

**IN THE COURT OF SH. M. K. NAGPAL,
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE
(PC ACT), CBI-09 (MPs/MLAs CASES), ROUSE
AVENUE DISTRICT COURT, NEW DELHI**

**Cr. Rev. No. 40/2023
Filing No. 573/2023
CNR No. DLCT11-000575-2023**

Shri Ashok Gehlot

... Petitioner/Revisionist/Accused

Versus

Shri Gajendra Singh Shekhawat

... Respondent/complainant

**Date of Institution : 01.08.2023
Date of conclusion of arguments : 07.12.2023
Date of decision : 13.12.2023**

**ORDER
13.12.2023**

1. This revision petition has been filed by petitioner U/S 397 r/w 399 Cr.P.C. against the impugned orders dated 04.03.2023, 24.03.2023 and 06.07.2023 passed by the Ld. ACMM-04, Rouse Avenue District Court, New Delhi in

criminal complaint bearing Ct. Case No. 03/2023, which was filed U/S 200 r/w 190 Cr.P.C. by respondent herein against the petitioner for commission of the alleged offence of defamation punishable U/S 500 IPC.

2. The above criminal complaint was filed on 03.03.2023 and was assigned to the court of Ld. ACMM-04 and vide impugned order dated 04.03.2023, the Ld. ACMM-04 had fixed it for recording of pre-summoning evidence of the complainant/respondent. After the complainant had led his pre-summoning evidence in the case, the Ld. ACMM-04 vide his impugned order dated 24.03.2023 had directed for an investigation to be conducted by Delhi Police as per provisions contained U/S 202 Cr.P.C. as the accused/petitioner was residing outside local jurisdiction of his court. Thereafter, vide impugned order dated 06.07.2023, Ld. ACMM-04 on considering the pre-summoning evidence led by complainant and the report submitted by Delhi Police after the above investigation had directed summoning of the petitioner herein as an accused for commission of the offence punishable U/S 500 IPC as he was of the view that from testimonies of the complainant's witnesses and the other evidence placed before him, a *prima facie* case for commission of the above said offence by petitioner herein was made out.

3. It is necessary to mention here that the petitioner was Chief Minister of the State of Rajasthan at the relevant time and he belongs to Indian National Congress (INC) party and the respondent is a Member of Lok Sabha from Jodhpur Constituency in Rajasthan and he belongs to Bhartiya Janta Party (BJP) and he is also a Cabinet Minister of the Union Council of Ministers. The respondent is stated to have been allotted an official accommodation at Akbar Road, New Delhi.

4. The defamatory allegations made by the petitioner against the respondent pertain to respondent's involvement, role or status etc. as an accused in a criminal case, which was registered in the State of Rajasthan vide FIR No. 32/2019, PS SOG (Special Operation Group), Jaipur on 23.08.2019 and it is stated to have been registered against some persons named as accused in the FIR and is in respect to a financial scam known as 'Sanjivani Credit Cooperative Society' scam. The above case/FIR is stated to have been registered for offences U/Ss 420/406/409/467/468/471/120B IPC and Section 65 of the IT Act and as per allegations made therein, the directors and other office bearers of the above said society had misappropriated or duped its investors of a huge amount of around Rs. 900 crores.

5. The above criminal complaint pending before Ld. ACMM-04 was filed by respondent against the petitioner

herein while alleging that though he was not named as an accused in FIR of the said case and though he was even not made accused in any of the chargesheets filed in said case till date, but still the petitioner had made some defamatory statements against him in public on 19.02.2023 and 21.02.2023 alleging him to be an accused in the said case and guilty for the said scam and even implicating and projecting his family members as accused in that case, though he or any of his family members had nothing to do with affairs of the above society or the said case. It was submitted by respondent in the above criminal complaint that neither he nor any other member of his family had been a promoter, director, employee, depositor or even borrower of the above society, but still the petitioner had made the above defamatory statements dated 19.02.2023 and 21.02.2023 to derive some political benefits out of the same and solely with an intent to defame him in public and the said statements were apparently false and misleading. It was also alleged that the above statements were made to mislead the people and to make them believe that the respondent and his family members had siphoned off public money in the above matter and since the petitioner herein was also holding the charge of Home Minister of the State of Rajasthan, besides being the Chief Minister, he had made these allegations even with an intent to influence the investigation being conducted by SOG in the above said matter. It was

further alleged by respondent in his above complaint that since he was a Member of Parliament (MP), a Cabinet Minister and also a respected politician having deep roots and respect in society, he was intentionally defamed by petitioner by making above false, frivolous and scandalous allegations and his goodwill and reputation has been harmed due to the said allegations.

6. The statement allegedly made by petitioner herein in the press conference dated 19.02.2023, which is also stated to have been uploaded on facebook account of the petitioner and on various other social platforms like YouTube and electronic media and even published by various newspapers, is being mentioned herein below:-

"Unka Khudkha naam aa raha hai in sab kaamo ke andar Main bola vaha assembly ke andar ki yeh khudh abhiyukt hai, mujhe bataya gaya ki kayi abhiyukt hai iske andar kayi log pakde bhi gaye hai or usma yeh bhi abhiyukt hai to maine kaha ki agar yeh abhiyukt hai to yeh bahot gambhir baat hai...."

7. The other statement made by the petitioner in the press conference on 21.02.2023, which was also uploaded on his twitter page, besides being published by the press and electronic media, is also being given herein below:-

"Manniniye kendriya mantri Shriman Gajendra Singh Shekhawat ko main kehna chahoonga ki aap jo mulzim bane hai baaki log jo jailo mein band hai, unhi dhaaron mein wohi aapke liye aarop hain aur aap usi dhang se mulzim hain, abhiyukt hain. Aap jo janta ko gumrah kar rahe hain

uski bajaye un gareebo ki taraf dekho jo paise loota gaya hai gareebo se lalbahg ek hazaar crore se jyada hoga. Nau so crore ke to figure hi aa rahein hain. Ek lakh se zyada log hain jo doob gaye bechare...

Hamari SOG, likh rahi baar baar hai ED ko ki aap is case ko lo. Kyoki ED ke haath mein adhikar hai property ko seize karne ka. Woh adhikar SOG ke pass nahi hai...

Aur ye kya keh raha hai kendriya mantri yeh. Arey yeh kehta hain main doshi nahin hoon. Aap madad kyo nahin karte logo ki...

Yeh, inke pita ji, inki mata ji, inki patni aur inke saale, paancho log iske andar hain. Mata ji to bhagwan ko pyari ho gayin. Theek hai. Ye tamam koi 30-40 mulzim hai iske andar...

Tamam jageh unka naam hai, paise ka lenden unke saath hua hai, paise ikhatta hua hai, who is tarah waapis circulate hue hai...

Inko kahon ki SOG jo jaanch hui hai usme javab deve...

[Reporter] - doosre mulzim jail jayenge?

[Accused] - jail gaye hain abhi 10-15 din pehle gaye hain 4, 5, 7 log...

Kyoki main Garh Mantri hoon, mujhe jo report di gayi woh public ko bata diya hoga maine. SOG ne mujhe kaha tha ki ye sab abhiyukt hain."

8. The above are alleged defamatory statements or imputations made by petitioner against the respondent herein on 19.02.2023 and 21.02.2023 respectively, as per contents of the above criminal complaint.

9. In impugned order dated 06.07.2023 of the Ld. ACMM-04, the statement dated 21.02.2023 made on twitter handle of the petitioner is also found mentioned, which is being reproduced herein below:-

"Kendriya Mantri Sh. Gajendra Singh Shekhawat Sanjeevani Co-operative Society Ltd. ghotale ke mamle me

janata ko bhramit karne ka prayas kar rahe hain jab ki Special Operation Group (SOG) ke anusandhan me anya giraftar kiye ja chuke abhiyukon ke samaan dharaon mein hi unke upar jurm paramanit ho chuka hai. Vo swayam is baat ko ache se jaante hain. Wo jaante hain ki 1 lakh se adhik peediton ki jindagibhar ki jamapunji ke kareeb 900 crore rupay se adhik ki rashi ko sanjeevani society ne loota hai."

10. Further, the above impugned order of Ld. ACMM-04 also contains a mention of the statement/quote reported by NDTV.com on the basis of above statement and tweet made by the petitioner and the same is also being reproduced herein below:-

"Gajendra Singh Shekhawat is trying to mislead the public in the case of the Sanjeevani Cooperative Society scam, whereas in the investigation of Special Operation Group (SOG) he has been named as accused while other accused have been arrested under the same sections. The crime has been proven against him."

11. Besides the above statements and publications, it was also alleged by the respondent in his above criminal complaint that even prior thereto, the petitioner had made some defamatory statements and allegations against him on 10.04.2022, 02.07.2022 and 07.12.2022 in respect to the above said matter.

12. The respondent in support of his allegations made in above criminal complaint had examined on record total four witnesses, including himself, and he stepped into the witness box as CW1 and deposed on oath regarding the alleged

defamatory statements and imputations made against him by the petitioner on different dates, as well as the harm or damage caused to his reputation as a result of the above false statements. He also tendered in evidence a copy of the above FIR No. 32/2019, PS SOG, Jaipur, Rajasthan as Ex.CW1/A1, transcript of press conference dated 19.02.2023 as Ex.CW1/A2, transcript of press conference dated 21.02.2023 as Ex.CW1/A3, newspaper cuttings of various articles pertaining to the above statements as Ex.CW1/A4 (Colly.-59 pages) and pen drive containing digital record of press conferences, newspaper reportings & social media posts, along with a certificate U/S 65B of the Indian Evidence Act (IEA) given by one Sh. Ashwani J.P. Singh as Ex.CW1/A5.

13. CW2 Sh. Sri Harsha Peechara, Advocate and CW3 Sh. Gajinder Singh Yadav are the two witnesses who claimed that they knew the respondent since long and they had read and seen the above media publications and reports. They also claimed that they were shocked by contents thereof and took them as true and they were, thus, witnesses of lowering of respect of the respondent in estimation or belief of others.

14. CW4 Sh. Ashwani J.P. Singh is the then Assistant Private Secretary of respondent and he deposed that on being told by respondent about the above defamatory statements and

posts, he prepared a compilation thereof from internet and handed over it to the respondent, along with a certificate U/S 65B of the IEA given by him regarding authenticity thereof. He stated that the above compilation was already Ex.CW1/A4 and the pen drive containing e-version thereof was Ex.CW1/A5 and he also re-exhibited the above certificate U/S 65B of the IEA given by him as Ex.CW4/A1.

15. All the above oral and documentary evidence led by respondent in support of allegations made in his above criminal complaint came to be considered and appreciated by Ld. ACMM-04 and since the petitioner was not residing within his jurisdiction, as per mandate contained U/S 202 Cr.P.C. it was observed by him vide his impugned order dated 24.03.2023 that the issue of process against the petitioner as an accused as per provisions contained U/S 204 Cr.P.C. was required to be postponed and an investigation by the police was necessary on certain given aspects, in view of propositions of law laid down by the Hon'ble Supreme Court in case of **Vijay Dhanuka Vs. Najima Mamtaj & Ors., (2014) 14 SCC 638**. Hence, vide his above order, the Ld. ACMM-04 had directed the Delhi Police to conduct investigation into the matter in an endeavor to answer the following questions:-

"i) Whether the complainant herein Sh. Gajendra Singh Shekhawat was addressed as 'an accused' in the Sanjeevani Scam by the accused herein Sh. Ashok Gehlot?

ii) Whether the accused herein Sh. Ashok Gehlot stated that the allegations against the complainant Sh. Gajendra Singh Shekhawat stand proved in the Sanjeevani Scam?

iii) Whether the complainant herein Sh. Gajendra Singh Shekhawat or his family members have been arrayed as 'an accused' in the investigation of the Sanjeevani Scam?

16. Further, it was also directed by Ld. ACMM-04 vide his above order that the above investigation directed U/S 202 Cr.P.C. shall be conducted either by the Joint Director of Delhi Police himself or it shall be got conducted through an officer not below the rank of Inspector and shall be monitored by the Joint Commissioner.

17. In compliance of directions contained in above said order dated 24.03.2023 of the Ld. ACMM-04, an investigation appears to have been conducted by an Assistant Commissioner of Delhi Police, Sub-Division-Barakhamba Road, New Delhi and initially an interim status report dated 25.04.2023 was filed before the Ld. ACMM-04 and then the final report dated 22.05.2023 came to be filed. Replies to the above questions framed by the Ld. ACMM-04 vide his order dated 24.03.2023, as given in the final status report submitted by Delhi Police, are also being reproduced herein below:-

" i) On perusal of the video of the speech uploaded on the official page of Facebook and Twitter of Sh. Ashok Gehlot, and the videos provided by the complainant, it has been established that Sh. Ashok Gehlot has been addressed the complainant as an accused in Sanjeevani Scam.....

ii) On perusal of the statement issued by accused Ashok Gehlot on his official Twitter Handle (showing blue tick screen shot attached) i.e., Ashok Gehlot (@ashokgehlot51) and also on his official Facebook account (showing blue tick screen shot attached) on dated 21.02.2023, it is clear that alleged Sh. Ashok Gehlot has addressed Sh. Gajender Singh Shekhawat as an accused and he further stated that allegations against him (Gajendra Singh Shekhawat) stand proved.....

iii) During the course of the investigation, undersigned visited Hon'ble Court of Ms Ram Kanya Soni, ACMM, Room No. 301, Jaipur court. After inspecting the case file of FIR No. 32/2019, dated 23/08/2019, U/s 420/406/409/467/468/471/477A/201/120B IPC & 65 IT Act, PS Special Operation Group, the certified copies of the main charge sheet report U/s 173 Cr PC dated 11.12.19 and three supplementary charge sheet reports U/s 173(8) CrPC dated 12.02.20, 07.02.23 & 31.03.23 were collected along with certified copies of the order sheet of the Hon'ble Court. In all these four documents, neither the complainant Sh. Gajendra Singh Shekhawat nor his family members' have been mentioned in the Column No. 11 as accused. The last supplementary charge sheet dated 31.03.23 was filed in the Hon'ble Court on 08.04.23. (Certified Copies of the main Charge Sheet and three Supplementary Charge sheets of FIR No.32/19, PS-SOG are attached)

It is also relevant to state here that a bare perusal of the copy of FIR No. 32/2019, dated 23/08/2019, U/s 420/406/409/467/468/471/477A/201/120B IPC & 65 IT Act, PS-Special Operation Group establishes that neither the complainant nor his family members' name had been mentioned in Column No. 7 of the FIR as an accused/suspect. (Copy of FIR No. 32/19 is attached). A perusal of the order sheets pertaining to FIR No. 32/19 also reveals that charges have not been framed against any of the accused so far. (Certified Copies of court orders of Hon'ble Court of ACMM, (CR), Room No. 301, Jaipur Court are attached)....."

18. The above final status report submitted by Delhi Police

and the other oral and documentary evidence led on record by respondent were again considered by the Ld. ACMM-04 vide his impugned order dated 06.07.2023 and after discussing ingredients of the offence of defamation as defined by Section 499 IPC and some relevant law on the subject and also the scope of scrutiny permissible at the stage of summoning of an accused, he was of the *prima facie* view that the above statements or imputations made by the respondent were defamatory in nature. The Ld. ACMM-04 was also of the *prima facie* view that the same were made by petitioner herein knowingly and with an intent to harm the reputation of respondent and hence, sufficient grounds existed for summoning the petitioner as an accused for commission of the offence of defamation made punishable by Section 500 IPC.

19. Feeling aggrieved by the above impugned orders dated 04.03.2023, 24.03.2023 and 06.07.2023 passed by the Ld. ACMM-04 in the above criminal complaint, the petitioner had preferred the present revision petition before this court challenging the correctness, legality and propriety of the said orders.

20. The contents of present revision petition, reply thereto filed on behalf of respondent as well as of rejoinder filed by the petitioner have been perused, along with other record of the case and the written submissions filed from both sides.

Extensive arguments advanced by 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 petitioner and Sh. Vikas Pahwa, Ld. Senior Advocate representing the respondent, assisted by Sh. Rajiv Mohan, Sh. Abhishek Pati, Sh. Manvinder Singh Shekhawat, Sh. Nishat Madan, Ms. Sanskriti S. Gupta, Sh. Shishant, Sh. Ajit Sharma, Sh. Aditya Vikram Singh and Sh. Rehan Khan Advocates, have been heard and considered. The trial court record has also been gone through.

21. It is the contention of Sh. Dayan Krishnan, Ld. Senior Advocate for petitioner that the impugned orders dated 04.03.2023, 24.03.2023 and 06.07.2023 of Ld. ACMM-04 are not legally sustainable as the same have been passed against law and are based on wrong appreciation of facts and legal provisions. It is his contention that, in nutshell, the case of respondent herein was that neither he nor any of his family members was an accused or had any involvement in the said case registered by Rajasthan Police, but from the facts and evidence placed before the court of Ld. ACMM-04 it became crystal clear that he as well as some of his family members were very much involved and even accused in the said case,

though they were not named in FIR or in any of the chargesheets filed in the said case till date, and hence, the above complaint of respondent was based on false and wrong facts and allegations. It is also his contention that once the facts and evidence placed on record before Ld. ACMM-04 made it clear that the respondent as well as his family members were accused in the said case, there could not have been any occasion for the Ld. ACMM-04 to pass the impugned order dated 06.07.2023 directing summoning of the petitioner herein as an accused in the said case.

22. It is also the contention of Ld. Senior Advocate for petitioner that the *sine qua non* for taking cognizance of an offence by a Magistrate is the application of his judicial mind to the facts and circumstances of the case to find out whether or not the alleged offence is made out therefrom and if a Magistrate fails in applying his judicial mind to the facts of a particular case and erroneously takes cognizance of an offence or proceeds further in the matter against the accused by passing an order in a casual and cursory manner, then such an order is not legally sustainable and has to be set aside. Judgments in cases **Sunil Bharti Mittal Vs. CBI, (2015) 4 Supreme Court Cases 609** and **Sanjit Bakshi Vs. State (NCT of Delhi) & Anr., 2022 SCC OnLine Del 3614** have also been referred to by Ld. Senior Advocate on these aspects.

23. It is also the contention of Ld. Senior Advocate for petitioner that since it *prima facie* stood established from the material placed before Ld. ACMM-04 that the respondent as well as his family members are involved in the above scam, the alleged statements or imputations made by petitioner cannot be said or termed as defamatory as per provisions contained U/S 499 IPC and rather, the same were based on correct facts and also represented the true status of the said case and hence, no offence of defamation can be said to have been committed by the petitioner herein and he in his capacity of a Home Minister or Chief Minister of the State of Rajasthan had addressed the media or gave statements only with regard to correct status of the said case. It is also submitted by him that it was a part of duties of the petitioner in his above capacities to bring the correct facts of said case to the knowledge of general public as a huge public amount belonging to a number of investors was involved in the said case. It is also his contention that the case of petitioner was even covered by exceptions provided or attached to Section 499 IPC as the petitioner had only spoken and highlighted the truth through these statements and he had brought the actual facts to the notice of general public in good faith, for public good and for protection of interests of general public at large. Judgment in case **Mohd. Abdulla Khan Vs. Prakash K., (2018) 1 Supreme Court Cases 615** has also

been relied upon by Ld. Senior Advocate for petitioner in support of his submission that essential ingredients of the above offence were not made out and hence, the petitioner could not have been summoned for the said offence.

24. It is further the contention of Ld. Senior Advocate for petitioner that even though the respondent himself was fully aware about his involvement, as well as the involvement of his family members in the said case, but still he chose not to disclose the same before the court of Ld. ACMM-04 at any stage of proceedings in the said complaint and rather, he went on to make false allegations and even false depositions on oath on the above aspect. It has also been submitted by him that even the Delhi Police had acted in collusion with the respondent and though it was duly brought to the notice of Delhi Police by the SOG of Rajasthan Police, during the course of above investigation directed by the Ld. ACMM-04 U/S 202 Cr.P.C., that the respondent and some of his family members were amongst 68 persons who had been named as accused in the said case till date, but still with some ulterior motives and designs, the interim status report dated 25.04.2023 filed by the Delhi Police intentionally highlighted some other portions of report suggesting to the contrary and the relevant portions of said report showing the actual status of respondent and his family members as accused in the said case and also

about the facts recorded in Case Diary No. 431 dated 10.02.2023 of the SOG were left un-highlighted and it was done only to give an impression as if the respondent and his family members were not accused in the said case.

25. Further, it is also the contention of Ld. Senior Advocate for petitioner that the above interim status report dated 25.04.2023 of Delhi Police was mainly based on order dated 13.04.2023 passed by the Hon'ble Rajasthan High Court in petition titled as **Gajendra Singh Shekhawat Vs. State of Rajasthan & Ors. S. B. Criminal Misc. (Pet.) No. 1375/2023**, but in the final status report of Delhi Police filed on 22.05.2023, the subsequent order dated 28.04.2023 passed by the Hon'ble High Court of Rajasthan in the above said petition was not intentionally mentioned and it was concealed from the court by Delhi Police. It has been submitted that though the interim order dated 13.04.2023 about the status of respondent and his family members not being an accused in the above said case came to be passed by the Hon'ble High Court on the basis of a submission made by Ld. Counsels appearing on behalf of SOG in the said petition, but it is clear from subsequent order dated 28.04.2023 of the Hon'ble High Court that the above submission was made inadvertently and by mistake and as a matter of fact, the respondent and his family members were accused in the said case, based on investigation done so far by

the SOG. It is stated that though the above order was very much in knowledge of the respondent, but still, he did not intentionally bring it to the notice of Ld. ACMM-04 prior to passing of the impugned order dated 06.07.2023 summoning the petitioner herein as an accused in the above said criminal complaint case, on the basis of false submissions and allegations made in the above criminal case.

26. It is, thus, the contention of Ld. Senior Advocate for petitioner that since the respondent and some of his family members were accused in the above said criminal case registered at Rajasthan vide FIR No. 32/2019 and investigation qua them was still pending, the alleged statements or imputations made by petitioner in this regard were not defamatory and hence, the impugned order dated 06.07.2023 of Ld. ACMM-04 holding the same as defamatory is not correct and legal and the same is factually wrong and incorrect and it shows that the Ld. ACMM-04 failed to apply his judicial mind to the facts and evidence placed before him. It is also his submission that merely the use of certain words by the petitioner in his above statements to the effect that the charges or crime against the respondent stand proved does not amount to making of false or defamatory statements by him as the above words have not to be read in isolation and the same have to be read along with other contents of his alleged statements

and he only meant to say through these statements that the respondent and his family members were involved or were accused in the said case.

27. It is further the contention of Ld. Senior Advocate for petitioner that since it is the case of respondent that the petitioner was Chief Minister as well as Home Minister of the State of Rajasthan and he made the above statements and disclosed certain facts and information therein which came to his knowledge as a Home Minister or Chief Minister of the State, the alleged defamatory statements of petitioner were made in his above capacities of a public servant and hence, a sanction U/S 197 Cr.P.C. for his prosecution in the above criminal case should have been obtained by respondent from the competent authority and thus, the impugned order dated 06.07.2023 of Ld. ACMM-04 summoning the petitioner as an accused in the above criminal complaint is liable to be set aside even on this ground alone. Judgments in cases **A. Srinivasulu Vs. The State Rep. by the Inspector of Police in Criminal Appeal No. 2417 of 2010 decided by the Hon'ble Supreme Court on 15.06.2023; Smt. D. Roopa Vs. Sri H.N. Sathyanarayanan Rao, MANU/KA/2443/2022; Vishnu P. Das Vs. B.K. Singh, 2018 SCC OnLine Del 10445 and P.K. Ghosh & Anr. Vs. Sukhbir Sharma, 2000 (56) DRJ (Suppl) 87** have been relied upon on this aspect and in support of the

above submission and also the submission that petitioner deserves to be protected from such false and vexatious prosecution. Further, judgments in cases **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda & Ors., (2015) 12 Supreme Court Cases 420** and **Pepsi Foods Ltd. Vs. Judicial Magistrate (1998) 5 SCC 749** are also referred in support of another submission that summoning of an accused in a criminal case is not a formality and there has to be an application of judicial mind by a Magistrate to satisfy himself about commission of the alleged offence before process to an accused can be issued.

28. Sh. Mohit Mathur, Ld. Senior Advocate representing the petitioner has reiterated the contentions raised by his Senior Colleague and has further supplemented the same by arguing that the submissions made in reply of respondent to this petition about veracity of the above Diary No. 431 dated 10.02.2023 of SOG being a fabricated document are false and baseless submissions and the same have been made against the facts and records of investigation of the said case. It is also his contention that as has been submitted by petitioner in his rejoinder, the above Diary No. 431 of SOG clearly shows that the names of respondent and his family members were there as accused in the above said case registered by them and even a copy of the factual report dated 12.04.2023 filed by SOG

before the Hon'ble High Court for date 13.04.2023 shows the status of respondent and other family members as accused in the said case. It is further his contention that once the Ld. ACMM-04 had directed an investigation to be conducted by the Delhi Police under the provisions of Section 202 Cr.P.C. vide his impugned order dated 24.03.2023, he was bound to consider and appreciate the report as well as the other documents submitted with it by Delhi Police in entirety to find out if the alleged statements or imputations made by the petitioner were defamatory or not or the same attracted the provisions of Sections 499 and 500 IPC, but it has not been done by him and hence, the impugned order on summoning dated 06.07.2023 is liable to be set aside.

29. It is also his contention that pre-summoning evidence led before the Ld. ACMM-04 by the respondent herein in support of allegations contained in his above criminal complaint was not sufficient to satisfy the ingredients of Section 499 IPC and even the tendering or exhibition of a certificate U/S 65B of the IEA by him regarding authenticity of some digital evidence during his own testimony was not proper as he was not the author of said certificate. It is further his submission that even the findings of Ld. ACMM-04 given in his impugned order dated 06.07.2023 regarding the admissibility or acceptance of news items or videos tendered in pre-summoning evidence are

not proper as the said videos or news items have not been proved as per law and the concerned journalists or authors of the said press reports or news items were not examined by the respondent during the course of his pre-summoning evidence. It is also his contention that a bare perusal of the above status reports of investigation submitted by Delhi Police and conduct of the concerned investigating officer (IO) in highlighting certain selected portions of the said report are sufficient to show that Delhi Police was acting under some political influence or compulsion and was under directions to favour the respondent and they had also attempted to conceal or hide some contrary findings of investigation and documents pertaining to the above said criminal case registered in Rajasthan in an attempt to help the respondent in securing summoning of the petitioner as an accused in the said case.

30. Per Contra, it has been argued by Sh. Vikas Pahwa, Ld. Senior Advocate representing the respondent that scope of revisional powers of this court U/S 397 Cr.P.C. is very limited and this court can interfere with the impugned order passed by the Ld. Trial Court only when the same suffers from any mistake, illegality or impropriety and not otherwise. It has been submitted by him that a bare perusal of impugned orders dated 04.03.2023, 24.03.2023 and 06.07.2023 of the court of Ld. ACMM-04 will show that the Ld. ACMM-04 had followed

the due procedure prescribed by law and had arrived at correct findings on facts and hence, the present revision petition is not maintainable and it is liable to be dismissed. It is also his submission that even otherwise, no fault can be found with the above orders of Ld. ACMM-04 in fixing the complaint for pre-summoning evidence of the respondent herein, directing mandatory investigation in terms of Section 202 Cr.P.C. and also in summoning the petitioner as an accused as sufficient evidence and material was placed before the said court to direct summoning of petitioner for the alleged offence of defamation.

31. It is also the submission of Ld. Senior Advocate for petitioner that at the stage of issuance of summons, the Ld. ACMM-04 was only required to see if there were sufficient grounds to proceed further in the matter or not against the accused and hence, no detailed appreciation or analysis of the allegations or evidence was required by him as it will be a matter of trial only. It is, thus, his submission that even on this ground, no fault can be found with the impugned order dated 06.07.2023 passed by the Ld. ACMM-04 summoning the petitioner herein as an accused for the offence of defamation. Judgments in cases **State of Gujarat Vs. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539; National Bank of Oman Vs. Barakara Abdul Aziz & Anr., (2013) 2 SCC 488** and

Fiona Shrikhande Vs. State of Maharashtra & Anr., (2013)

14 SCC 44 are also referred to by him on this aspect.

32. It is further the submission of Ld. Senior Advocate for respondent that a bare perusal of the above defamatory statements dated 19.02.2023 and 21.02.2023 and the tweet dated 21.02.2023 made by petitioner, as discussed above, shows that the same contain defamatory imputations concerning the respondent and these were apparently made by petitioner with the requisite intention or knowledge to harm the reputation of respondent or having reasons to believe that the same will so harm the reputation of respondent and thus, the said statements and tweet amount to defamation within the meaning of Section 499 IPC and the petitioner herein is guilty of commission of the said offence of defamation, which has been made punishable by Section 500 IPC. It is also his submission that even if the exceptions provided in or attached to Section 499 IPC are taken into consideration, the above defamatory statements or imputations still fall in the same category as the case of petitioner is not covered by any of the said exceptions because the facts and circumstances of the present case *prima facie* establish that the same were made by the petitioner only with an intent to harm the reputation of respondent by lowering his image in the eyes of others and to derive some political benefits or mileage out of the same.

Judgments in cases **Rajeh Churiwala Vs. State of U.P. & Anr., 2021 SCC OnLine All 501**; **Sanjay Mishra Vs. Govt. of NCT of Delhi & Anr., 2012 SCC OnLine Del 1779**; **Jeffrey J. Diermeier & Anr. Vs. State of West Bengal & Anr., (2010) 6 SCC 243**; **Sukra Mahto Vs. Basdeo Kumar Mahto & Anr., (1971) 1 SCC 885** and **Chaman Lal Vs. The State of Punjab, (1970) 1 SCC 590** have also been referred to by Ld. Senior Advocate for respondent in support of his argument that the case of petitioner is not covered by exceptions to Section 499 IPC as the above imputations cannot be said to have been made by him in good faith or for public good etc.

33. It is further the contention of Ld. Senior Advocate for respondent that different portions of the above defamatory statements or imputations made by the petitioner against the respondent are not to be seen or viewed independently or in separation from each other, but all these statements and imputations have to be seen together and when so viewed, it becomes crystal clear that these statements and imputations were made by petitioner with the sole intention of harming the reputation of respondent. It has also been submitted by him that these statements and imputations directly related to the respondent and subsequent publication of these statements and tweet made by the petitioner in the print and electronic media

shows that the petitioner was even successful in achieving his goal of tarnishing the image of respondent in the eyes and estimation of public persons at large.

34. It is also the contention of Ld. Senior Advocate for respondent that the evidence and material placed before the court of Ld. ACMM-04 was sufficient to show *prima facie* that the allegations being levelled against the respondent and his other family members regarding their involvement in the above scam were not factually correct and these allegations were levelled only for some political purposes and to dent the reputation of respondent. It is also his submission that even the above amount of Rs. 900 or Rs. 1000 crores being alleged to have been involved in the said scam was not correct and was exaggerated by petitioner in his above statements. Further, it is also argued by him that though the petitioner was fully aware at the time of making of these statements that the respondent and his family members were not accused in any of the FIRs registered in relation to the above scam, but still with an intent to defame the respondent, he went on to make the above false statements at public platforms and levelled false allegations therein that guilt of the respondent stood already proved in said scam and he and his family members even owned properties in some foreign countries like Australia and Ethiopia.

35. It is further the contention of Ld. Senior Advocate for

respondent that the fact that respondent and his family members had no involvement in the above scam and they were not accused in any of the FIRs registered in relation to the said scam or even in any of the four chargesheets filed before the court concerned at Jaipur, Rajasthan i.e. one main chargesheet and three other supplementary chargesheets in respect to the said scam and in relation to FIR No. 32/2019, was also duly brought to notice of the Hon'ble High Court of Rajasthan on 13.04.2023 during the course of hearing of S. B. Criminal Misc. (Pet.) No. 1375/2023 filed by respondent, when it was submitted therein on behalf of the State of Rajasthan that since the respondent herein was not an accused in any such FIR and there was no apprehension of his being arrested by SOG/Rajasthan Police, the above criminal petition was misconceived. It is argued that it was only on the basis of above submission made on behalf of the State of Rajasthan that the Hon'ble High Court of Rajasthan directed that the respondent herein shall not be arrested in connection with the said case/FIR till next date of hearing in the said petition. It is stated that the above submission was made by a battery of Senior Advocates representing the State of Rajasthan, some of whom joined the proceedings through Video Conferencing and some joined it physically. It is also stated that even IO of the said case was present at the time of making of said submission.

36. It is further the contention of Ld. Senior Advocate for

respondent that though some application for modification of the said order came to be filed subsequently on behalf of the State of Rajasthan and it was taken up and disposed of by the Hon'ble High Court of Rajasthan on 28.04.2023, but it was done in absence of respondent herein or his counsels and even then, the above order of stay of arrest of the respondent was not interfered with by the Hon'ble High Court and the said order is still in operation. It has also been submitted that though through the said order dated 28.04.2023 passed by the Hon'ble High Court of Rajasthan, a submission made on behalf of State of Rajasthan was taken on record that their previous submission made on 13.04.2023 with regard to status of accused in the above FIR was not correct and in fact the respondent was an accused in the said FIR, but this new and subsequent submission was made before the Hon'ble High Court on the basis of a false and fabricated document prepared on directions of the petitioner herein in the form of Case Diary No. 431 dated 10.02.2023. It has also been submitted that the above modification application was moved only because of the political pressure of petitioner herein. It has also been submitted by him that even the above status or factual report dated 12.04.2023 of SOG prepared with reference to the hearing dated 13.04.2023 before the Hon'ble High Court is a fake document subsequently made at the instance of petitioner. It is further submitted by him that the petitioner being the

Chief Minister and Home Minister of the State of Rajasthan is trying to manipulate investigation of the said case and also the documents related to it to derive political benefits out of the same.

37. It is also the contention of Ld. Senior Advocate for respondent that even if it is taken as true that the name of respondent and his family members or relatives were implicated in the above scam for some political reasons, but it does not make him or his family members an accused in the said case as investigation qua their roles had not yet started by the SOG and the same even otherwise was open to all eventualities and the SOG would have been within its rights to file a final report of closure against them before the court concerned. However, still the petitioner herein went on to address the respondent and his family members as accused through these statements and he even went on to say that their guilt stood already proved like the other arrested accused of the said case. It is also argued that the petitioner even alleged that the respondent was involved in toppling his Government and this statement of petitioner on its own is also defamatory qua the respondent. It is, thus, the submission of Ld. Senior Advocate that even on merits, the above statements and imputations made by the petitioner have to be held defamatory qua the respondent and therefore, the summoning order dated 06.07.2023 is perfectly legal.

38. It is further the contention of Ld. Senior Advocate for respondent that Section 197 Cr.P.C. has got no applicability to the facts and circumstances of this case as the alleged acts of petitioner in making defamatory imputations against the respondent cannot be said to have been done or purported to be done in discharge of his official duties and hence, no sanction for prosecution of the petitioner under the above provision was required to be obtained as there was no reasonable connection or nexus between the acts done by him and his official duties. It is also his submission that the prosecution of petitioner by the respondent herein in the above criminal complaint cannot be held as false or vexatious. Judgments in cases **Manish Sisodia Vs. The State of Assam & Anr., Crl. Pet./984/2022 (Gauhati High Court); S. S. Lingaraja Vs. B. Selvakumar, 2022 SCC OnLine Mad 457; Punjab State Warehousing Corporation Vs. Bhushan Chander & Anr., (2016) 13 SCC 44; Urmila Devi Vs. Yudhvir Singh, (2013) 15 SCC 624; General Officer Commanding, Rashtriya Rifles Vs. CBI & Anr., (2012) 6 SCC 228; Choudhury Parveen Sultana Vs. State of West Bengal & Anr., (2009) 3 SCC 398; Raj Kishor Roy Vs. Kamleshwar Pandey & Anr., (2002) 6 SCC 543; P. K. Pradhan Vs. State of Sikkim represented by the CBI, (2001) 6 SCC 704 and Bhagwan Prasad Srivastava Vs. N. P. Mishra, 1970 (2) SCC 56** have been referred to and relied

upon by Ld. Senior Advocate in support of his submissions.

39. It is also the contention of Ld. Senior Advocate for respondent that though one has a constitutional right and freedom of speech as guaranteed by Article 19 of the Constitution of India, but this right has to be exercised in such a way that it does not encroach upon the rights of others and this freedom of speech and expression cannot be permitted to be exercised in such a manner that it affects the reputation or dignity of a person. It is his submission that a balance is required to be drawn between the above constitutional right and freedom of a person and the dignity of the other individual and exercise of this right or freedom is always subject to reasonable restrictions. Judgment in the case of **Subramanian Swamy Vs. Union of India, (2016) 7 SCC 2021** has also been relied upon in this context.

40. In rebuttal, Sh. Dayan Krishnan and Sh. Mohit Mathur, Ld. Senior Advocates representing the petitioner have reiterated the arguments addressed by them earlier and have also countered the arguments advanced by Ld. Senior Advocate for respondent regarding the above Case Diary being a fabricated document by submitting that the same is a public document and it has to be presumed as a genuine document in view of the provisions contained U/S 114 of the IEA. It is also

their submission that the arguments of Ld. Senior Advocate for respondent regarding abuse of his political position by petitioner to influence the investigation of the above case or for fabrication of documents are not tenable as the SOG had been doing investigation as per law and as per the oral and documentary evidence which surfaced during the course of investigation and no malice can be attributed to the said agency and there is also no material or reason for holding the above Case Diary to be a fake document. It is further their submission that it is not for the courts to impute political motives to the investigating agencies and judgment in case **Sanjay Singh Vs. ED, 2023 DHC 7741** has also been relied upon on this aspect.

41. Further, Ld. Senior Advocates for the petitioners have also argued again in rebuttal that once the Ld. ACMM-04 had directed point-wise inquiry or investigation U/S 202 Cr.P.C. to be conducted by the Delhi Police to find out the status of respondent and his family members as accused in the said case and it stood confirmed from the status reports filed before the court by Delhi Police, then there was no reason or ground available to Ld. ACMM-04 for summoning of petitioner as an accused in the above said complaint case simply on the basis of some press reports or clippings as what was being reported or published in media was not in hands of the petitioner. It is further the contention of Ld. Senior Advocates for petitioner

that the purpose of filing of a miscellaneous application before the Hon'ble High Court of Rajasthan in respect to observations made in its order dated 13.04.2023 passed in the above petition was not to seek modification of the said order regarding the relief of stay on arrest of respondent, but it was only for correction of a factual mistake about status of respondent and his family members in the above said case. It is submitted that through the said application, it was brought on record of the Hon'ble High Court of Rajasthan on 28.04.2023 that the respondent and his family members were accused in the above said case and a contrary submission on this issue was made on behalf of State on the previous date i.e. 13.04.2023 only due to some mistake or inadvertence. It is also their submission that even the respondent himself new his status as an accused in the above case much prior to filing of the above criminal complaint by him as is evident from his letter dated 14.03.2023 written to the Additional Director General, SOG, wherein he admitted his above status and had even stated that he joined investigation of the case and handed over documents pertaining to the said case to SOG on 12.03.2023. A copy of the above letter, which is in fact found to be a legal notice sent on behalf of respondent and his family members, has also been placed on record by petitioner as a part of the documents filed along with the rejoinder. Thus, both the Ld. Senior Advocates for petitioner have once again reiterated their earlier

submission that once the above facts and documents established that respondent and his family members were accused in the above said case, the alleged statements or imputations made by petitioner herein cannot be termed as defamatory.

42. As stated above, the petitioner herein has also challenged the orders dated 04.03.2023 and 24.03.2023 passed by Ld. ACMM-04 in the above criminal complaint bearing Ct. Case No. 03/2023, besides the order dated 06.07.2023 summoning him as an accused in the said case. These orders have been challenged on the ground that the same are bad on facts as well as on law and are, thus, liable to be set aside by this court in exercise of its revisional powers. However, Ld. Senior Advocates representing the petitioner have failed to show any mistake, illegality or impropriety in orders dated 04.03.2023 and 24.03.2023 of the court of Ld. ACMM-04, during the course of arguments advanced by them before this court.

43. Moreover, as already discussed, vide order dated 04.03.2023, Ld. ACMM-04 had simply fixed the above criminal complaint for pre-summoning evidence of the complainant/respondent and vide the other order dated 24.03.2023, he had directed some investigation to be conducted by Delhi Police on the above given aspects, as per

provisions contained U/S 202 Cr.P.C., before arriving at a conclusion about summoning of the accused/petitioner for the alleged offence of defamation made punishable by Section 500 IPC. There was nothing wrong in fixing of the case for pre-summoning evidence of the complainant vide order dated 04.03.2023 of the Ld. ACMM-04 as in terms of provisions contained U/S 190 and 200 Cr.P.C., he being the jurisdictional Magistrate taking cognizance of the offence disclosed by the above criminal complaint had fixed the matter for recording of pre-summoning evidence of the complainant and his witnesses on oath. It is well settled now that no detailed order is required to be passed by a Magistrate at the stage of taking cognizance of an offence or even at the stage of summoning of an accused and such orders are also not required to be ordinarily interfered with by a revisional court unless the same are perverse or based on no evidence. Reference in this regard can also be made to judgment dated 06.01.2012 passed in case **Dr. Mrs. Nupur Talwar Vs. CBI, Delhi and Anr. SLP (CrL.) No. 2982/2011**. Again, a Magistrate is not required to undertake an elaborate inquiry at the time of taking cognizance and such an order is not required to contain detailed reasons for taking cognizance or the documents or material considered by the Magistrate for arriving at a conclusion about taking of the cognizance. Reference on this aspect can also be made to the judgments in cases **Rakesh Devi Vs. State of UP, 2002 CrLJ**

125 (All) and State of West Bengal Vs. Mohd. Khalid, AIR 1995 SC 785.

44. Further, even the subsequent order dated 24.03.2023 passed by the Ld. ACMM-04 is also found fully in consonance with the provisions contained U/S 202 Cr.P.C., which required him to postpone the issuance of process against the accused and either to conduct an inquiry into the case himself or to direct an investigation to be made by a police officer. It has been observed on perusal of provisions contained in the above Section that though such conduction of an inquiry by a Magistrate or direction for investigation to be made by a police officer may be optional in a case where the accused was residing within jurisdiction of the concerned Magistrate, but the same was mandatory in a case where the residence of accused was at a place beyond the area in which the Magistrate was exercising his jurisdiction as the Section uses the word 'shall' and thus, casted an obligation on the court to conduct such inquiry or direct such investigation if the accused was residing beyond the jurisdiction of Ld. Magistrate. Admittedly, the petitioner herein was residing in the State of Rajasthan and even his given address in the above criminal complaint was of Jaipur, Rajasthan and hence, the Ld. ACMM-04 had acted legally in directing an investigation by an officer of the Delhi Police on certain aspects, as per the mandate contained in

Section 202 Cr.P.C.

45. Moreover, as also discussed above, Ld. ACMM-04 in his impugned order dated 24.03.2023 had not only discussed in detail the above legislative mandate and the duty casted upon him by provisions contained U/S 202 Cr.P.C., which are found reproduced in the said order, but he had even highlighted the observations made on this issue by the Hon'ble Supreme Court in case of **Vijay Dhanuka (Supra)**. The relevant portion of the above impugned order dated 24.03.2023 of Ld. ACMM-04 is being reproduced herein below :-

“Section 202 Cr.P.C., amended by the Code of Criminal Procedure (Amendment) Act, 2005, specifically contains the word ‘shall’ and casts an obligation on the court that where the accused is residing at a place beyond the area in which the court exercises jurisdiction, an inquiry or an investigation is must. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected.

The importance and the jurisprudential object of this amendment has been highlighted in the observations of Hon'ble Supreme Court in Vijay Dhanuka Vs. Najima Mamtaj and Ors., 2014 14 SCC 638. The contextually relevant portion is quoted as under :

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such

other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” was inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them.

The note for the amendment reads as follows:

'False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of [Section 202](#) to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.

The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints.

Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the

accused living beyond the territorial jurisdiction of the Magistrate.”

46. Hence, in light of the above, this court is of considered opinion that the impugned orders dated 04.03.2023 and 24.03.2023 passed by Ld. ACMM-04 do not suffer from any mistake, illegality and impropriety and are, thus, liable to be upheld and are not required to be interfered with by this court in exercise of its revisional powers.

47. Now coming to the order dated 06.07.2023 of Ld. ACMM-04 summoning the petitioner herein as an accused in the above criminal complaint and the argument advanced by Ld. Senior Advocates for petitioner on the issue of sanction, it has been observed by this court that there was no requirement of obtaining of a sanction U/S 197 Cr.P.C. for prosecution of petitioner as an accused by the respondent herein for filing of above criminal complaint because this court is of *prima facie* view that the alleged acts of petitioner in making the above defamatory statements or imputations were not committed by him in the course of his official duties. As it emerges out from the provisions contained U/S 197 Cr.P.C. and the judgments relied upon on this issue from both sides, the protection of this Section is available only if the alleged acts of accused have been done or committed by him during the course of discharge of his official duties or the same have been purported to be done so and thus, there should be a direct nexus between the

official duties of an accused and the acts done by him. However, in the present case, the above defamatory statements or imputations by the petitioner herein were though made by him while holding the posts of Chief Minister and Home Minister of the State of Rajasthan, but the same cannot be *prima facie* said to have been made by him while discharging his functions or duties in the above capacities and rather, the same appear to have been made by him in his personal or individual and political capacity to derive political mileage out of the above issue and thus, his above acts of making these statements or allegations cannot be given an official colour. Had such imputations been contained in any official letter written by the petitioner to SOG in his capacity of Chief or Home Minister of the State, the things would have been different. Hence, the judgments being relied upon by Ld. Senior Advocates for petitioner on this aspect are found to be not applicable to the peculiar facts & circumstances of this case as the alleged statements or imputations in the present case have not been made in any official capacity, correspondence or while doing a public act or discharging a public duty.

48. Coming to facts of the case and before finding answer to the question as to whether the alleged statements or imputations made by petitioner were *prima facie* defamatory or not, it is first to be seen as to whether or not the respondent

was an accused or he stood so implicated in the above said case or cases pertaining to 'Sanjivani' scam, as on the date on which these statements were made by the petitioner. The factual position which emerges out of the above discussion and on perusal of records on this aspect is that the above FIR No. 32/2019 of Rajasthan Police was registered on 23.08.2019 at PS SOG for commission of offences U/Ss 420/406/409/467/468/471/471A/201/120B IPC and Section 65 of the IT Act and the same was registered against several named persons and entities and also against some other unnamed or unknown persons. It was registered on allegations of duping or misappropriating the investments of around Rs. 900 crores made by public persons at large. It also emerges from record that investigation of the above case is still pending and as on date four chargesheets i.e. one main chargesheet bearing No. 28 and three supplementary chargesheets bearing No. 28A, 28B and 28C, stand already filed against some of the accused and few accused persons in the said case stand even arrested by the SOG. The main chargesheet in the case is stated to have been filed on 11.12.2019 and it was followed by three supplementary chargesheets filed on 12.02.2020, 07.02.2023 and 31.03.2023, but the respondent herein or any of his family members were neither named as accused in FIR registered in connection with the above scam or in any of the four chargesheets filed in relation to the said FIR. During the course

of arguments, it has further been submitted on behalf of petitioner that some other FIRs in relation to the above scam have though also been registered, but all these FIRs are the subject matter of investigation being done by SOG, along with investigation of the above FIR No. 32/2019. However, it is also admitted case of parties that the respondent or his family members are even not named as accused in any other FIR registered in relation to the above scam nor any other chargesheet in relation to the said scam is stated to have been filed before any court, except the above four chargesheets filed in FIR No. 32/2019 of PS SOG.

49. As per case of the petitioner, which in turn is based on the case of SOG or Rajasthan Police, the respondent as well as some of his family members stood subsequently implicated as accused in the above scam/case and the roles and participation of total 68 persons in commission of offences of the said case have/has already surfaced, though till date only 16 accused have been chargesheeted before the court concerned in respect to the above scam. It has been submitted that as per status report dated 21.04.2023 given by SOG to the concerned ACP of Delhi Police conducting investigation U/S 202 Cr.P.C., in terms of impugned order dated 24.03.2023 of the court of Ld. ACMM-04, also in the status report dated 25.04.2023 submitted by the ACP of Delhi Police before the court of Ld. ACMM-04 and even in the status report dated 12.04.2023 filed

by SOG before the Hon'ble High Court of Rajasthan in the above S. B. Criminal Misc (Pet) No. 1375/2023 filed by respondent herein in connection with the hearing dated 13.04.2023, the name of respondent appears as an accused at Serial No. 66 of the list of accused of said case and the names of his wife, father and mother (since deceased) respectively appear at Serial No. 64, 67 and 68 respectively. Further, it is also the case of petitioner that one Case Diary No. 431 dated 10.02.2023 has been registered by SOG showing the status of respondent and his family members as accused in the above said case and as per this Case Diary, even the allegations made against them stand *prima facie* established or proved. There is also a specific mention of this Case Diary in the report dated 21.04.2023 submitted by SOG to the concerned ACP of Delhi Police conducting investigation U/S 202 Cr.P.C. and even in the two status reports dated 25.04.2023 and 22.05.2023 submitted by the said ACP before the court of Ld. ACMM-04 during the course and on conclusion of the said inquiry and hence, once it was established from the documents placed on record for perusal of Ld. ACMM-04 that the respondent and his family members were accused in the above case, there was no question of his being defamed by the above statements or imputations allegedly made by the petitioner as the said statements or imputations only stated a fact or truth as per record and it was stated in good faith and for a public good.

50. However, the case of respondent is that the above Case Diary No. 431 dated 10.02.2023 is a fabricated and false document prepared by SOG at the instance of petitioner herein as he being the Chief Minister as well as Home Minister of the State of Rajasthan was interfering in and manipulating investigation of the said case and had even got fabricated the said document. It is the contention of Ld. Senior Advocate for respondent that had the above Case Diary been a genuine document, then there was no occasion or reason for making of a statement or submission before the Hon'ble High Court of Rajasthan by Ld. Counsels appearing on behalf of the State of Rajasthan that led to the grant of protection to or stay on arrest of the respondent herein in the above said petition filed by him. As already discussed, the above petition bearing No. S. B. Criminal Misc (Pet) No. 1375/2023 was filed by respondent for quashing the proceedings of the above case and his arrest in the said case was stayed by the Hon'ble High Court of Rajasthan vide its order dated 13.04.2023 as it was submitted on behalf of State of Rajasthan on that day that the petitioner (respondent herein) was not an accused in any FIR registered by the SOG or Rajasthan Police and hence, there was no apprehension of his being arrested by the SOG or Rajasthan Police.

51. It is also the submission of Ld. Senior Advocate for

respondent that had the respondent and his family members been an accused in the above said case on the date of registration of above Case Diary No. 431 i.e. on 10.02.2023 and further that if the SOG was even able to find out a *prima facie* evidence against them, then nothing prevented it from prosecuting them through the third supplementary chargesheet filed in the said case by them before the court concerned at Jaipur on 31.03.2023 i.e. after around one and a half month from the date of registration of the above Case Diary. It has, thus, been argued on behalf of the respondent that for the reasons stated above, the above Case Diary is a false and fabricated document and it is for this reason that there is no mention of above Case Diary in the factual report dated 12.04.2023 filed by SOG before the Hon'ble High Court of Rajasthan for the above hearing dated 13.04.2023 in the above said petition. It is also his contention that the above Case Diary was fabricated subsequent to the passing of above said order dated 13.04.2023 and it was then *ante-dated* and all this was done at the instance of petitioner herein.

52. However, this court fails to accept the above submissions being made by Ld. Senior Advocate for respondent about the above Case Diary being a fabricated document as there is no material on record to suggest it and even such an inference is not possible to be drawn in view of the submissions being advanced to this effect. Rather, the only

inference which can be drawn by the court about this document at this stage is that it is a genuine document recorded by the concerned agency even though due to some mistake or omission, no reference of this document was made in the above status report dated 12.04.2023 filed before the Hon'ble High Court of Rajasthan for the hearing dated 13.04.2023 or in any other report.

53. It emerges out from the above factual discussion and submissions advanced from both the sides that though the respondent and his family members might have been named or implicated in one of the complaints received in connection with the above scam, but they were not named as accused in the above FIR No. 32/2019 or in any other FIR registered in relation to the said scam. Further, none of them was even chargesheeted as accused in four chargesheets filed till date in the above FIR No. 32/2019 or in chargesheet(s) of any other case or FIR pertaining to the above scam. It also emerges out from record and submissions advanced before this court that neither the respondent nor any member of his family was ever summoned by the SOG as a witness, suspect or an accused under the provisions of Section 160 Cr.P.C. or Section 41 Cr.P.C., though investigation of the said case is pending for the last around four years and further though, earlier a notice U/S 91 Cr.P.C. was given to him to produce certain documents in

connection with the ongoing investigation. This position is also made clear from the recent order dated 24.11.2023 passed by the Hon'ble Rajasthan High Court in the above pending S.B. Criminal Misc (Pet.) No. 1375/2023, a copy of which has been placed on record on behalf of respondent along with his additional written submissions filed in support of his reply to this revision petition. It has been observed that the Hon'ble High Court vide its above order took note of the above facts and circumstances and after considering the rival submissions made from both sides, and also the request for vacation or extension of interim stay granted on arrest of respondent herein in the above said case of SOG, had further extended the stay on his arrest till 08.01.2024 and had also directed that in addition to the above, even no chargesheet against him will be filed by SOG in the said case without their prior approval.

54. However, though it is the case of petitioner herein that the above statements and imputations made by him are not defamatory at all as the same contained and conveyed the truth only as the respondent was certainly an accused in the said case, but in light of the above facts and discussions this submission of Ld. Senior Advocates representing the petitioner is not acceptable at this stage. It is so because even if the record shows that the respondent and his family members were named in some of the complaint received in relation to the said scam, but without any investigation conducted by the SOG

with regard to the truth of allegations contained therein and without even calling the respondent and his family members to make their submissions in respect to such allegations, there was no reason or ground available to the petitioner to address them as accused of the said case or scam. A bare perusal of some of relevant extracts of above statements made by petitioner and reproduced in the impugned order dated 06.07.2023 passed by Ld. ACMM-04 directing summoning of the petitioner as an accused for commission of the offence of defamation will show that in his above statements, he had addressed the respondent and his family members not only as accused but had further gone to the extent of saying that their guilt for the offences alleged in above case or scam stands proved and their roles were similar to the other accused who stood already arrested in the said case and were running in custody. Again, the petitioner is also found to have claimed in his above statements that the respondent and his family members had misappropriated the huge amounts or investments of public persons exceeding one lakh in number and had further acquired properties from these amounts in different countries like Australia and Ethiopia and their properties and assets are liable to be attached and seized. In *prima facie* opinion of this court, there was no justification in making of such reckless and defamatory allegations in public by the petitioner against the respondent and his family

members or other relations, when no investigation at all was yet conducted by SOG about the correctness or truth of such allegations as contained in the above complaint and they were even yet not formally made to participate or join the investigation. Hence, the only reason which appear to have been behind the making of such allegations and imputations by petitioner through these statements can be to derive political benefits out of it by denting the image and reputation of respondent in the eyes of general public, in view of the coming Assembly or Parliamentary elections.

55. Though, the Ld. Senior Advocates for petitioner have also argued forcefully that the present case is covered by first and ninth exceptions to Section 499 IPC and the above statements and imputations made by petitioner cannot be termed as defamatory as the same were made by him in good faith and for public good and also for protection of interests of public persons at large, but this court is also of *prima facie* view, on the basis of material placed before it, that the same cannot be said to have been made even in good faith, for public good or for protection of interests of others and rather, the same appear to have been made by him for his own benefits and political interests.

56. Even otherwise, Ld. Senior Advocate for respondent has rightly submitted that the fact as to whether these statements

were made in public good or not as per first exception to above Section will only be a question of fact to be decided at the time of final disposal of the case and on the basis of evidence adduced before the court concerned during the trial. Even though the public good as per ninth exception to the above Section is not a matter of trial as per submissions made by Ld. Senior Advocates for petitioner, but the other ingredients or requirements of these exceptions are also to be kept in mind by the court to see if the case of an accused is covered by these exceptions or not and as stated above, when viewed in this perspective, the above statements and imputations made by the petitioner do not appear to be falling under any of the above two exceptions. This court fails to see as to how such imputations or allegations could have been made in good faith or for the public good, when even the truth of such allegations was yet to be investigated by the concerned agency.

57. Some of the relevant observations made on these aspects by the Hon'ble Supreme Court in case of **Subramanian Swamy (Supra)** being referred to by Ld. Senior Advocate for respondent are also being reproduced herein below:-

"98. Freedom of speech and expression in a spirited democracy is a highly treasured value. Authors, philosophers and thinkers have considered it as a prized asset to the individuality and overall progression of a thinking society, as it permits argument, allows dissent to have a respectable place,

and honours contrary stances. There are proponents who have set it on a higher pedestal than life and not hesitated to barter death for it. Some have condemned compelled silence to ruthless treatment. William Douglas has denounced regulation of free speech like regulating diseased cattle and impure butter. The Court has in many an authority having realized its precious nature and seemly glorified sanctity has put it in a meticulously structured pyramid. Freedom of speech is treated as the thought of the freest who has not mortgaged his ideas, may be wild, to the artificially cultivated social norms; and transgression thereof is not perceived as a folly. Needless to emphasise, freedom of speech has to be allowed specious castle, but the question is should it be so specious or regarded as so righteous that it would make reputation of another individual or a group or a collection of persons absolutely ephemeral, so as to hold that criminal prosecution on account of defamation negates and violates right to free speech and expression of opinion. Keeping in view what we have stated hereinabove, we are required to see how the constitutional conception has been understood by the Court where democracy and rule of law prevail.

179. Having dealt with the four Explanations, presently, we may analyse the Exceptions and note certain authorities with regard to the Exceptions. It is solely for the purpose of appreciating how the Court has appreciated and applied them. The First Exception stipulates that 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. "Public good" has to be treated to be a fact. In Chaman Lal v. State of Punjab, the Court has held that in order to come within the First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good, is on the accused.

195. One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that

context criminal defamation which is in existence in the form of Sections 499 and 500 IPC is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest. Thus, we are unable to accept that provisions relating to criminal defamation are not saved by doctrine of proportionality because it determines a limit which is not impermissible within the criterion of reasonable restriction. It has been held in *D.C. Saxena v. Chief Justice of India*, though in a different context, that if maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The Court had further observed that the State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation."

(Emphasis supplied)

58. Thus, the above statements and imputations made by petitioner herein cannot *prima facie* be said to be protected or covered by the provisions contained in above exceptions to Section 499 IPC. It further follows from the above discussion that the provisions contained in this Section as well as in Section 500 IPC are perfectly in consonance with the spirit of Constitution of India and the restrictions put on constitutional

right or freedom of speech and expression of an individual through these provisions are legal and a balance has been sought to be drawn through these provisions between the freedom of speech and expression of an individual and the dignity or respect of the other person as he has also a constitutional right to live his life with dignity.

59. It has also been argued by Ld. Senior Advocates for petitioner that the portion or part of the alleged media statements dated 19.02.2023 and 21.02.2023 of petitioner, as reproduced by the respondent in his above criminal complaint, cannot be considered to be so offensive or defamatory so as to attract the provisions of Sections 499 and 500 IPC and it is also their submission that Ld. ACMM-04 had discussed and reproduced some what different statements attributed to the petitioner than those mentioned in the complaint. However, it has been observed that the impugned order dated 06.07.2023 of Ld. ACMM-04 takes note of the complete statements of petitioner made to press and of his statement made on the twitter account on above said dates and not merely of the portions which were reproduced or referred to by the respondent in his above complaint. The Ld. ACMM-04 concerned was even otherwise duty bound to consider not only the contents of some portions of these statements mentioned in the complaint or that of allegations made in the complaint, for

deciding the question of summoning of the petitioner as an accused for the above said offence, but he was also under a duty to consider the evidence produced by complainant or respondent herein in support of the said allegations, whether it was oral evidence brought on record in the form of witnesses produced by him or the documentary evidence. It has been observed that transcripts of the complete contents of above press statements of petitioner were duly placed on record by the respondent herein in support of allegations made in his above complaint and as a part of the evidence adduced therein and it was besides the tweet dated 21.02.2023 made on the official twitter ID of the petitioner and hence, Ld. ACMM-04 was fully justified in considering the above statements in entirety for deciding the question of summoning of petitioner as accused and for proceeding further on the said complaint.

60. However, this court fully agrees with the submissions advanced from both sides to the effect that the entire contents of such statements are to be seen or viewed by the court and the statements have to be considered in entirety or as a whole in any criminal proceedings for defamation based on such statements and only selected parts or portions thereof should not be considered. It is so because it is only when such a statement is considered in entirety or as a whole that it can convey the true intent of maker thereof. Thus, it also becomes necessary to reproduce herein the complete press statements

dated 19.02.2023 and 21.02.2023 made by the petitioner and the transcripts thereof as annexed with the criminal complaint filed by respondent are as follows:-

**"TRANSCRIPT OF THE STATEMENT OF SH. ASHOK
GEHLOT/ ACCUSED DATED 19.02.2022**

(document found wrongly made as Annexure A-3 to the complaint instead of Annexure A-1 and even the year of statement is found wrongly typed as 2022 instead of 2023)

"देखिये संजीवनी क्रेडिट सोसाइटी मुझसे कोई चार पांच महीने पहले मिले थे जयपुर के अंदर ये लोग उसमे 70 साल 80 साल के लोग भी थे औरत आदमी और जो मुझे उन्होंने किस्से कहानी सुनाये थे उस दिन भी मैं बहुत भावुक हो गया था और मुझे उम्मीद थी की केंद्रीय मंत्री है गजेंदर शेखावत जी तो केंद्रीय मंत्री बहुत बड़ी चीज़ होती है बहुत बड़ी हस्ती होती है देश में केंद्रीय मंत्री बनना किसे कहते है। अगर उनको अवसर मिला तो मेने कहा वो खुद आगे आकर के जांच में सहयोग भी करे और कैसे मतलब वो जो इनके कर्ता धर्ता है किसमे वो पार्टनर है किसमे वो पैसा यहाँ से बाहर गया ऑस्ट्रेलिया या इथोपिया ठीक है। तो ये तमाम बाते उनको खुद को आके **clear** करनी चाहिये थी बल्कि मैं यह उनसे अपील करुगा उनको ईमानदारी तो उसमे है के वो जो है जितने भी आज मेरे पास आये है 100 लोग इनको जो है वैसे लाखों लोग होंगे परंतु 2 लाख लोग है कम से कम 100-200 लोगों को बूला कर बात करें और अपनी स्थिति स्पष्ट करे और कहे की मैं इस प्रकार से आगे बढ़ना चाहता हूँ। अमित शाह जी **Co-operative Minister** भी है। तो ये जो संजीवनी **Credit Co-operative Credit Co-operative Society Multi Level Credit Co-operative society** कहलाती है मेरे खयाल से **Multi State** तो ये जो है ये सोसाइटीए केंद्र से भी संचालित होती है मैं चाहूँगा कि उनको खुद को अपनी स्थिति स्पष्ट करनी चाहिए उनके खुद के हित के अंदर है की वो क्यो इतने लोगो के पैसे डूब गये अभी आपने सुना कोई 2 करोड़ की बात कर रहा है कोई ढाई करोड़ की बात कर रहा है कोई 80 लाख की बात कर रहा है आप सुन नहीं सकते इनकी बातो को महिला रोने लग गई है वहा पर किस प्रकार का धोखा दिया गया किस प्रकार उनका खुद का नाम आ रहा है इन सब कामों के अंदर उनको स्थिति स्पष्ट करनी चाहिए मेरा मानना है। अभी उन्होंने **Z Security** ले ली है क्योंकि मैं बोला वहाँ **Assembly** के अंदर की ये खुद अभियुक्त है मुझे बताया गया है की कई अभियुक्त है इसके अंदर कई लोग पकड़े भी गये है और उसमे ये भी अभियुक्त थे उनके तो मेने कहा वो अभियुक्त है तो ये बहुत गंभीर बात है अब मैंने सुना उन्होंने **Z Security** ली है केंद्र से क्या जरूरत पड़ गयी उनको कोन सा उनको खतरा था और खतरा होता तो पहले हमे बताते हमे लिख कर देते वो हम उसको **Examine** कराके हम उनको **Security Provide** करते कई लोगों को **B.J.P** नेता है राजस्थान मे उन सब को चाहे वो राजेन्द्र राठोड हो चाहे ओर कोई हो उन सब को हमने **Provide** कराई है **Security** वो भी हमारे यहाँ के सांसद भी है केंद्रीय मंत्री भी है हम उनको **Security** हम देते उनको

क्या जरूरत थी उनको केंद्रीय सरकार से **Z Security** लेनी पड़ी **Z Security** अगर उन्होंने ली है तो मैं समझता हूँ मेरा मानना है क्योंकि वो अभियुक्त है तो उनको डर था की कही **SOG** वाले मुझे कही **Arrest** नहीं कर ले इस लिए ली होगी ये बहुत गंभीर बात है ये प्रधानमंत्री और ग्रहमंत्री को सोचने की बात है आपकी कैबिनेट में ऐसे मंत्री बैठे हुए है जिनके लिए लोग डूब गये है लंबे अरसे से हाहाकार कर रहे है लोग बाग ओर कोई जवाब देने वाला भी नहीं है उनको इनको कोई जवाब देने वाला भी नहीं है ये तो **Social Worker** की तरह काम कर रहे है इसमें अधिकांश लोग तो कई गरीब लोग दूखी है हम कैसे उनकी मदद करे इसी लिए आगे आये है मैं ये समझता हूँ की केंद्रीय मंत्री होने के नाते मैं उनको आग्रह करूंगा की वो थोड़ा बडप्पन दिखाए और इन सब को संतुष्ट करे और कैसे पैसा मिल सकता है इनको कुछ डूब गया है मान लीजिए कुछ इनके पास प्रोपर्टीज है वो क्यों नहीं आगे आकर के पंचायती करते है की भाई चलो प्रोपटी बेच कर के जो बचा पैसा है उनको मैं **equal Distribute** करवा दूंगा ये कर सकते है वो कुछ तो करे कम से कम वो मूल तो मिल जाये ब्याज गया भाडु में कम से कम मूल उनको (**unclear**) अभी आप सून रहे थे देखा नहीं जाता कैसे महिलाये और लोग बोल रहे थे और वो भी उद्योग पति नहीं है वो लोग किसी को कुछ बेच कर शादियाँ करनी थी किसी को पैसा बचाया उस तंग से कई लोगों की तो सदमे से डेथ हो गयी है कई लोगो की तो सदमे में हथ डेथ हो गयी है अभी बोल रहे थे लगता है साहब मुझे वो इस लिए परवाह नहीं कर रहे है की धीरे धीरे सब मर जाएंगे तो कौन मांगेगा हमसे। अगर ये भावना इनकी है इसका मतलब इनके दिलो के अंदर क्या भावना होती होगी की सरकार हमारी मदद नहीं कर पा रही है केंद्रीय मंत्री आगे नहीं आ रहे है तो भी कुछ जवाब देना पड़ेगा हम लोगो को हम भी तो सरकार मे है हम क्या कर सकते है मैंने इनको विश्वास दिलाया आप निश्चिन्त रहो सरकार जो कर सकती है मैं जो कर सकता हूँ उसमे हम लोग कोई कमी नहीं आने देंगे सरकार जो कर सकती है मैं जो कर सकता हूँ उसमे हम लोग कमी नहीं आने देंगे मैंने कहा है अगर कानून बदलना पड़ेगा तो कानून बदलेंगे हम लोग कुछ भी करना पड़े तो मैं करने के लिए तैयार हूँ करना पड़ेगा कानून के अंतर्गत ही करना पड़ेगा। लाखो का मामला होता तो मैं भीख मांग लेता यहाँ लोकल उद्योगपतियो से भीख मांगता कुछ स्कीम बना लेता सरकार की कोई करवा लेते इनको मान लो लाखो का मामला नहीं करोडो का मामला है इधर गर्जेन्द्र सिंह जी शेखावत को खुद को आगे आना चाहिए और इस मामले को मैं समझता हूँ की खुद हस्तक्षेप करे बात चीत करे बुला कर बात चीत करे खुद आये यहाँ पर सब को इकट्टा करे तब उनका बडप्पन दिखेगा ये मेरा मानना है **SOG** जाँच कर रही है **SOG** ने जाँच की है कुछ लोग अरस्ट भी हुए है अभी अगर मान लो फिर भी कोई **SOG** के वहां कुछ **Pending** होगा तो मैं उनसे भी बात करूंगा की आप लोग आगे क्यों नहीं बढ़ पा रहे है क्या दिक्कत आ रही है मैं बात करूंगा"

TRANSCRIPT OF THE STAEMENT OF SH. ASHOK
GEHLOT/ ACCUSED DATED 21.02.2022

(document found wrongly made as Annexure A-1 to the complaint instead of Annexure A-3 and even the year of statement is found wrongly typed as 2022 instead of 2023)

"केंद्रीय मंत्री श्रीमान गजेन्द्र सिंह शेखावत साहब को मैं कहना चाहूंगा कि आप जो मुलजिम बने हैं बाकी लोग जो जेलो में बंद हैं उन्ही धाराओं में वही आप पर आरोप है और आप उसी ढंग से मुलजिम है अभियुक्त है आप जो जनता को गुमराह कर रहे हैं उसकी वजह उन गरीबो की तरफ देखो जो पैसा लूटा गया है गरीबो से लगभग **1000** करोड़ रूपए होगा **900** करोड़ के तो फिगर ही आ रहे हैं एक लाख से ज्यादा लोग है जो डूब गए है बिचारे उनकी आँखों में आंसू आ जाते हैं मैं दो बार मिला हूँ उनसे मैं खुद भावुक हो गया और तरह आदमी क्या क्या बोल रहे हैं रिकॉर्डिंग है और यह केंद्रीय मंत्री है अगर ईमानदारी होती इनमे तो यह खुद बुला कर बात करते बुलाकर बात करते जबकि हमारी एसओ जी लिख रही है बार-बार ईडी को क्योंकि एडीके हाथ में है अधिकार है प्रॉपर्टी को शीश करने का वह अधिकार एसओजी के पास नहीं है और बगैर प्रॉपर्टी सीज़ किये हुए आप इनके पैसे कैसे चुकाओगे कल को खुद बुर्ज कर देंगे प्रॉपर्टी को अभिलंब ईडी को केस को लेकर प्रॉपर्टी सीज़ करनी चाहिए ईडी को यह मेरी मांग है और यह क्या कह रहा है केंद्र मंत्री है अगर यह कहता है कि मैं दोषी नहीं हूँ आप मदद क्यों नहीं करते हो मेरी अगर आप दोषी नहीं हो तो आपके इनमे इन्वॉल्वमेंट था पैसा आपने जमा करवाया वापस विद्रोह किए यह इनके पिताजी इनकी माताजी इनकी पत्नी इनके साले पांचो लोग उसके अंदर हैं माताजी तो भगवान को प्यारी हो एक नहीं यह कोई **30, 40, 50** मुलजिम है इसके अंदर कुछ तो जेल में बैठे हुए हैं तो यह केंद्रीय मंत्री की जिम्मेवारी है और प्राइम मिनिस्टर को सोचना चाहिए एक ऐसे मंत्री को मंत्री बना रखा है जिसके ऊपर इतने भयंकर आरोप है वह जांच कर ले केंद्रीय सरकार जांच कर ले कि जो आरोप लगा रही है पब्लिक रही है पब्लिक हम तो लगा नहीं रहे हैं एसओजी तफ्तीश कर रही है पर जो इतने भयंकर आरोप लगे हैं लूटा है लोगो को **2** करोड़ एक करोड़ **50** लाख **25** लाख मैं आपको कहना चाहूंगा मेरे पास जब आए थे **8** महीने पहले **10** महीने पहले तो मुझे **70** साल **80** साल के लोग थे किसी ने कहा मेरे **8** लाख डूब गए किसने कहा मेरे **5** लाख डूब गए मैं उस रकम को बहुत ज्यादा मानता था और मुझे बहुत दुख हुआ **8** लाख चले गए **10** लाख चले गए **12** लाख चले गए कल मैं जब परसो जोधपुर में था तब लोगो ने कहा डेढ़ करोड़ डूब गए मेरे तो मेरी तीन बेटियों के शादी नहीं हो पा रही है औरते रोने लग गई वहां पर मैंने कहा भाई लाखो का मामला होता तो उद्योगपतियों से बात करता सरकार का कोई तरीका निकालता मत करता अब लाखो करोड़ो रूपए हैं कोर्ट क्या कर सकती है यह तो आपको केंद्र सरकार का जो ईडी है जो छापे डाल रहा है सब जगह अभी अधिवेशन आ रहा है हमारा रायपुर में और छापा डाल रहे हैं इतनी तो शर्म आनी चाहिए कि राष्ट्र पार्टी का महाधिवेशन है कुछ तो डेमोक्रेसी में सेवा ही होती है आपस के अंदर अगर उनका महासचिव महाधिवेशन हो बीजेपी का और वहां ऐसी कोई हरकतें करे तो अच्छा लगेगा पूरे देश का कांग्रेसी और जनता आक्रोशित है रायपुर में जो कुछ घटना हुई है छापे डालने की बहुत दुखद है निंदनीय है निंदा करनी चाहिए तो इनके हाँसले बढ़ते

जा रहे हैं ईडी जोधपुर में नहीं आ रही है इतने गरीब बर्बाद हो गए और अधिकांश 80 परसेंट राजपूत है उसके अंदर मैंने बात की भगवान सिंह जी रोल साहब सर जी से वह गजेंद्र शेखावत जी के गुरु हैं उनको मैंने फोन किया परसो मैंने कहा भगवान सिंह जी आपका जो शिष्य है उसको समझाओ पहले की पैसा लौटाए ऑस्ट्रेलिया में है कोई पता नहीं कहा का है उनका मुझे तो कोई ध्यान ही नहीं विदेशों के अंदर कहा है आपको मालूम होगा इथोपिया इथोपिया और भी एक दो जगह है इथोपिया में ऑस्ट्रेलिया में कहा कहा है मुझे पता नहीं यह तमाम बातें क्लियर करनी चाहिए केंद्र मंत्री को क्यों नहीं वह प्राइम मिनिस्टर से बात करता ईडी को जांच करवा वे अगर वह खुद ईमानदार है खुद फसा हुआ नहीं है तो यह काम करवा वे तमाम जगह उनका नाम है पैसो का लेन देन उनके साथ हुआ है पैसा इकट्ठा हुआ है वही पैसा वापस सर क्यू लेट हुआ है इतना बड़ा कांड हो गया है बताइए आप आदर्श घोटाला अलग है वह सिरोही वाला इनके हाथों में दे दे यू तो यह सीबीआई तो उनके जेब के अंदर है उनको दे देवे इनको कहे एसओजी की जांच हुई है उसमे जवाब देवे और कहता है ना कि कही मेरे को बुलावे तो मैं आ जाऊंगा बुलाने की जरूरत ही कहा है आ जाइए आप एसओजी के अंदर और कहिए मेरे खिलाफ कोई आरोप है तो मुझे अरेस्ट कर लीजिए इतनी हिम्मत दिखाए फिर वह कई जेल गए हैं अभी 10, 15 दिन पहले गए हैं चार पांच सात लोग वह तो यह काम एसओजी का काम है वह तय करेगा हम कोई पंचायती नहीं करते मैं गृहमंत्री हूँ मुझे कोई रिपोर्ट दी गई तो मैंने बताया मैंने पब्लिक को बता दिया मैंने रिपोर्ट मेरे पास कहा से आई है एसओजी से आई है एसओजी ने मुझे कहा था ये सब अभियुक्त हैं इक्वल अभियुक्त हैं यह गजेंद्र सिंह इतना बड़ा पोर्टफोलियो इम्पोर्टेंट है इनके पास में पहले सरकार हमारी गिरा रहे थे उसमे यह भी शामिल थे किरदार था उसमे इसकी वॉइस सैंपल दे नहीं रहा उसमे कोर्ट से रिलीफ ले रहा है बार-बार आप बताइए वॉइस सैंपल की जरूरत नहीं है दुनिया जानती है कि कुछ बोल रहे थे उसके अंदर बताइए सरकार गिराने के अंदर अगर जोधपुर का एक एमपी हमारी सरकार को मारवाड़ का मुख्यमंत्री और मारवाड़ के लोगो को यह और क्या कहते हैं बेइज्जती कर रहा है सरकार गिरा के यह मुलजिम नहीं है हमारा ही मुलजिम है"

61. Thus, even a bare perusal of the above complete statements made to press by petitioner herein *prima facie* shows that the same were not made by him in good faith or for public good or for protection of interests of the public persons and rather, the same convey that these were made by him only with a view to derive political benefits out of the same by defaming the respondent herein and not with any other purpose. Further, *prima facie*, the criminal intent or *mens rea*

on the part of petitioner to harm, dent or damage the reputation or image of respondent through these statements is also established from the record. Thus, even though the submission of Ld. Senior Advocates for petitioner is accepted and it is taken that the distorted versions of above statements as published by the print or electronic media should not be considered for deciding the question of these statements being defamatory or not or the intent of petitioner behind making the same, but still from the original contents of these statements itself, it is *prima facie* visible that the same are defamatory qua the respondent as these tend to damage or destroy his image and character in the eyes of general public. These statements also *prima facie* convey that the same were made by petitioner with the above criminal intent only.

62. It is well settled that the onus or burden of proof placed upon a party in criminal proceedings is different at different stages and at the stage of summoning of an accused U/S 204 Cr.P.C., the court has only to see if from the facts and evidence placed before it there are sufficient grounds available or not for proceeding further in the matter. Again, at this stage of summoning of an accused, the court is not required to enter into any detailed discussion or appreciation about correctness or admissibility etc. of the evidence adduced before it as it can be adjudicated only at the end of trial and on the basis of evidence adduced during the course of trial. Even at the stage

of framing of charges in a criminal case, the court is required to see the existence of a *prima facie* case only against the accused for commission of the alleged offences, on the basis of documents and evidence produced before it, and it will again be a matter of trial if the charges can be proved against the accused or not on the basis of said evidence, which has to be tested during the course of trial. However, at the final stage of conclusion of a criminal trial, the court has to be sure that the guilt of accused is established beyond reasonable doubts from the evidence adduced before it during the trial. Hence, this court fails to find any fault or infirmity with the above order of Ld. ACMM-04 in summoning the petitioner herein as an accused on this count and on the basis of above statements and imputations and judgments in cases of **Afroz Mohammed Hasanfatta (Supra)**, **Barakara Abdul Aziz (Supra)** and **Fiona Shrikhande (Supra)** are found to have been rightly relied upon by Ld. Senior Advocate for respondent on this aspect.

63. Thus, there is found to be no requirement of examination of the journalists concerned with the above publications or press statements made by petitioner at the stage of summoning and it was enough if the e-copies or printouts thereof were tendered during the pre-summoning evidence of respondent in the above said criminal complaint. Again, the impugned order

on summoning dated 06.07.2023 is not only based on the above e-evidence or contents of reports published in print and electronic media, but the oral testimony of respondent and other witnesses examined by him in his pre-summoning evidence in the said complaint was also considered before passing the above order. The submission of Ld. Senior Advocates for petitioner that these publications could not have been tendered through the testimony of respondent in the manner in which it was permitted to be done is also not legally correct as there was no requirement of reproducing contents of such publications by a witness from his mouth and the documents could well have been tendered by him in the given manner and in support of his oral testimony. Again, simply because if one of these witnesses did not state that the image of respondent stood lowered or tarnished in his or other person's eyes or in their estimation is not a ground to hold non application of judicial mind on the part of Ld. ACMM concerned or to set aside the impugned order and to dismiss the said complaint as the respondent himself and one of the other witnesses is found to have deposed specifically to this effect. No flaw in exercise of territorial jurisdiction of the Delhi Courts is also visible as the above statements were published throughout India and were also read, heard and viewed by the respondent and other public persons in Delhi, including the two witnesses produced by respondent during his

pre-summoning evidence.

64. Similarly, there was nothing illegal if the certificate U/S 65B of the IEA given about authenticity of the e-evidence produced to this effect was permitted to be tendered initially during the statement made by respondent himself and the author thereof i.e. Sh. Ashwani J. P. Singh was examined subsequently by the respondent in his pre-summoning evidence as CW4.

65. It is also well settled that the scope of powers of a revisional court U/S 397 Cr.P.C. is very limited and this court can interfere with such an impugned order of a court subordinate to it only when the said order is factually or legally incorrect or suffers from some impropriety and further, it is not every kind of mistake, illegality or impropriety which is required to be interfered with or corrected under this provision and interference under this provision has to be made only when the order of a subordinate court is *per-se* perverse or will result in grave injustice to the party which is seeking such interference. Ld. Senior Advocate for respondent on this aspect has also referred to some of the observations made by the Hon'ble Supreme Court in case of **Afroz Mohammed Hasanfatta (Supra)** and the same are being reproduced herein below:-

"51. While hearing revision under Section 397 CrPC, the High

Court does not sit as an appellate court and will not reappraise the evidence unless the judgment of the lower court suffers from perversity. Based on the charge sheet and the materials produced thereon when the Magistrate satisfied that there are sufficient grounds for proceeding, the learned Single Judge was not justified in examining the merits and demerits of the case and substitute its own view. When the satisfaction of the Magistrate was based on the charge sheet and the materials placed before him, the satisfaction cannot be said to be erroneous or perverse and the satisfaction ought not to have been interfered with."

66. Therefore, in view of the above discussion, it is held that even the impugned order dated 06.07.2023 passed by the Ld. ACMM-04 in the above criminal complaint bearing Ct. Case No. 03/2023 does not suffer from any factual mistake or illegality or impropriety of finding etc. and thus, the same is also being upheld, along with the other two orders dated 04.03.2023 and 24.03.2023 which have been impugned in this revision petition. As a result thereof, this revision petition filed by the petitioner herein is being dismissed.

67. However, it is made clear that nothing contained herein shall tantamount to expression of any opinion on merits of the case and it will not prejudice the rights, interests and contentions of the parties and they shall be at liberty to prove their respective submissions and cases during the course of trial and as per law.

68. The interim orders passed by this court during pendency of this revision petition stand vacated. TCR be sent back to the

Ld. Trial Court along with a copy of this order. File of this revision petition be consigned to record room upon compliance of all the necessary formalities.

**Announced in the open court
on 13.12.2023**

**(M.K. Nagpal)
ASJ/Special Judge (PC Act)
CBI-09 (MPs/MLAs Cases)
RADC, New Delhi:13.12.2023**