

GAHC010196722022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./984/2022

MANISH SISODIA
S/O. LT. CAPTAIN DHARAM PAL SINGH, R/O. 17 MATHURA ROAD, NEW
DELHI.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR, ASSAM, GAUHATI HIGH COURT AT
GUWAHATI.

2:DR. HIMANTA BISWA SARMA
S/O. LATE KAILASH NATH SARMA
R/O. QR. NO. M-6
MINISTERS COLONY
DISPUR
GUWAHATI
KAMRUP (M)
ASSAM
PIN-781006

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 04.11.2022:

Heard Mr. A.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned P.P. appearing for the State respondent no.1 and Mr. D. Saikia, learned senior counsel, assisted by Ms. R. Baruah, learned counsel for the respondent no. 2.

2. By filing this criminal petition under section 482 Cr.P.C. the petitioner, namely, Manish Sisodia, has prayed for quashing of the proceedings of C.R. Case No. 81/2022 under sections 499/500 IPC, which is pending for disposal before the Court of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati.

3. Bereft of unnecessary details, it would suffice to mention the herein before complaint petition was filed by the respondent no.2, namely, Dr. Himanta Biswa Sarma, who is the present Chief Minister of the State of Assam. In the complaint petition it was alleged that on 04.06.2022, the petitioner had addressed a press conference at New Delhi where defamatory statement was made against the respondent no. 2, accusing him of indulging in corruption. The video of the said press conference was uploaded in you-tube channel of Aam Aadmi Party, with caption – “*Assam ke BJP CM ke bhrastachar ka yeh hai kacha chittha.*” It would suffice to mention that in the complaint petition, it was stated, amongst others, that the allegations against the respondent no. 2 was to the effect that the respondent no. 2 was involved in corruption; he had given

Government contract to his wife's Company for purchasing PPE kits; while purchase from others were made at Rs.600/- per kit, such kits were purchased from the Company of the wife of the respondent no. 2 at the rate of Rs.990/- per PPE kit.

4. The learned Court of Chief Judicial Magistrate, Kamrup (M), Guwahati (hereinafter referred to as the "trial Court"), after considering the statement of the respondent no. 2, recorded under Section 200 Cr.P.C., and the statement of 2 (two) witnesses examined under Section 202 Cr.P.C., by order dated 20.08.2022, found sufficient ground to proceed against the petitioner under sections 499/500 Cr.P.C. and on taking cognizance of the offence, was pleased to issue summons to the petitioner for appearance in the proceeding.

Submissions of the learned counsel for the petitioner:

5. The submissions of the learned counsel for the petitioner are three-fold. Firstly, it was submitted that the petitioner was the Deputy Chief Minister of the State of NCT of Delhi and accordingly, although he was a public servant, no sanction was obtained as per the requirement of Section 197 Cr.P.C. to prosecute him. Secondly, it was also submitted that the statement made by the petitioner in the press-conference held on 04.06.2022 at Delhi falls within the "exceptions" contained in Section 499 of the I.P.C., as because it was for public good and to caution the public. Thirdly, it was submitted that the supply of PPE kits was made at the exorbitant rate of 990/- per PPE kits, while similar PPE kits were purchased by the Government at the rate of Rs.600/- per PPE kits. The learned counsel had also submitted that even assuming but not admitting that PPE kits were given without raising bills, but they took the benefit

under “Corporate Social Responsibility Fund” and therefore, the respondent no. 2, though the Company of his wife had caused undue enrichment to themselves. Fourthly, it was submitted that in the press conference, the petitioner had merely reproduced those materials which were available in the internet as published by web/news-portals under the name of “The Wire” and “The Cross Current”. However, while the respondent no. 2 did not suffer any defamation by these web/news-portals, the petitioner has been proceeded with. Thus, it was submitted that the true reproduction of materials already available in the internet cannot amount to defamation.

6. Although many grounds has been set forth in this criminal petition, but no other point was urged by the learned counsel for the petitioner.

7. In support of his submissions, the learned counsel for the petitioner has placed reliance on the following case citations, viz., (i) *Aroon Purie v. State of NCT of Delhi*, judgment dated 31.10.2022, by Supreme Court of India in *Crl. Appeal Nos. ___(not available) of 2022 (arising out of SLP (Crl.) Nos. 5115- 5118 of 2021)*, (ii) *Manoj Kumar Tiwari v. Manish Sisodia & Ors.*, judgment dated 17.10.2022, by the Supreme Court of India in *Crl. Appeal No. 1791/2022 (arising out of SLP (Crl.) No. 351/2021)*; (iii) *Rajendra Kumar Sitaram Pande & Ors. V. Uttam & Anr.*, (1999) 3 SCC 134, (iv) *Jawaharlal Darda & Ors. v. Manoharrao Ganpatrao Kapsikar & Ors.*, reported in *MANU/SC/0251/1998*, (v) *Aroon Purie v. State of Haryana*, 2007 (3) *Law Herald* 1888, (vi) *The Editor, Deccan Herald v. M.S. Ramaraju*, reported in *MANU/KA/0128/2005*.

Submissions of the learned counsel for the respondent no.2:

8. The submissions made by the learned senior counsel for the respondent no. 2 on these three points urged by the learned counsel for the petitioner was as follows. Firstly, it was submitted that making of *ex facie* defamatory statement against the respondent no. 2 in a press conference held on 04.06.2020 under the banner of Aam Aadmi Party, a political party was not an official act committed by the petitioner in exercise of his official duty. Secondly, it was submitted that the petitioner did not take care to find out facts from the NHM as to whether or not the wife of the respondent no.2 or her Company had raised any supply bills to the State or to the NHM and whether or not the State or the NHM had made any payment to the wife of the respondent no. 2 or to her Company for supply of any PPE kit pursuant to the two supply orders dated 18.03.2020. Thirdly, it has been submitted that at the time of first wave of Covid-19 pandemic, no one was in a position to supply large quantity of PPE kits, as such, the Government were exploring possibility of obtaining PPE kits from various sources and therefore, the concerned NHM officials had reached to various manufacturers, suppliers, persons and organizations, including the Company where his wife is associated for urgent purchase of 15,000 (10,000 + 5,000) PPE kits vide two supply orders dated 18.03.2020. However, the said Company was not interested to supply such PPE kits and therefore, the said two supply orders dated 18.03.2020 was cancelled vide NHM letter dated 21.03.2020. However, under Corporate Social Responsibility Fund, the said Company supplied a consignment of 1,485 PPE kits to the Mission Director, NHM vide letter dated 26.03.2020, but without raising any bills and therefore, there was no question that the Government of Assam was required to make any payment to the Company of the wife of the respondent no. 2. Thus, it

was submitted that the petitioner had recklessly made defamatory remarks against the respondent no. 2, who was the then Health Minister of the Government of Assam without any basis. Fourthly, it was submitted that after the defamatory statement involving the wife of the respondent no. 2 surfaced in the you-tube portal, and became viral throughout the length and breadth of the Country, the wife of the respondent no. 2 had clarified her stand on 01.06.2020 through her twitter handle "RINIKI BHUYAN... @ rinikibs..." to the effect that she had donated around 1,500 PPE kits to NHM, Assam as a part of CSR activity of her Company and had also uploaded the NHM letter dated 27.03.2020, by which the NHM had put on record its appreciation for the donation of PPE kits. The same was re-tweeted by the respondent no 2 in his twitter handle "Himanta Biswa Sarma... @ himantabiswa..." on the same date. Thus, it was submitted that while the petitioner had allegedly used the article appearing against the respondent no. 2 in web/news-portal "The Wire" and "The Cross Current" with derogatory and defamatory remarks, he had suppressed the information available through the tweets made by the respondent no. 2 and his wife and chose not to disclose such materials. Accordingly, it was submitted that defamatory statements were made against the respondent no. 2 without verifying the facts from the Government in the Health Department or the National Health Mission, Assam.

9. In support of his contention, the learned senior counsel for the petitioner has referred to the following case citations, viz., (i) *Manoj Kumar Tiwari (supra)*, (ii) *National Bank of Oman v. Barakara Abdul Aziz & Anr., (2013) 2 SCC 488*, (iii) *State of Maharashtra v. Dr. Buddhikota Subbarao*, (iv) *Shivjee Singh v. Nagendra Tiwary & Anr.*, (v) *S.K. Sinha, Chief Enforcement Officer v.*

Videocon International Ltd. & Ors., (2008) 2 SCC 492, (vi) Trisuns Chemical Industry v. Rajesh Agarwal & Ors., (1999) 8 SCC 686, (vii) State of Haryana & Ors. V. Bhajanlal & Ors., 1992 Supp (1) SCC 335.

Materials not referred by the learned counsel for the petitioner as a part of submissions:

10. It may be stated that the grounds on which this criminal petition has been set forth, but in respect of which no submissions were made at the Bar by the learned counsel for the petitioner, amongst others, in brief and/or in short, are as follows:-

- i.* That summoning order passed by the learned Judge is arbitrary, unjust, and against the principle of natural justice;
- ii.* The order was passed mechanically without any discussion as to how offence under Section 499 was made out and the order is a non-speaking order;
- iii.* * * *
- iv.* * * *
- v.* * * *
- vi.* The respondent no. 2 is neither a victim nor an aggrieved person. The statement are against the wife of the respondent no. 2;
- vii.* The allegations labeled by the petitioner is based on documents in the form of electronic records which is available in the public domain and asking an explanation of the Chief Minister of a State does not amount to defamation;
- viii.* * * *
- ix.* Taking cognizance of the offence is bad in law as the whole case rests upon electronic record and the learned Court below without perusing the same as such the order taking cognizance is liable to be

set aside;

- x. The learned Judge has failed to give any justification or reason for issuance of such summons;
- xi. No materials were available on record to prosecute the petitioner;
- xii. The order is non-speaking and the learned Judge has failed to give a proper reasoning for taking cognizance of the complaint and summoning the petitioner and in this regard, a part of the case of *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors., (1998) 5 SCC 749* was extracted therein;
- xiii. The learned Judge failed to follow the procedure prescribed by law as no proper enquiry was made under Section 202 Cr.P.C. before summoning the petitioner and in this regard, a part of the case of (i) *Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528*, and (ii) *Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638* were extracted therein;
- xiv. Enquiry under Section 202 can only be conducted in post cognizance stage and in this regard, a part of the case of *Rameshbhai Pandurao Hedau v. State of Gujarat, (2010) 4 SCC 185* was referred to;
- xv. The learned Judge has failed to distinguish between the recording of pre-summoning evidence and enquiry under Section 202 Cr.P.C.
- xvi. The learned Judge did not hold any enquiry as mandated under Section 202 Cr.P.C. as cognizance was taken immediately after recording statement of witnesses;
- xvii. Section 199 Cr.P.C. mandates that when offence under Chapter XXI of the IPC is alleged to have been committed against a person who at the time of commission of offence is a Minister of a State in respect of his conduct in the discharge of his public functions, then Court of Sessions may take cognizance of the offence;
- xviii. Complaint filed by respondent no. 2 in his personal capacity was not maintainable;
- xix. As per Section 199(2) Cr.P.C., the case is exclusively triable by the

Court of Sessions and therefore, the order lacked inherent jurisdiction;

- xx. Reference was made to observations made in a part of the judgment in the case of *Ranvijay Singh & Ors. v. The State of U.P. & Ors., Crl. M.C. 2355/2020* (without disclosing any case citation or date of judgment and without providing copy of order);
- xxi. Reference was made to observations made in a part of the judgment in the case of *Kalyan Bandhopadhyay v. Mridul De, CPR No. 1856/2009 dated 13.10.2015* (without disclosing any case citation or providing copy of order);
- xxii. Issue relating to application of the provisions of Section 199(2) and 199(6) Cr.P.C. and procedure for defamation are pending before the Supreme Court of India in the case of *Manoj Kumar Tiwari v. Manish Sisodia, SLP (Crl.) 351/2021*, where order summoning and proceedings were stayed and a part of judgment in the case of *Vijender Gupta v. State of NCT of Delhi & Anr., Crl.M.C. 2964/2021* by High Court of Delhi (without disclosing any case citation or providing copy of order) was extracted;
- xxiii. Reference was made to the observations made by High Court of Delhi in the case of *Ramvir Singh Bidhuri v. Delhi Jal Board & Ors., Crl. M.C. 3185/2021 (Order dated 08.12.2021* (without disclosing any case citation or providing copy of order);
- xxiv. Notwithstanding lack of jurisdiction, private complaint was entertained under Section 200 Cr.P.C., which was totally barred;
- xxv. * * *
- xxvi. Reproduction of article published by "The Wire" will not amount to defamation;
- xxvii. Statement of the petitioner has been backed by RTI replies by NHM;
- xxviii. Learned Judge failed to take into account that the statement of witnesses failed to make out the ingredient of defamation or lowering of petitioner (*sic.*) in the estimation of people and in this regard, a part

of the case of *Pataka Industries (Pvt.) Ltd. v. State of W.B.* in CRR No. 3277/2008 vide judgment dated 07.10.2013 (without disclosing any case citation or providing copy of order) was extracted;

xxix. The impugned order has failed to take note of the background in which the complaint has been made out against the petitioner;

xxx. Impugned order failed to appreciate that the alleged statements were true and were required to be published for public good;

xxxi. Impugned order failed to appreciate that the statements were bona fide expression of opinion as the conduct of the respondent no. 2 touching upon the questions of public importance, and thus not defamatory;

xxxii. The Court has inherent and Constitutional jurisdiction to entertain the present petition to preserve, protect, secure the life, liberty, dignity and reputation of the innocent petitioner;

xxxiii. Complaint is a example of misuse of law which has to be discouraged and the law which is there to *prevent the reputation and life (sic.)* of the person will become the tool to take vengeance;

xxxiv. Petitioner seeks permission of this Court to urge further grounds in support of the present petition.

11. At the outset, the Court is of the opinion that notwithstanding that as many as 34 (thirty four) grounds has been set forth in this criminal petition, if the learned counsel for the petitioner does not press any of those and if proper case citations are not provided to the Court, the Court is not obliged to consider or appreciate those non-pressed grounds and/or to consider the case citations, the copy whereof has not been provided. Thus, save and except ground nos. (iii), (iv), (v), (viii) and (xxv), which has been pressed by the learned counsel for the petitioner, as no submissions has been made in respect of ground nos. (i), (ii), (vi), (vii), (ix) to (xxiv) and (xxvi) to (xxxiv), those are

not discussed as they were not pressed.

Discussions and reasons:

12. Perused the criminal petition, the affidavit filed by the petitioner on 20.10.2022 and affidavit filed by the respondent no. 2 on 04.11.2022 to bring some documents on record.

13. Before examining the merit of the respective contentions, it would be appropriate to examine the provision of Section 499 of the I.P.C., which is extracted below:-

*499. **Defamation.**- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

Explanation 1- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says-"Z is an honest man; he never stole B's watch" ; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's Watch. This is defamation unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

First Exception.- Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.- Public conduct of Public servants.- It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.- Conduct of any person touching any public question.- It is not defamation to express in good faith any opinion whatever respecting to conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.- Publication of reports of proceedings of Courts.- It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation- A justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.- Merits of case decided in Court or conduct of witnesses and others concerned.- It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says-"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he express respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says-"I do not believe what Z asserted at that trial because I know him to be a man without veracity" ; A is not within this exception, inasmuch as the opinion which he express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.- Merits of public performance.- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation- A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing in the judgment of the public.

(d) A says of a book published by Z-"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he express of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says-"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.- Censure passed in good faith by person having lawful authority over another.- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A judge censuring in good faith the conduct of a witness, or of an officer to the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within the exception.

*Eight Exception.- **Accusation preferred in good faith to authorized person.**- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

Illustration

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master ; if a in good faith complains of the conduct of Z, and child, to Z's father-A is within this exception.

*Ninth Exception.- **Imputation made in good faith by person for protection of his or other's interests.**- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

Illustrations

(a) A, a shopkeeper, says to B, who manages his business- "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

*Tenth Exception.- **Caution intended for good of person to whom conveyed or for public good.**- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*

14. It would now be relevant to extract the English translated version of the allegedly "defamatory" statement of the petitioner, as given in the press conference held by him. The said English version is a part of the complaint case filed by the respondent no. 2, and it is not the case of the petitioner that the translation from Hindi was inaccurate. The same is as under:-

MANUSCRIPT OF THE PRESS CONFERENCE ADDRESSED BY SH. MANISH SISODIA IN NEW DELHI ON 04.6.2022

Manish Sisodia-

"Bhartiya Janata Party people every other day file fake cases against Aam Aadmi Party and when those cases reach the court and justice is done in the court, then every allegation of Bhartiya Janata Party has always been proved to be false because these people file false allegations against the leaders of Aam Aadmi Party. Nowadays they have put Satyendra Jain ji in jail by the ED of Bharatiya Janata Party, while yesterday itself it was told in the High Court through the Central Government that Sir, we have not yet impleaded Satyendra Jain as accused, yet they have put him in jail, alleging false allegations. Today or tomorrow the truth of Satyendra Jain ji will also come forth and he will be released, he will be proved innocent because he has not done any wrong. He has not indulged in any corrupt practices or corruption. But today I am disclosing the facts of corruption of a very big leader of Bhartiya Janata Party in front of you. This big leader of Bhartiya Janata Party is also the Chief Minister of a state and from his deed, I would like to advise the leaders of the Bhartiya Janata Party that it is called corruption; see

The acts and deeds of your leaders and understand what corruption is. Building Mohalla Clinic and School is not corruption, corruption is what a big leader of your party and Chief Minister has done. This big leader of Bhartiya Janata Party has granted government purchase contracts to his wife's company and to the companies of his son's partner. I am repeating again, that these big leaders of Bhartiya Janata Party. I will tell you the whole thing now, but people of Bhartiya Janata Party who say that corruption, I will tell how corruption happens and how your party is doing. The big leaders of your party and the Chief Minister of the Bhartiya Janata Party has granted government purchase contracts to his wife's companies, to his son's companies, to his son's partners, have given government purchase contracts to their companies, this is corruption. When an elected Chief

Minister or minister award government purchase contracts to his wife's companies or his son's partner's companies, then this is corruption in the law of this country. Bhartiya Janata Party should tell whether it is corruption in its eyes or not, whether action will be taken on it or not? Will you put your Chief Minister in jail or not? While raising this question, I will tell you the whole story. This story is exposed by "The Wire" and a web portal of Assam "The Cross Current". They have released a report and the documents they have annexed to this report give a solid proof that how Assam Chief Minister Himanta Bishwa Sarma ji, who was then the Health Minister there in 2020, under the guise of Covid, openly indulged in corruption. All these documents that "The Wire" and "The Cross Current" have released on their website, is a solid evidence of this fact. The incident is of 2020, when Covid was spreading in the whole country, there was panic in the whole country, at that time the present Chief Minister of Assam who was the Health Minister at that time, issued contracts to buy PPE for his Health department. There was an emergency, so obviously all the governments would be doing it. However, during the emergency, contracts are issued without tender. The government has the power. We do not believe that anything wrong must have been done in emergency. Even without tenders, procurement is carried out without contracts. But to whom these contracts were awarded under the guise of Corona, who were given contracts to buy PPE kits during emergency and at which rate these were awarded? All this are corrupt practices. There lies real story of corruption. Your Chief Minister who was the Health Minister at that time and big leader of Bhartiya Janta Party Himanta Bishwa Sarmaji awarded these contracts to the company of his wife and to the company of his son's partners and to the company of business partners of his wife. They were awarded contracts to procure PPE Kits. The wife of this big leader Himanta Bishwa Sarmaji runs one company - JCB Industries. This JCB Industries was given the contract to procure PPE Kits and that too, without tender. It's ok if given, but awarded to the company run by his wife.....illegible...and the company of his wife have nothing to do with medical supply, or medical equipment manufacturing. But the contract to supply PPE kits to his wife's company under the guise urgency was given by the government of Bhartiya Janata Party and now present Chief Minister Himanta Bishwa Sarma had awarded that contract at that time and the most interesting thing in all this is that at that time the government was purchasing PPE Kit from other companies at the rate of Rs.600/- but the PPE Kits purchased from the company of his wife were procured at the rate of Rs.990/- as it was his wife's company. That PPE kit was purchased by the present Chief Minister and the then Health Minister from the company of his wife on awarding contract to that company at the rate of Rs.990/-. This is the copy of that contract on the website. Hard copy will be provided. And now did not stopped even after awarding contract to his own wife, to his wife's company to purchase PPE kit at

haphazard rate. The son of Bhartiya Janta Party's Health Minister is also a partner in one of its

Company and that company was also awarded contracts directly in which his son is the business partner. Those companies are GET Pharmaceuticals and Mediclaim Healthcare. These companies were awarded contract to procure PPE at the rate of Rs.990/-per kit, whereas, the same PPE kit was purchased by the government from other companies at the rate of Rs.600/-, but to his son's partner companies, contract was awarded @Rs.990/-, to wife's companies @ Rs.990/- and to partners of his son @ Rs.990/- instead of Rs.600/. without tender. I am not making any remark on that, emergency was there, people take decisions. But awarding of such big contracts by the Minister, as per laws of the India, to his own family, own children, own brother-sister, own relatives is an offence. The interesting thing in this is that the present Chief Minister and then Health Minister's son's partner company did not supplied the items, wife's company also did not supplied, that contract was cancelled, supplied somewhat and then son's partner company also did not completed the supply, but even after that he was awarded another contract to supply PPE kit, not @ Rs.990/- but this time @ Rs.1680/-, that kit which was available @Rs.500/-and supplied in Assam, but son's partner company was awarded the contract to supply PPE Kit @Rs.1680/ and that too be supplied in Delhi at Assam Bhawan, from there we will transport on government expenses. When the PPE Kit is available @ Rs.600/-, then the purchase of PPE kit from the son's partner's company, getting it supplied in Delhi, is that not a corruption or corrupt practice. Bhartiya Janta Party people ponder over that and give a statement. Talk of corruption so much and alleges fake statements against us. I will see today that whether Bhartiya Janta Party has any knowledge of corruption or not. They simply put the opposition parties in jail by accusing them of corruption and after that they will be set free by court when it is not proved in the court that they have not committed any crime, this they have been playing for a long time. But today we are giving evidence that the Chief Minister of your party, the then Health Minister, has given contracts to the companies related to his son at a random rate. Another company comes into the picture after this - Agile Associates, the record of this company shows that this company is the company of the business partners of Health Minister and wife of Bhartiya Janata Party leader Himanta Bishwa Sarmaji wife's company and this company was 22001 awarded another contract @Rs.220/- per kit whereas the prevalent rate was Rs.600/-. Thus, the same kit was procured at the rate of Rs.900/, Rs.1600/- and now Rs.2200/- since it is his wife's company, company of wife's business partners, Company of son's business partners, and that too, without tender, Covid is only an excuse, Emergency is an excuse. All the facts and all the documents of this entire story

have been published by "The Wire" on its website. I would like to congratulate the team of "The Wire" and The "Cross Current" that they have explained to the Bhartiya Janata Party what corruption is, by giving the example of a very big leader and Chief Minister of their own. Today I want to ask this question to BJP workers and supporters of BJP that it has been two days since this story was published. Why is the Bhartiya Janata Party silent on this open corruption of its Chief Minister. Why is no one answering? Why is no one talking? Today he should tell that awarding of government purchase contract to his wife's company and giving that too at a haphazard/random rate is corruption in the laws, or not, then why is he not arrested?"

15. Accordingly, on the perusal of the alleged defamatory statements and submissions made by the learned counsel for the petitioner, learned P.P. and learned senior counsel for the respondent no.2, the following points of determination arise for decision in this case, they are:-

- a. Whether to prosecute the petitioner a previous sanction is required as envisaged under Section 197 Cr.P.C.?
- b. Whether despite the fact that on the date when the complaint petition was filed, the respondent no. 2 was the Chief Minister of the State of Assam, his complaint as a private person could have been entertained in view of the express bar under Section 199(2) Cr.P.C.?
- c. Whether in this case, there was a reproduction of the materials already available in the internet as those were already published earlier in point of time by the web/news-portal of "The Wire" and "The Cross Current"?
- d. Whether any case has been made out for quashing of the complaint petition and order dated 20.08.2020, passed by the learned trial Court [i.e. Court of Chief Judicial Magistrate, Kamrup (M), Guwahati]?

Point of determination no. (a):

16. In this case, the petitioner has not made any attempt to show from the law in force that it is the official duty of the Deputy Chief Minister of the NCT of Delhi to call a Press Conference under the aegis and/or banner of Aam Aadmi Party and make statement about alleged corrupt practice committed by the Chief Minister of the State of Assam, while he was holding office of the Minister for Health. In other words, the petitioner has not been able to show that by holding press conference on 04.06.2020, he was performing a Government act/ task or that he was performing a function of a public servant. Thus, none of the cases cited by the learned counsel for the petitioner helps the petitioner in this regard.

17. In this regard, the provision of Section 197 Cr.P.C. is quoted below:-

197. Prosecution of Judges and public servants.- (1) *When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty no court shall take cognizance of such offence except with the previous sanction-*

- (a) *In the case of it person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
- (b) *In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:*

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for

the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or Section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union whole acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, whenever they may be serving, and thereupon the provisions of that sub-section will apply as if lot the expression "Central Government" occurring therein, the expression "State Government were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued trader clause (I) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is here by declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the court before which the trial is to be held.

STATE AMENDMENTS

Assam:

In Section 197, for sub-section (3) of section 197, the following subsection shall be submitted, namely.

“(3) The State Government may, by notification, direct that the provisions of subsection (2) shall apply-

- (a) To such class or category of the members of' the Forces charged with the maintenance of' public order, or*
- (b) To such class or category of other public servants [not being persons to whom the provisions of sub-section (1) or subsection (2) apply] charged with the maintenance of public order.*

as may be specified in the notification wherever they may be serving, and thereupon the provisions of sub-section (2) shall apply as if' for the expression Central Government occurring therein, the expression State Government were substituted.”

18. The petitioner is not a Government servant in the State of Assam either for the Government of Assam or Central Government servant in the State of Assam. No material has been shown that a Government servant of another State has a public duty to hold a press conference in political party office to comment on actions of the Chief Minister of another State, i.e. State of Assam in this case. At least, nothing contained in Section 197 Cr.P.C. or the Assam amendment to the said provisions discloses so.

19. Thus, as the petitioner has not been able to demonstrate that as a Deputy Chief Minister for the State of NCT of Delhi, he was performing any public duty or was carrying out his prescribed duty as a Government servant to hold a press conference under the banner of Aam Aadmi Party and make statement allegedly or purportedly exposing commission of alleged corrupt practice of the petitioner, the Court is of the considered opinion that there was

no requirement of obtaining any prior sanction under Section 197 Cr.P.C. to prosecute the petitioner by way of a complaint petition for committing alleged defamation. The point of determination no. (a) is answered in the negative and against the petitioner.

Point of determination no. (b):

20. There is no dispute that on 30.06.2022, the date when the complaint petition, registered as CR Case No. 81/2022 was filed, the respondent no. 2 was the Chief Minister of the State of Assam. It is also not in dispute that offence of defamation is covered by Chapter XXI of the I.P.C. The provision of Section 199 Cr.P.C. is quoted below:-

*199. **Prosecution for defamation.**- (1) No court shall take cognizance of all offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by, the offence:*

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

- (4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction.*
- (a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;*
- (b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;*
- (c) of the Central Government, in any other case.*
- (5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*
- (6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.*

21. Thus, from a perusal of the provision of Sub-Section (2) of Section 199 Cr.P.C., it is apparent that the said provision is in addition to and not in derogation of the provisions contained in Chapter XV of the Cr.P.C., relating to complaints to Magistrates. Therefore, there appears to be no prohibition for an aggrieved to file a private complaint, notwithstanding that when a Public Prosecutor submits a complaint in writing, the Sessions Court is empowered to take cognizance of the alleged offence even without any committal proceeding.

22. Therefore, the point of determination no. (b) is answered by holding that despite the fact that on the date when the complaint petition was filed, the respondent no. 2 was the Chief Minister of the State of Assam, but his complaint as a private person was rightly entertained as the provision of Section 199(2) Cr.P.C. is not in derogation of any other provisions contained in the Code of Criminal Procedure.

Point of determination no. (c):

23. On facts presented in this criminal petition in form of complaint petition filed by the respondent no. 2, it appears that a specific statement has been made by the respondent no.2, to the effect that after allegations were made against his wife in "The Wire" and "The Cross Current", his wife and he had clarified their position by their tweet through internet twitter handle, referred herein before. In light of the same, there is no material on record to show that the supply order to the Company of the wife of the respondent no.2 was operating after 21.03.2020, or the NHM made any purchase from the said Company on the strength of two purchase orders dated 18.03.2020, or that 1485 PPE kits was not supplied free of cost to the NHM, Assam by the Company of the wife of the respondent no.2 under Corporate Social Responsibility Fund.

24. The learned counsel for the petitioner has failed to demonstrate that as per any law in force that even if no bill has been raised on the State Government and correspondingly, no payment has been made by the State or its instrumentalities like the NHM, Assam for receiving 1485 PPE kits from the Company of the wife of the respondent no.2, *prima facie* it has to be accepted that the respondent no. 2 had indulged in corruption while he was the then Minister of Government of Assam in the Health Department.

25. It is not the pleaded case of the petitioner in this criminal petition that the availing of inflated CSR benefit by the Company of the wife of respondent no.2, amounts to commission of corrupt practice by the respondent no. 2 and therefore, it appears that the learned counsel for the petitioner has made this argument without there being any statement to that effect in this

criminal petition. Nonetheless, the learned counsel for the petitioner has not been able to legally demonstrate that if the Company of the wife of respondent no. 2 has availed CSR benefit as prescribed in the Companies Act, 2013, it would amount to corruption by the respondent no. 2. In the opinion of the Court, if undeserving CSR benefit has been availed by any Company, it is for the concerned authorities to add-back the amount and enforce the requirement of law on utilization of CSR fund.

26. Moreover, if the stand of the learned counsel for the petitioner is that CSR benefit was availed by the Company of the wife of respondent no.2, it dislodges and/or runs counter to the entire allegations made by the petitioner in his press conference. Therefore, by presuming that the learned counsel for the petitioner was addressing the Court on “corporate social responsibility”, i.e. CSR only on specific instructions by the petitioner in this regard, the statement made by the petitioner in the press conference, appears to have become redundant and irrelevant and therefore, such allegations cannot be saved by plea that the petitioner was exposing corruption committed by the respondent no. 2. The allegations of the respondent no. 2 indulging in corruption is diametrically opposite to the stand taken in course of argument by the learned counsel for the petitioner that inflated CSR benefit was availed by the Company of the wife of the respondent no.2 and appears to be mutually destructive to each other as by arguing on CSR fund, the learned counsel for the petitioner has admitted that the PPE kits was supplied by the Company of the wife of the respondent no. 2 for free under CSR fund of her Company.

27. From the contents of the herein before extracted English version

of the statement made by the petitioner in his press conference, the petitioner has miserably failed to demonstrate that apart from mere reproduction of the materials already available in the internet as those were already published earlier in point of time by the web/news-portal of "The Wire" and "The Cross Current", the petitioner did not say or utter any other words of his own in the press conference held by him. Thus, *prima facie*, the Court does not find any merit in the projection made by the petitioner that he was reiterating what was available in the internet.

28. In this regard, it may be stated that the petitioner, by filing an affidavit on 21.10.2022, had produced the copy of "The Wire" and "The Cross Current". The learned counsel for the petitioner has not been able to show that the contents of the statement made by the petitioner in his press conference was not more than the contents of "The Wire" and "The Cross Current", or that no "sugar and spice" was added by the petitioner, or that there was no attempt to sensationalize the contents of "The Wire" and "The Cross Current".

29. It must be remembered that the petitioner had made his press conference on 04.06.2022. However, according to the respondent no. 2, on 01.06.2022, his wife and he had given their respective clarification regarding the free supply of 1485 PPE kits (stated as "about 1500 PPE kits") under the CSR activity of the Company of wife of the respondent no.2. Therefore, *prima facie*, the petitioner has not been able to demonstrate that he was not aware of the tweets made by the respondent no. 2 or his wife, or that before making statement in the press conference, he had made enquiry as any reasonable man would do to ascertain the correctness about what he was going to state in his

press conference, held after tweets of the respondent no.2 and his wife was made in social media domain of internet. Therefore, notwithstanding that the petitioner has not been able to demonstrate that the contents of his press conference was a replica of the contents of "The Wire" and "The Cross Current", but it is apparent that the petitioner did not take care to cross-check facts before making remarks against the respondent no. 2 and his wife.

30. The point of determination no. (c) is answered accordingly, against the petitioner.

Point of determination no. (d):

31. Thus, in light of the discussions above, specifically in the context of point of determination nos. (a) to (c) above, the Court is of the considered opinion that no case has been made out by the petitioner for quashing of the complaint petition and order dated 20.08.2020, passed by the learned trial Court.

Cases cited by the learned counsel for the petitioner:

32. On the basis of the materials available on record, the ratio of the cases cited by the learned counsel for the petitioner does not even remotely come to the assistance of the petitioner in any manner whatsoever.

33. The case of *Aroon Purie (supra)*, decided by Supreme Court of India was cited to impress upon the Court that issues touching upon misappropriation of government funds does not amount to defamation. It appears that the context in which the said judgment was rendered has not been

appreciated by the learned counsel for the petitioner. In the said case, the article in question was held to be a true reporting of the proceeding held in the Legislative Assembly of the State, which is not the facts in this case in hand. If that interpretation is extended to reproduction of rumours spread internet, then one may have a 'ghost' spread malicious contents in the internet and then hordes of men may further spread the rumours by taking a defence that some material was available in the internet. Therefore, if a news, for which clarification was given on 01.06.2022 by the respondent no. 2 and his wife, it is not open to the petitioner to refer to a news circulating prior to clarification being given and to take a defence that he did not defame the respondent no. 2. Thus, the said case does not help the petitioner. For the reasons given above, the case of *Jawaharlal Darda (supra)* also does not help the petitioner as in the said case, proceeding of Legislative Assembly was accurately reported.

34. The case of *Manoj Kumar Tiwari (supra)*, was referred to show that if questions are asked by a person, it is not defamation. In this present case in hand, the petitioner has not been able to demonstrate that he was merely asking questions, but it is apparent that his statement, if read as a whole, speaks of something else. Thus, the said case does not help the petitioner.

35. The case of *Rajendra Kumar Sitaram Pande (supra)* does not help the petitioner because the report of the Treasury Officer, indicating that departmental enquiry has been initiated against the petitioner fell within the *Exception 8* to Section 499 IPC, which is not the fact in the present case in hand. The petitioner has not been able to remotely show that he was an

authority who was competent to give report on the respondent no. 2 or that he was doing an official act and moreover, in light of the non-consideration of the clarification issued by the respondent no.2 and his wife, the said case does not come to the rescue of the petitioner in any way.

36. It cannot be said that there are no materials to proceed with the trial of the C.R. Case No. 81/2022 and therefore, the case of *Aroon Purie (supra)*, decided by Karnataka High Court also does not help the petitioner because this is not a case where the entire contents of the press conference has not been read as a whole and it cannot be said that summons has been issued to the petitioner without cogent materials on record *prima facie* suggesting that the petitioner had defamed the respondent no. 2.

37. After clarification was issued by the respondent no. 2 and his wife on 01.06.2022, and when the petitioner has not referred to the same, it cannot be said that the petitioner has given statement in press conference in good faith. Therefore, the case of *The Editor, Deccan Herald (supra)*, does not appear to help the petitioner in any manner.

38. It has already been mentioned herein before that some cases were cited in the "grounds" in support of this criminal petition, but the same were not pressed. Therefore, no purpose would be served in burdening this order with the discussions on the cases cited by the learned counsel for the petitioner and the learned senior counsel for the respondent no. 2. It would suffice to mention that this is not a case where it has been demonstrated that the press conference contained reproduction of contents of "The Wire" and "The

Cross Current” and nothing more.

39. The alleged statements made in the press conference are not merely questions, as were asked in the case of *Manoj Kumar Tiwari (supra)*. Moreover, the cases cited by the learned counsel for the petitioner do not lay down the law that reckless reproduction of defamatory article without verifying its correctness would not amount to defamation. In this case, the complaint petition does contains a specific statement that the wife of the respondent no.2 and he had issued clarification vide their respective twitter handle. Thus, the press conference was held on 04.06.2022 after such clarifications were issued on 01.06.2022. Moreover, merely because a defamatory news article is uploaded in the internet, but when the NHM, by its letter dated 26.03.2020, had clarified that no payment was made to the Company of the wife of the respondent no.2 and that the PPE kits were received free of cost, the contents of the statements made by the petitioner in his press conference cannot negate the projection made by the respondent no. 2 in his complaint that he had been defamed.

Cases cited by the learned senior counsel for the respondent no.2:

40. As the cases cited by the learned counsel for the petitioner is not found to help the petitioner, the Court has refrained from discussing the cases cited by the learned senior counsel for the respondent no. 2, to avoid burdening this order any further.

Order:

41. In light of the discussions above, the Court is of the considered

opinion that the petitioner has not been able to make out any case for quashing of the proceedings of C.R. Case No. 81/2022 under sections 499/500 IPC, which is pending for disposal before the Court of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati. Thus, this petition fails and the same is dismissed.

42. The respondent no. 2 is permitted to produce a certified copy of this order before the Court of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati to make it a part of the record of C.R. Case No. 81/2022.

43. Before parting with the records it is clarified that the discussions and/or observations made in this order is made for deciding this criminal petition for quashing the complaint petition and therefore, none of the parties would be prejudiced during the trial of C.R. Case No. 81/2022 under Sections 499/500 IPC, which shall be decided on its own merit.

JUDGE

Comparing Assistant