IN THE COURT OF MS. VIDHI GUPTA ANAND
ADDL. CHIEF METROPOLITAN MAGISTRATE:01
ROUSE AVENUE COURT, NEW DELHI

Complaint Case No. 2/2021
CNR No. DLCT120000172021
Chhail Bihari Goswami v. Satyendra Jain & Ors.

Dated: 09.11.2022

ORDER ON PLEA OF ACCUSED PERSONS SEEKING THEIR DISCHARGE U/S 251 Cr.P.C. FROM THE PRESENT CASE.

1. The subject matter of this order is decision on the plea of the Accused persons namely Satyendra Jain, Atishi Marlena, Raghav Chaddha, Durgesh Pathak and Saurabh Bhardwaj seeking their discharge from the present matter wherein they have been summoned for the offence of defamation u/s 499/500 of the Indian Penal Code (IPC).

2. Before discussing the arguments addressed by Ld. Counsel for the accused persons as well as Ld. Counsel for the complainant on the issue at hand, it is pertinent to briefly make a note of the case put forward by the complainant to understand the background of the case.

2.1 Complainant submits that he is an advocate by profession and a Councilor from Ward No. 104N, Naraina in the North Delhi Municipal Corporation (hereinafter to be referred as North MCD) elected in the year 2017 under the aegis of Bhartiya Janta

Party. The complainant further submits that he is also the Chairman of Standing Committee of North MCD.

With respect to the Accused persons, it is stated that they are sitting MLAs and members/leaders of the Aam Aadmi Party (AAP) in Delhi.

2.2 Complainant states that as per the constitutional scheme, revenue generated by the Delhi Government, presently led by the Aam Aadmi Party, had to be distributed between the Delhi Government and three Municipal Corporations of Delhi which it failed to do and resultantly, the Municipal Corporations, which were headed by the BJP Leaders, were unable to take developmental works of public importance and were not even able to meet basic expenses like payment of salaries to Doctors, Nurses, Pensioners, Employees, etc. It is alleged that withholding of the funds by Delhi Government is aimed at tarnishing the reputation and credibility of the complainant and his party members.

2.3 It is further alleged that in order to win the Municipal Corporation Elections to be held in Delhi and in order to divert the issue of non-releasing of funds due to the Corporations, Accused persons and their political party have leveled false allegations on the three Municipal Corporations and BJP Leaders including the complainant.

2.4 The crux of the case of the Complainant is that the

accused persons have made defamatory statements through press-conferences, Tweets, etc. that BJP's leaders/North MCD have misappropriated funds of over Rs. 2400 Crores i.e. the amount which was allegedly due to be received by North MCD from South MCD as rent. Facebook links of the live statements of the accused persons as well as twitter links have been specifically mentioned in the complaint. Transcripts of the Press Conferences held by the accused persons respectively have also been placed and exhibited on record. Complainant states that he has himself seen defamatory imputations made by the accused persons, which were published in the newspapers, on twitter and through Facebook live telecast.

2.5 Complainant further alleges that when he along with his party leaders were sitting on a protest on 16.12.2020, an advocate namely Ashish Rathore came to the protest site and questioned his credentials telling him that he had come to know from the statements of AAP leaders namely Satyender Jain, Atishi Marlena, Raghav Chaddha, Saurabh Bhardwaj and Durgesh Pathak that Complainant had committed a scam of Rs.2,500 crores which was not expected from him.

2.6. Complainant submits that he was shocked to hear such a statement and he was disheartened to see his reputation being lowered by the statements of the accused persons. Purportedly, persons namely Vijay Kumar and Yogesh Verma were also

present at the site along with the complainant, who heard the statements made by Advocate Ashish Rathore as aforesaid.

2.7. Complainant has specifically stated in his complaint that defamatory imputations were made against a class of persons i.e. BJP Councilors which is an identifiable and determinable body capable of being defamed and thus, the same is covered within the Explanation-II of Section 499 IPC which provides for defamation of a collection of persons. Hence, complainant submits that he is an aggrieved person within the meaning of Section 199 of Cr.PC as false allegations and defamatory remarks have been leveled by the accused persons against Municipal Councilors of Bhartiya Janta Party which also includes the complainant. Complainant alleges that with the aforesaid defamatory remarks not only his political reputation has been damaged but his career as an Advocate and his good-will in the society has also been adversely affected.

Thus, Complainant alleges that by making the aforesaid defamatory imputations, which were widely published in the print and electronic media, accused persons have committed the offence of defamation under Section 500 IPC read with Section 34/120B IPC.

3. Upon the said complaint, Complainant led pre summoning evidence and examined eight witnesses including himself, Vijay Kumar, Yogesh Verma, news correspondents, etc.

After conclusion of the pre-summoning evidence, vide order dated 16.02.2022, holding that *the Court is of the considered view that prima facie accused persons namely Satyender Jain, Aatishi Marlena, Raghav Chadha, Durgesh Pathak and Sourabh Bhardwaj have committed the offence punishable U/s 499/500 IPC read with Section 34 IPC,* accused persons, as above mentioned, were summoned in the Court.

4. Upon their appearance in the Court, accused persons were admitted to bail and copies were duly supplied to them by the complainant. At the stage of serving of notice of accusation u/s 251 Cr.P.C., accused persons submitted that they wanted to address arguments seeking their discharge in the present case and accordingly, arguments were addressed in detail by Ld. Counsel for the accused persons as well as Ld. Counsel for the complainant on the issue of discharge of the accused persons from the present matter.

5. On behalf of the accused persons, arguments were addressed by Ld. Senior Counsel Sh. Manish Vashisht stating that the present complaint has only been filed to harass the accused persons and to attain political mileage for the upcoming elections of the Municipal Corporation of Delhi. Seeking discharge of the accused persons from the present case, following contentions were raised by Ld. Senior Counsel:-

i) In the entire complaint there is no direct insinuation on the

complainant and thus, it is not the case, where Section 499/500 IPC is attracted. Ld. Senior Counsel vehemently argued that the complainant has not been able to bring either in his complaint or in the evidence tendered by him that he is *an aggrieved person*. It was argued that even the basic ingredients to constitute the offence of defamation, as defined in Section 499 IPC, are absent and thus, accused persons deserve to be discharged from the present case.

Referring to Section 199 Cr.P.C. which is titled as *Prosecution for Defamation*, Ld. Senior counsel argued that the provision specifically provides that the Court cannot take cognizance of an offence punishable under Chapter XXI of the IPC (Providing for Defamation) except upon a complaint made by some person aggrieved by the offence and hence, as no prima-facie material is shown by the complainant to prove that he is the aggrieved, accused persons cannot be put to trial in the present case. It was further asserted that imputations, if any, are against the North MCD and not against the complainant and thus, the complainant cannot be categorized as the person aggrieved for the purposes of taking cognizance under Section 199 Cr. P.C. Reference was made here to the judgments titled as ***Vinod Dua Vs Union of India [2022 SCC OnLine SC 414]*** and ***Arnab Ranjan Goswami Vs Union of India and Ors. [(2020) 14 SCC 12]*** wherein it was held that cognizance with respect to an

offence punishable under Chapter XXI of the IPC can be taken only upon a complaint made by the aggrieved person.

ii) Ld. Senior Counsel on behalf of the accused persons referred to several portions of the complaint and the transcripts exhibited on record with respect to the press conferences conducted by the accused persons and reiterated that the complainant has not been named anywhere either in the Press Conference or in the Tweets or at any other public forum addressed by the accused persons.

With respect to accused Satyender Jain, it was argued that he has merely stated that he came to know through newspapers that North MCD has misappropriated funds over Rs. 2,400 crores and therefore, he ordered an enquiry for the same. Referring to the tweet made by accused Satyender Jain, Ld. Senior counsel argued that it has merely been stated that orders have been issued to investigate misappropriation of Rs. 2400 Crore by *BJP run North MCD* and complainant has not been specifically named in the tweet.

Further, it was argued that even though, accused Satyender Jain has stated that he got information through newspaper reports, complainant has not taken any action against the said newspapers which published the news reports of the misappropriation of funds by North MCD. Ld. Senior counsel emphasized that merely ordering an enquiry cannot be termed as

defamation. Reliance was placed upon two authorities in support of this contention i.e. ***Paul Sellers and ors. Vs State of Andhara Pradesh and Anr.[2014 SCC Online Hyd 1543]*** and ***Jawaharlal Darda Vs Manoharro Ganpatrao Kapsikar [AIR 1998 SC 2117]***

With respect to other accused persons as well, similar line of arguments was taken by Ld. Senior Counsel stating that no imputation has been made against the complainant. It was further stated that nothing has been mentioned against the complainant or against the Standing Committee of the North MCD or its Chairman and hence, even prima facie case is not made out against the Accused persons.

iii) Further, it was specifically argued that in para 26 of his complaint, it has been admitted by the complainant that the defamatory imputations are made against a class of persons i.e. BJP Councilors and not against the complainant specifically. Placing reliance upon judgments titled as ***S. Khushbook Vs Kanniammal and Ors. [(2010)5 SCC 600]*** and ***G. Narsimhan and Ors. Vs T.V. Chokkappa [(1972) 2 SCC 680***, it was put forward that in order to bring the complainant within the ambit of the phrase *person aggrieved*, court has to see whether the class of persons allegedly defamed is an identifiable body or not; and when the complainant is not named, the test would be whether the words uttered would lead people acquainted with him to the conclusion that he was the person referred to. In regard to the

case at hand, it was argued that neither complainant has been named nor has any reference been made to the Chairman of the Standing Committee of the North MCD and thus, by mere use of the term BJP Leaders or North MCD councilors, no imputation can be attributed to the Complainant.

It was argued that no legal injury has been caused to the complainant as his job as well as salary has remained intact, therefore, right of the accused persons under Article 19 cannot be curtailed only because an enquiry was ordered against the North MCD. To buttress this argument, citing the authority ***R. Rajagopal and Anr. Vs State of T.N. and Ors. [(1994) 6 SCC 632]***, it was put across that even the House of Lords has held that *there no public interest in allowing governmental institutions to sue for libel, it was "contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech" and further that action for defamation or threat of such action "inevitably have an inhibiting effect on freedom of speech"*. It was further stated that public administration must be open to criticism and any attempt to fetter such criticism amounts to political censorship of the most objectionable kind.

vi) It was further contended by Ld. Senior counsel that before deciding the question on merits as to whether prima-facie case is made out against the accused persons or not, the court shall also have to deal with the question as to whether at the stage of

Section 251 Cr.P.C., can accused be discharged by the court or not. It was stated that even though in Cr.P.C. the word *"discharge"* has not been used in the context of Section 251 Cr.P.C., it has to be read together with Section 258 Cr.P.C. which deals with stopping of proceedings.

Reading out the contents of Section 251 Cr.P.C, Ld. Senior counsel argued that even while serving of notice of accusation upon the accused under Section 251 Cr.P.C. the Court has to be satisfied that prima-facie case is made out against the accused and the charge cannot be framed merely on the basis of subjective whims and fancies. It was argued that sufficiency of material has to be there and rather something more than mere prima-facie case has to be seen. Ld. Senior counsel further argued that when no prima-facie case is made out, the Court must discharge the accused from the case as the complainant cannot take shelter of leading judicial precedents to argue that accused should be subjected to trial as this is a summons triable case. Several authorities were cited to support the arguments on this point viz., ***S.K. Bhalla & Ors. Vs State of NCT of Delhi & Anr. [2010 SCC Online Del 4384], Bhushan Kumar & Anr. Vs State (NCT of Delhi) And Anr. [(2012 5 SCC 425], Raujeev Taneja Vs NCT of Delhi And Ors. [(2013) SCC Online Del 6528]*** *and* ***Sakiri Vasu Vs State of Uttar Pradesh & Ors. [(2008)2 SCC 409]***

Further, Ld. Senior counsel asserted that language of Section 251 Cr. P.C. itself suggests that it is not necessary to frame a formal charge and hence it is implied that the Court has power to discharge. Again, referring to Section 258 Cr.P.C. which provides for stopping of proceedings, Ld. Senior counsel submitted before the court that the proceedings can be stopped at any stage and not necessarily at the stage of trial. Reliance was placed upon ***Dr. Kamala Rajaram Vs D.Y.S.P. Office of the S.P. (Rural) & Anr. [2005 SCC Online KER 302].***

vii) Lastly, Ld. Senior counsel pointed out that the complainant has alleged that he first realized that he has been defamed by the accused persons on 16.12.2020 when he was sitting on protest along with fellow party leaders and a person namely Ashish Rathore came to him and questioned his credentials, however, said Ashish Rathore has not been made brought in witness box in the pre-summoning evidence tendered by the complainant. Thus, it was argued that the allegation of defamation made by the Complainant remains unsubstantiated at the outset itself.

With the above submissions, Ld. Senior counsel appearing on behalf of accused persons closed his arguments emphasizing that no case is made out against the accused persons since no defamation has been caused to the complainant as merely ordering an enquiry cannot be covered within the ambit of the offence of defamation and thus, the accused persons deserve to

be discharged from the present case. With these concluding remarks, Ld. Senior Counsel vehemently prayed for discharge of the accused persons from the present case.

6. Opposing the contentions put forward by the accused persons, Ld. Counsel for the complainant firmly addressed his arguments in favour of serving of notice of accusation upon the accused persons on account of the alleged defamatory statements made by them.

Ld. Counsel for the complainant addressed his arguments in three parts. First dimension covered the background of the case; second dimension covered the statements made by the accused persons through Press Conferences/Twitter accounts etc. and the third dimension pertains to the legal aspect whereby relevant authorities of the Supreme Court and the High Courts were referred to the Court.

6.1. First dimension of arguments of the Complainant - Background of the case.

Giving a brief background of the constitution of the Municipal Authorities in Delhi, Ld. Counsel for the complainant stated that while earlier there was only one Municipal Corporation of Delhi (MCD), later, it was divided into three authorities i.e. North MCD, South MCD and East MCD. Further, he stated that while offices were allotted separately to North MCD and East MCD, South MCD was not given a separate

office and was allowed by Delhi Government to sit with North MCD in Civic Centre, Delhi which lies within the jurisdiction of North MCD.

Further, Ld. Counsel pointed out that the order of the Delhi Government dated 28.10.2013 Ex.CW5/A vide which South MCD was allowed to sit in the Civic Centre directs South MCD to pay water, electricity, security and facility management charges, etc. on monthly basis, however, the same does not mention payment of any rent. Hence, it was submitted by the Ld. Counsel for the complainant that it was decided by the Delhi Government itself that no rent was to be paid by South MCD to North MCD and thus, when there was no provision of rent, no question of South MCD paying cash rent of Rs. 2500 Crore to North MCD arises. It was further argued that at the maximum what was done was that the claim of rent raised by North MCD towards South MCD for payment of rent was waived off and that does not mean corruption.

It was argued that the elections were approaching at the time of the alleged incident and the entire issue arose because BJP Leaders demanded their share of taxes from the Delhi Government and release of funds for the three MCDs, which the Delhi Government did not do and rather diverted the issue by raising false claims.

6.2. Second dimension - Statements given by the accused

persons.

First, Ld. Counsel for the complainant referred to the statements given by the accused Atishi Marlena stating that during her Press Conference (Transcript is Ex. CW1/13) she has specifically used the term *"BJP's North MCD Leaders"* which directly referred to the complainant as the complainant was Chairperson of the North MCD at that time. Hence, it was argued that it cannot be said that the complainant is not named as such in any of the allegations by the accused.

It was argued that the test before the Court is whether word used for a specific class of persons referred to the complainant or not. It was emphasized that the term *"BJP Ke Neta" (BJP's Leaders)* refers to all 67 Corporators, who were holding the position at that time and any of them could file a case. Further, Ld. Counsel for the complainant referred to Ex. CW1/5 i.e. the Tweets made by the accused Atishi Marlena wherein repeated reference has been made to BJP Leaders as well as Leaders of MCD, which brings out clear imputation upon the complainant. Ld. Counsel for the complainant argued that by alleging corruption on BJP Leaders of MCD, the accused has made a clear attack on the reputation of the complainant and diverted the issue of non-payment of funds by the Delhi Government to the Municipal Corporations.

Thereafter, coming to the statements made by the accused

Raghav Chaddha, Ld. Counsel for the complainant referred to Ex. CW1/7 i.e. a newspaper report dated 14.12.2020 and tweet made by the said accused i.e. Ex. CW1/6 and stated that again repeated reference to BJP Leaders of MCD have been made by the said accused stating that they have committed corruption.

Further, it was pointed out that the line of thread of the statements of the accused Raghav Chaddha is such that first reference is made to corruption of Rs. 2500 crores and then the same is attributed to BJP Leaders, which clearly makes an imputation upon the complainant and hence question of *locus-standi* of the Complainant to file this case does not arise. It was submitted by Ld. Counsel for the Complainant that from the language of the tweet itself it is apparent that the same is *per se* defamatory in nature and the same cannot be denied by the accused.

Similarly, with respect to the accused Saurabh Bhardwaj and Durgesh Pathak, references were made to Ex. CW1/8 i.e. Hindu Newspaper Report dated 15.12.2020; Ex. CW1/I i.e. report of Times of India Newspaper dated 02.11.2020; Ex. CW1/2 i.e. report of Dainik Jagaran Newspaper dated 02.11.2020; Ex. CW1/10 i.e. tweet made by accused Durgesh Pathak and Ex. CW1/13 i.e. transcript of the Press Conference conducted by accused Durgesh Pathak and Saurabh Bhardwaj and it was argued that in all the said documents repeated

references to BJP Leaders and North MCD have been made, which again makes it apparent that direct attack on complainant is being made.

Ld. Counsel for the complainant further stated that the said documents straight away point out to an identifiable class of persons, which includes the complainant.

Lastly, in regard to accused Satyender Jain, Ld. Counsel for the complainant referred to tweet made by him vide Ex. CW1/9 wherein it has been specifically stated that misappropriation of hefty amount of Rs. 2400 crore has been done by BJP run North MCD and argued that undoubtedly yet again reputation of the complainant has been put at stake by stating on the public forum that he has committed corruption.

With the above arguments, Ld. Counsel for the complainant concluded the second dimension of his arguments and stated that all the accused persons have specifically given defamatory statements against the complainant and hence, they should be prosecuted for the same.

6.3. Third dimension : Legal Aspect pertaining to the offence of defamation, particularly in case of a class of persons.

i) Ld. Counsel for the complainant started with reference to the judgments cited by the accused persons i.e. ***S.Khushboo*** (supra); ***G. Narasimhan and Ors.*** (supra) and ***Vinod Dua*** (supra) and argued that from these judgments itself a case in favour of

the complainant is made out rather than the accused persons.

In reference to the ***S.Khushboo Judgment*** and ***G. Narsimhan Judgment***, it was argued by Ld. Counsel for the complainant that the said judgments specifically hold that in order to demonstrate the offence of defamation with respect to a collection of persons the same must be an identifiable body so that it is possible to say with precision that group of a particular persons stood defamed and in a case in hand, BJP is a registered political party with Election Commission of India and therefore, it can be stated to be an identifiable body and hence can be covered well within the ambit of offence of defamation.

With respect to ***Vinod Dua judgment***, Ld. Counsel for the complainant argued that contrary to the contentions of the accused persons, ratio of the said judgment does not pertain to locus-standi of an aggrieved persons to file a case of defamation and hence, the same is not directly applicable to this case.

ii) In order to add weight to his contentions, Ld. Counsel for the complainant referred to the judgment titled as ***Tek Chand Gupta Vs. R.K. Karanjia & ors. [1969 Cri LJ 536]*** wherein Rashtriya Swayam Sevak Sangh (RSS) was taken as an identifiable body and it was held that :-

> *"The test laid down by various Courts for the application of Explanation (2) of Section 499, I.P.C., appears to be that the class or the association of persons must not be unidentifiable. If it is identifiable in the sense that it is definite, then the remarks about it are defamatory of the*

class within the meaning of Section 499, I.P.C. The complainant is a member of the body against which the defamatory remarks are said to have been made in that article. My attention has been invited by the learned Counsel for the revisionist to the constitution of the body for the purpose of convincing me that it cannot be said that the body in question is indefinite or not identifiable. There is a regular constitution by which the body is controlled and there are various offices mentioned in the constitution which are held by the members of that body. It is not clear why the learned Magistrate, without examining all the evidence that may have been produced on behalf of the complainant, took a decision to the effect that the body against which the remarks have been made in the article is too large, meaning thereby that it is unidentifiable. Without considering the evidence that the complainant could have produced in support of his complaint, the conclusion at which the learned Magistrate arrived appears to be rather hasty."

Ld. Counsel for the complainant also referred to the judgment of Hon'ble High Court of Kerala titled as ***Mathrubhoomi Illustrated Weekly & Ors. Vs P. Gopalankutty & Anr. Crl. M.C. No. 6574 of 2014*** wherein it was held that :

"*10. A class of persons as such cannot be defamed as a class, nor could an individual be defamed by a general reference to a class to which he belongs. Going by explanation 2 to Section 499 of IPC, if a well-defined class is defamed, each and every member of that class can file a complaint. Where the words reflect on each and every member of a certain number or class, each and all can sue."*

iii) Further, Ld. Counsel for the complainant laid emphasis on the order of Hon'ble Supreme Court of India in ***Suo Motu Writ Petition (Crl.) No. 2 of 2020 In Re. : Expeditious Trial of Cases***

under Section 138 of N.I. Act 1881, wherein it was held that there is no inherent power of Trial Courts to review or recall the issue of summons.

Hence, Ld. Counsel for the complainant argued that with respect to a summons case, law has been settled by the Supreme Court of India and it has been held that once cognizance is taken, the magisterial court has no power to review its order and for recalling of issuance of process recourse can be taken only to provision under Section 482 of Cr.P.C.

iv) Lastly, Ld. Counsel for the complainant countered the arguments of the accused persons invoking Section 258 of Cr.P.C. which provides for stopping of proceedings. Ld. counsel for the complainant read out the provision and stated that it specifically refers to cases otherwise than upon complaint and therefore, as the case at hand is a complaint case, Section 258 of Cr.P.C. is not applicable herein.

With the above submissions, Ld. Counsel for the complainant argued that a clear case of defamation is prima-facie established against the accused persons from the pre-summoning evidence brought on record by the complainant as not only clear imputations defaming the complainant have been made against him but also they have been published at various forums such as twitter, facebook, etc. Hence it was argued by Ld. Counsel for the complainant that accused persons must be put to

trial.

7. In rebuttal to the arguments of the Ld. Counsel for the complainant, following submissions were made by Ld. Senior Counsel:

i) It was reiterated that it has been admitted by the complainant in his own complaint that he has not been named directly or indirectly in the complaint and therefore what complainant is urging is to draw inferences which is against the scheme of Section 199 Cr.P.C. Further, Ld. Senior Counsel also stated that reliance placed by the complainant on *Tek Chand Judgment* is faulty as the same has already been over ruled.

ii) It was argued that fair criticism cannot by any means be covered within the meaning of defamation as it has been stated by accused Satyender Jain that he came to know through the newspapers about the entire issue and no newspaper editor has been questioned by the complainant in regard to the news so printed. Referring to the judgment titled ***Vineet Jain vs. State [Delhi High Court, 2011]*** Ld. Senior counsel stated that mere reporting of a news cannot attract liability for defamation.

iii) Further, Ld. Senior counsel stressed that even if presuming that the complainant is named in the complaint, still no case of defamation is made out against the accused persons as one of the most relevant witnesses as per the complaint i.e. Ashish Rathore has not been brought to the court in pre-summoning evidence

even though his name appears in the list of witnesses.

iv) Also, Ld. Senior counsel argued that taking cognizance is different from framing of charge and the Court, at the time of framing of charge has to see that whether any prima-facie material ensuring the guilt of the accused is there or not.

v) Referring to the allegedly defamatory tweets made by the accused persons, Ld. Senior Counsel argued that no action has been taken by the complainant to seek an injunction to get these tweets etc. to removed from social media, which again points out towards the innocence of the accused persons.

vi) Further, Ld. Senior counsel specifically stated that it defies common sense, logic and law as to how a Government Officer can complaint of defamation as according to statutory legal provision, provided under Section 199 Cr.P.C., a complaint in regard to defamation of a Government servant can only be filed through the concerned public prosecutor and hence, cognizance of the alleged offence could not have been taken by the court. In support of his contentions, Ld. Senior Counsel relied upon ***Raja Gopal Judgment (supra) and Nirmal Jeet Singh Nirula vs. Yashwant Singh & Ors. [2012, Delhi High Court].***

vii) Lastly, Ld. Senior counsel stated in rebuttal that a Metropolitan Magistrate is very much empowered to discharge the accused in the light of Section 251 Cr.P.C. as the same has been specifically held in judgments of Delhi High Court, which

this court is bound to follow.

Hence, Ld. Senior Counsel argued that no ground whatsoever is made out to put the accused persons to trial and this is a fit case for their discharge.

8. In response to the above, Ld. Counsel for the complainant stated that the Court has already seen whether the prima-facie case is made out or not and therefore, there is no question to revisit the issue. It was argued that the Court is bound to conduct the trial within the scheme of Chapter XX of Cr.P.C. and as per law settled by the Supreme Court of India as well as by the High Court of Delhi, the accused cannot be discharged in a summons case.

To support his contention, Ld. Counsel for the complainant referred to a recent decision of Division bench of Hon'ble High Court of Delhi titled as ***Court On Its Own Motion Vs. State dated 20.04.2022 (Crl. Ref. 4/2019)*** wherein it has been again held that Trial Court does not have the power to discharge the accused upon his appearance in Court in a summons trial case once cognizance has already been taken and process has been issued.

Ld. Counsel for the accused persons countered the submissions of Ld. Counsel for the Complainant stating that the above mentioned order is only in reference to cases u/s 138 of the Negotiable Instruments Act and hence, not applicable to the case.

Further, he referred to an order of Hon'ble Supreme Court of India in the matter titled as ***M/s Conserve Ready Mix Concrete & Ors. Vs. M/s R.K.M. Sand Aggregates (SLP No. 1192/2022)*** stating that in the said order, by dismissing the SLP it has been implied by the Supreme Court that the Trial Court does have power to discharge the accused at the stage of serving of notice under Section 251 Cr. P.C.

9. This court has heard the detailed arguments of both the sides and gone through the court record as well as the authorities cited by the parties.

Written arguments have also been filed on record on behalf of Accused Satyender Jain as well as Accused Raghav Chaddha. Same have also been perused.

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

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

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

10.2. Further, Constitution Bench of the Supreme Court of India in its decision dated 16.04.2021 titled as ***In Re.: Expeditious Trial of Cases under Section 138 of N.I. Act 1881(supra)***

upholding the ***Adalat Prasad Judgment*** and ***Subramanium Sethuraman judgment*** has held that :

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

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

> *"A plain reading of the paragraphs extracted hereinabove leaves no manner of doubt that in terms of the judgment of the Hon'ble Supreme Court in Adalat Prasad Vs. Rooplal Jindal and Others (2004) 7 SCC 338 and Subramanium Sethuraman Vs State of Maharashtra and Another, (2004) 13 SCC 324, the Trial Court cannot be conferred with inherent powers, either to review or recall the order of issuance of process. As held in Adalat Prasad (supra) and Subramanium Sethuraman (supra), the Magistrate is deluded with the power to revisit the order of issue of process, except to the limited extent that the Court has no jurisdiction to try the case. In other words, the Trial Court has no inherent jurisdiction to revisit the order of issue of process within the meaning of the provisions of Section 258 Cr.P.C.*
>
> …..
>
> *In view of the foregoing, we are of the considered view that Question No.1 in the present reference is to be answered in the negative. The Court of a Magistrate does not have the power to discharge the accused upon his appearance in Court in a summons trial case based upon a complaint in general, and particularly in a case under Section 138 of the N.I. Act, once cognizance has already*

been taken and process issued under Section 204 Cr.P.C.”

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

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

Defence has relied upon a judgment of the Supreme Court of India in the matter titled as *Bhushan Kumar & Anr. Vs State (NCT of Delhi) and Anr. (decided in 2012)* to thrust upon discharge of the Accused persons stating that there are ample powers with the court even in a summons case to do so. To fortify its arguments, defence has also cited a 2013 judgment of the High Court of Delhi titled as *Raujeev Taneja vs. NCT of Delhi And Ors.* wherein reliance was placed upon *Bhushan Kumar judgment.* However, these judgments do not lend the required support to the arguments taken by defence on account of the recent decisions of the Supreme Court and Delhi High Court referred above.

Thus, as such it is not within the powers of the Court to discharge the Accused persons and hence, the plea taken by the Accused persons seeking their discharge from the case is *per se*

misplaced.

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

> *In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.*

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

13. It has also been argued on behalf of Accused persons that no *prima-facie* case is made out against them and at the stage of charge/notice court has to see whether prima-facie sufficient

material is present on record to secure guilt of the Accused persons or not. Contrary to the arguments of defence, at the stage of charge/notice, court only has to see whether sufficient material is available on record to raise grave suspicion upon the Accused persons and not to evaluate the evidence brought by Prosecution in detail. On this aspect, it is relevant to peruse a recent judgment of the High Court of Delhi titled as ***Settu* vs. *State of NCT of Delhi*** **[2022 LiveLaw (Del) 220]**, wherein it was held that:

> *8.It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.*
>
> *9.To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the*

accused or not.

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

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

> *51. The long history of the evolution of the legislation relating to prosecution for the offence of defamation of public servants shows that the special procedure*

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

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

15. Lastly, it must be mentioned here that the main thrust of the arguments of the Accused persons was that the complainant is not an *aggrieved person* as per section 199 Cr.P.C. and thus, he has no *locus-standi* to file this case. In this regard, it is yet again reiterated that it shall be decided only after conclusion of trial as to whether Complainant is an aggrieved person or not and at this stage, since *cognizance* has already been taken, court cannot

delve into this issue.

16. From the above held discussion as well as on the basis of leading judgments quoted above, it is abundantly clear that there are no merits in the submissions of the Accused persons against serving of notice of accusation u/s 251 Cr.P.C. upon them. It has already been settled in law that in a summons case there is no scope of discharge of the Accused by the Trial Court or of recalling/review of the summoning order.

Hence, the plea of the Accused persons namely Satyendra Jain, Atishi Marlena, Raghav Chaddha, Durgesh Pathak and Saurabh Bhardwaj seeking their discharge from the present case is hereby dismissed.

Announced in open Court today
Dt. 09.11.2022 **(Vidhi Gupta Anand)**
ACMM-01/RADC/New Delhi
09.11.2022