

Cr. Rev. No. 40/2023

Filing No. 573/2023

CNR No. DLCT11-000575-2023

Ashok Gehlot Vs. Gajendra Singh Shekhawat

01.08.2023

Present: Sh. Dayan Krishnan, Sh. Mohit Mathur and Sh. G. S. Bapna, Ld. Senior Advocates assisted by Sh. Mudit Jain, Sh. Kunal Dewan, Ms. Aarohi Mikkilineni, Sh. Rishi Gupta, Ms. Sanjeevi Sheshadri, Sh. Mayank Sharma and Sh. Rudraksh Nakra, Advocates for the revisionist/petitioner.

Sh. Vikas Pahwa, Ld. Senior Advocate representing the respondent assisted by Sh. Abhishek Pati, Ms. Sanskriti S. Gupta and Sh. Shishant, Advocates and Sh. Aditya Vikram Singh, Advocate (through VC).

In terms of letter/circular No. 1/RG/DHC/2023 dated 05.06.2023 issued by the Hon'ble High Court, Sh. Aditya Vikram Singh, Advocate assisting Ld. Senior Advocate representing the respondent has been permitted to join the proceedings through VC on oral request.

This is a fresh criminal revision petition filed U/S 397 r/w 399 Cr.P.C. received on assignment from the Bail & Filing Section, RADDC, New Delhi for today. Let it be checked and registered as per rules.

Though, notice of the petition has yet not been directed to be issued to the respondent, but appearance on his behalf has been filed and even one formal memo of appearance

on behalf of respondent has been placed on record. As requested, let vakalatnama for respondent be filed on or before the next date.

The revision petition is also accompanied with two miscellaneous applications i.e. one seeking exemption from filing of certified/typed/fair copies, along with proper margins of annexures, and the other seeking ex-parte ad-interim stay of proceedings before the Ld. Trial Court.

Copies of the revision petition and both the above applications have been supplied to Ld. Senior Advocate appearing for the respondent and as far as request for exemption from filing of certified/typed/fair copies, along with proper margins of annexures etc., is concerned, the said request is allowed and the same are directed to be filed by next date.

This petition is found to have been presented against the orders dated 04.03.2023, 24.03.2023 and 06.07.2023 passed by the Ld. ACMM-04, RADC, ND in Ct. Case No. 3/2023 titled as 'Gajendra Singh Shekhawat Vs. Ashok Gehlot'. Vide order dated 04.03.2023, the Ld. ACMM had fixed the above said complaint filed by respondent against the petitioner herein, U/S 200 r/w 190 Cr.P.C. for commission of the offence of defamation defined by Section 499 and made punishable by Section 500 IPC, for pre-summoning evidence and after recording of pre-summoning evidence, vide impugned order dated 24.03.2023, Ld. ACMM had directed conduction of some

inquiry as per provisions contained U/S 202 Cr.P.C. on certain aspects mentioned in the said order. Finally, vide order dated 06.07.2023 impugned in this petition and on the basis of pre-summoning evidence recorded before him and the report of said inquiry submitted by the Delhi Police, he was of the view that evidence placed on record prima-facie revealed that the accused (petitioner herein) had made specific defamatory statements against the complainant (respondent herein) and hence, he had directed summoning of the accused for the offence punishable U/S 500 IPC.

Extensive arguments as advanced by Sh. Dayan Krishnan, Sh. Mohit Mathur and Sh. G. S. Bapna, Ld. Senior Advocates representing the petitioner and Sh. Vikas Pahwa, Ld. Senior Advocate representing the respondent have heard in petition as well as on the request being made on behalf of petitioner for staying the proceedings of above case pending before the Ld. Trial Court.

Ld. Senior Advocates representing the petitioner have vehemently argued that the impugned orders passed by the Ld. ACMM are incorrect, illegal and improper in light of the given facts and circumstances of the said case and hence, the same are not sustainable. It has specifically been argued that cognizance of the alleged offence was never taken by the Ld. ACMM and therefore, summoning of the petitioner herein as an accused could never have been directed. It is also argued that the

reports submitted by the Delhi Police in above inquiry U/S 202 Cr.P.C. were not factually correct and hence, the impugned order of summoning dated 06.07.2023 of Ld. ACMM based on the said reports is also incorrect and illegal. It has further been submitted that had the correct facts been brought to the notice of Ld. ACMM, there was no reason or occasion for directing the summoning of petitioner as an accused as whatever statements or speeches were made by him against the respondent and his family members through the electronic or print media, the same were based on records of a criminal case under investigation and hence, the same were not defamatory.

Further, it has also been argued by them that sanction U/S 197 Cr.P.C. for prosecution of the petitioner as an accused in the above said case was mandatorily required before cognizance of the above offence could have been taken or he could have been summoned by the Ld. ACMM in the said case, which was never taken and hence, the above case or prosecution cannot proceed further and this revision petition is liable to be accepted as the order dated 06.07.2023 summoning him as an accused becomes untenable. It has further been submitted by them that even the above inquiry directed by the Ld. ACMM U/S 202 Cr.P.C. was not proper and could not have been legally directed.

Per contra, Ld. Senior Advocate representing the respondent herein has justified passing of the impugned orders

with submissions that there is no illegality or impropriety etc. in the said orders as the same are not only correct factually, but also legally and were passed by the Ld. ACMM as per the mandate conferred by provisions of Sections 200, 202 & 204 Cr.P.C. It has also been specifically argued by him that the facts placed and evidence brought before the Ld. ACMM during the course of pre-summoning evidence and above inquiry clearly demonstrate that statements made by the petitioner against the respondent herein through different modes were defamatory in nature and the same were made only for political purposes and to defame and tarnish the image of respondent.

The petitioner herein is presently serving as Chief Minister of the State of Rajasthan and he is also stated to be holding the charge of Home Ministry and the respondent herein is stated to be a Cabinet Minister of the Central Government and a member of Lok Sabha from Jodhpur, Rajasthan and thus, both the parties to this petitions are holding high positions and respect in public.

The crux of allegations made in the above complaint case is that the petitioner herein had made some statements and speeches published in print as well as electronic media against the respondent, which are claimed by the respondent to be defamatory and damaging his reputation and to have been made maliciously and for political reasons. The above statements broadly pertain to involvement and status of respondent herein

and his family members as accused in one Sanjeevani Scam, which is stated to be the subject matter of FIR No. 32/2019, PS SOG, Jaipur. The above scam pertains to allegations made against the Directors/employees of Sanjeevani Cooperative Society in usurping huge sum of money amounting to around Rs. 900 crores of investors/general public. While directing summoning of the petitioner herein as an accused in the above complaint case vide the impugned order dated 06.07.2023, summons to him have been directed to be issued for 07.08.2023 at 11 am vide a separate zimni order of even date.

It has been submitted by Ld. Senior Advocates representing the petitioner that in view of submissions made above, the petitioner is likely to succeed in the present revision petition and since he is serving as Chief Minister of the State of Rajasthan and has multifarious official duties to perform, it will not be in public interest to require his presence before this court, when he is residing beyond the territorial jurisdiction of this court. It has also been submitted that the petitioner shall suffer irreparable loss and injury if the above interim relief of stay of proceedings is not granted to him and further that his appearance before the Ld. ACMM will also cause irreparable injury and incalculable harm to his reputation and goodwill. It is also submitted that the balance of convenience also lies in his favour. Judgment in the case of **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda, (2015) 12 SCC 420** has also been relied

upon in support of the above submissions.

However, in considered opinion of this court, the above legal and factual issues being raised from both sides can only be considered and appreciated by this court after the respondent comes up with his formal reply and detailed arguments on facts as well as on law take place before the court. Though, physical and personal appearance of the petitioner as an accused before the Ld. ACMM in the above said case on 07.08.2023 may not be practically convenient and necessary, but this court sees no reason or ground for staying the proceedings of above complaint case or as to why appearance cannot be filed by petitioner in the said court through Video Conferencing (VC) mode, when VC or hybrid hearings in Delhi Courts have been permitted by the Hon'ble High Court even recently vide the above said letter/circular dated 05.06.2023.

Hence, this revision petition is being directed to be listed on **19.08.2023 at 10.30 am** for reply and arguments and in the meanwhile, it being directed that on the above said date of hearing fixed before the Ld. ACMM, i.e. 07.08.2023, Ld. ACMM shall not insist upon personal physical presence of the accused/petitioner herein and the petitioner shall be permitted to join the proceedings through VC and even the Ld. Counsels representing him shall be at liberty to join the proceedings either physically or through VC, in terms of the above guidelines/directions issued by the Hon'ble High Court. It is

further being directed that the Ld. ACMM shall also not insist upon furnishing of a personal as well as surety bond on behalf of the accused/petitioner on the said date.

As prayed, an e-copy of this order be given to the parties dasti through Whatsapp/e-mail and a copy of this order be also sent to the Ld. Trial Court for information, records and compliance.

(M.K. Nagpal)
ASJ/Special Judge (PC Act) (CBI)-09,
(MPs/MLAs Cases), RADC,
New Delhi/01.08.2023