namely Amanatullah Khan and Prakash Jarwal, by touching, pushing and putting hands on the chin of the Chief Secretary, were asking him as to why he was not performing his duties and during that incident, his (Chief Secretary) spectacle fell down on the ground. Chief Minister asked both the MLAs to refrain from doing so. He further stated that Chief Secretary picked up his spectacles and sought the permission from the Chief Minister to leave and the Chief Minister permitted him to leave from there.

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

conduct of two MLAs, asked them to refrain from doing so and even permitted the complainant to leave from there, when permission was so sought by the complainant.

74. Not only this, Mr. V.K Jain, in his supplementary statement dated 09.05.2018 also stated that after he left the meeting, he got a call from Mr. Bibhav (Personal Secretary to CM) that CM (A-3) wanted to see him again and he came back and met CM. CM was unhappy about the conduct of the MLAs. Moreover, Mr. Bibhav Kumar, another witness cited in this case stated in his statement u/s 161 Cr. PC dated 19.04.2018 that after the meeting, CM Sahab was sitting in the drawing room and he was upset.

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

76. The aforesaid conduct of the A-3 and surrounding

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

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

78. Even, complainant stated in his first complaint that

suddenly two MLAs, sitting on a sofa with him, without any provocation from his side, started hitting and assaulting him and hit several blows with fists on his head and temple and his spectacles fell on the ground.

79. From the aforesaid circumstances and material available on record including the statement of prosecution witness Mr. V.K. Jain recorded u/s 164 Cr. PC, it appears that the alleged incident with the complainant happened suddenly, after some of the MLAs started questioning him over some issues and in the spur of the moment, two of the aforesaid MLAs allegedly assaulted and hit him, without any conspiracy, prior meeting of minds or pre-meditation amongst the accused persons present there. If during the course of a meeting called by the Chief Minister (A-3), whose own conduct is not suspicious at all, if something untoward allegedly happened, that itself does not render the meeting an unlawful assembly or does not make the presence of CM, Deputy CM and other accused MLAs as part of or acting under a criminal conspiracy or sharing common intention or even abetting in any manner, commission of alleged offence.

80. Moreover, it is clearly demonstrated from the statement u/s 164 Cr. P.C. of the witness Mr. V.K. Jain that the Chief Minister asked the two MLAs to refrain from any unruly behaviour. Once the Chief Minister did so, there was no occasion for the Deputy Chief Minister and other MLAs present there to do the same, especially when as per the version of said witness, the

complainant himself left the meeting immediately after taking permission from the Chief Minister. Hence, the contention raised on behalf of prosecution/complainant that CM, Deputy CM and other MLAs present there did not intervene during the alleged assault, holds no ground.

81. In the backdrop of the aforesaid discussion and material available on record, I am of considered view that the charges for the offence(s) of unlawful assembly, criminal conspiracy, abetment of offence or criminal act done in furtherance of common intention of all, are prima facie not made out against the accused persons in this case. Moreover, no prima facie case has also been made out for any other offence against the accused persons namely Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Sanjeev Jha (A-9), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13) in this case and consequently, they are discharged in the present case.

82. Now, coming to the remaining accused persons namely Amanatullah Khan (A-1), Prakash Jarwal (A-2), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8) and Rituraj Govind (A-10), to whom some overt acts have been attributed by the complainant during the course of incident in question, either in his original complaint or subsequent supplementary statements given on different dates, it has to be seen whether on the basis of material available on record, a prima facie case is made out against them or not.

83. As far as role attributed to accused Nitin Tyagi (A-6) is

concerned, complainant stated in his first supplementary statement dated 20.02.2018 that Nitin Tyagi used very abusive and unparliamentary language to him and when he, anyhow managed to escape from the meeting/drawing room at CM's residence, was even followed by the accused Nitin Tyagi to stop him. Allegations against the accused Rituraj Govind (A-10), as levelled by the complainant in his Supplementary statement dated 20.02.2018, are that accused Rituraj Govind threatened him that he will be confined in the room for the entire night unless he agrees to release the TV campaign in connection with Government's publicity programme on completion of three years of present Government.

84. In his supplementary statement dated 25.04.2018, recorded after more than two months of registration of FIR, complainant, for the very first time, specifically named accused Praveen Kumar (A-7) and Ajay Dutt (A-8). The allegations attributed to accused Praveen Kumar are that he was the person who had firmly shut the door of the said room to confine him in the said room. So far as accused Ajay Dutt is concerned, it is alleged that he was the person who threatened the complainant to implicate him in false cases including the case under SC/ST Act.

85. In the case of **“Manik Taneja and Another Vs State of Karnataka and Another, (2015) 7 SCC 423”**, the Hon’ble Supreme Court held as under: -

“12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the ac-

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

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

87. Complainant alleged that accused Nitin Tyagi used very abusive and unparliamentary language to him and when he, anyhow managed to escape from the meeting/drawing room at CM's residence, was even followed by the accused Nitin Tyagi to stop him. However, as demonstrated from the material on record including statement of witness Mr. V.K. Jain, the then Chief Minister (A-3) permitted the complainant to leave from there,

when complainant sought his permission to leave from the meeting room. So, as such, there was no confinement of the complainant, rather, he left the meeting room, as and when he desired after seeking permission of the Chief Minister.

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

89. Similarly, the allegations against the accused Rituraj Govind and Ajay Dutt also do not make out any offence of criminal intimidation or any other offence against them. Allegation against the accused Praveen Kumar that he firmly shut the door of room, when complainant entered the meeting room, in no way can be considered as constituting any offence in the given circumstances. There was no wrongful restraint or

confinement of the complainant in the meeting room. A plain reading of the allegations in the complaint or in his subsequent statements, does not satisfy all the ingredients of section 506 IPC. On the principles as enumerated by the Hon'ble Supreme Court in *Manik Taneja (supra)*, I am satisfied that ingredients of Sections 506 are also not made out from the complaint filed by the complainant.

90. Furthermore, if there would have been any threat to the complainant to his life, as alleged, he would have raised alarm and certainly had conveyed the same to his PSO Inspector Satbir Singh, immediately after he came out of the meeting room and asked to save him, which he did not do and his conduct itself speaks volume. The conduct of the complainant immediately after the alleged incident, when he left the meeting room, whereby he did not even prefer to convey his fear or apprehension of threat to his life, to his PSO Inspector Satbir Singh, coupled with the fact that he did not even call at 100 number or lodge the police complaint immediately thereafter, clearly demonstrate that there was no such threat to the complainant, so as to attract the ingredients of section 506 IPC. As discussed hereinbefore, the charge for the offence(s) of unlawful assembly, criminal conspiracy, abetment of offence or criminal act done in furtherance of common intention of all, are prima facie not made out against the accused persons in this case.

91. In view of aforesaid discussion and material available on record, I am of the considered view that no prima facie case has

also been made out for any offence against the accused persons namely Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8) and Rituraj Govind (A-10), and therefore, they are also discharged in the present case.

92. Now, as per the allegations levelled against the accused Amanatullah Khan (A-1) and Prakash Jarwal (A-2), they suddenly, without any provocation from his side, started hitting and assaulting him and hit several blows with fists on his head and temple and his spectacles fell on the ground.

93. Ld. Senior Counsel and Id. Counsel for the aforesaid accused persons Prakash Jarwal and Amanatullah Khan respectively, have also argued that IO has deliberately withheld the first statement given by the star witness Mr. V.K. Jain on 21.02.2018 u/s 161 Cr. PC, who had no business to conceal the said statement and in the said statement dated 21.02.2018, Mr. V.K. Jain had not stated anything against the accused persons Amanatullah Khan and Prakash Jarwal; that there is no prima case nor even a case of strong suspicion is made out against the accused persons and therefore, aforesaid accused persons deserves to be discharged in the present case.

94. I have also carefully perused and considered the aforesaid statement dated 21.02.2018 of Mr. V.K. Jain and in the said statement, Mr. V.K. Jain has stated *inter alia* that 4-5 MLAs started asking the CS Sahab about door step delivery of ration, advertisement fund release and slow processing of files. In the meanwhile, he went to the washroom and when he came back,

then CS was leaving the meeting and CM also told him that meeting was over and he could also leave. In his aforesaid statement dated 21.02.2018, when he (Mr. V.K. Jain) was specifically asked by the IO as to whether any misbehaviour or scuffle took place with CS Sahab in his presence, Mr. V.K. Jain replied that during the course of the meeting, he went to the washroom and he cannot say as to what happened during that time.

95. However, in the statement given by Mr. V.K. Jain on 22.02.2018 u/s 164 Cr. PC, he stated that when he came back from the washroom, he saw two MLAs namely Amanatullah Khan and Prakash Jarwal, by way of physically touching, pushing and putting hands on the chin of the Chief Secretary, were asking him as to why he was not performing his duties and during that incident, his (Chief Secretary) spectacle fell down on the ground. Chief Minister asked both the MLAs to refrain from doing so. He further stated that Chief Secretary picked up his spectacles and sought the permission from the Chief Minister to leave and Chief Minister permitted him to leave from there.

96. It is well settled that statement of a witness recorded under section 164 Cr. P.C. during investigation has higher value than the statement recorded under Section 161 Cr. P.C. by the police, since statement u/s 164 Cr. PC is recorded by a Magistrate. Statement made by a witness u/s 164 Cr. PC, which is recorded by a Magistrate and signed by witness carries more weightage and evidential value in comparison to a statement

recorded u/s 161 Cr. PC by the police. Moreover, it is only during the trial, a witness can have an opportunity to explain any inconsistencies as appearing in his previous statements and such statements can be used during the course of trial, in accordance with law. Hence, in my considered view, the aforesaid inconsistency in the statements of witness Mr. V.K. Jain, alone is not sufficient to discard the allegations against the accused persons namely Amanatullah Khan and Prakash Jarwal at this stage. Allegations leveled by the complainant against accused persons Amanatullah Khan and Prakash Jarwal, finds corroboration from the statement of star witness Mr. V. K. Jain recorded u/s 164 Cr. P.C, which is sufficient at this stage, to prima facie show their complicity in the commission of offence.

97. As per record, a complaint u/s 195 Cr. PC under signatures of the complainant was filed on 13.08.2018 and vide order dated 18.09.2018, Ld. Predecessor of this Court took cognizance of the offences in the present case. Hence, the contention raised on behalf of accused persons that there is no compliance of section 195 Cr. PC in the present case, is also without any merits.

98. Moreover, the plea raised on behalf of accused that no sanction u/s 197 Cr. PC was taken to prosecute the accused persons, also holds no ground. It is well settled that sanction is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith. Sanction is not necessary when the offence complained of has nothing to with discharge of

his duty. (In this regard, reference is craved to the law laid down in the case of ***Romesh Lal Jain Vs. Naginder Singh Rana, (2006) 1 SCC 294***). Since, in the present case also, the offence complained of has nothing to do with discharge of duty of accused persons, hence no sanction is required.

99. The other contentions raised on behalf the aforesaid accused persons Amanatullah Khan and Prakash Jarwal regarding delay of about 12 hours in lodging of complaint by complainant, further delay of approximately 9 hours in getting medical examination of complainant conducted, non-mentioning of the injuries in the Rukka, not naming of accused Prakash Jarwal in his first complaint, progressive improvements made by the complainant in his subsequent statements given to the police etc., are the factors, which in the considered opinion of this Court, are not sufficient to discharge the accused persons namely Amanatullah Khan and Prakash Jarwal and the same can more appropriately be dealt with only after the evidence is led, where the witness(es) would also have an opportunity to explain their acts and/or omissions, if any.

100. The complainant, while attending that meeting, was stated to be discharging his official duties and in the light of allegations levelled against these two accused persons namely Amanatullah Khan (A-1) and Prakash Jarwal (A-2), which also find corroboration from the statement u/s 164 Cr. P.C. of another star witness of the prosecution namely Mr. V.K. Jain and material on record, I am of the considered view that prima facie case for

offences u/s 186/332/353/323/34 IPC is made out against the accused persons namely Amanatullah Khan (A-1) and Prakash Jarwal (A-2) to proceed further with the trial after framing of charges against them.

101. As a net result of the aforesaid, accused persons namely Arvind Kejriwal (A-3), Manish Sisodia (A-4), Rajesh Rishi (A-5), Nitin Tyagi (A-6), Praveen Kumar (A-7), Ajay Dutt (A-8), Sanjeev Jha (A-9), Rituraj Govind (A-10), Rajesh Gupta (A-11), Madan Lal (A-12) and Dinesh Mohania (A-13) are discharged in the present case. Whereas, prima facie case for offences under section 186/332/353/323/34 IPC is made out against the accused persons namely Amanatullah Khan (A-1) and Prakash Jarwal (A-2).

**Announced through video-
conferencing today on 11.08.2021**

**(SACHIN GUPTA)
ACMM-03/RACC
NEW DELHI/11.08.2021**