IN THE COURT OF MS. NEHA MITTAL
ADDITIONAL CHIEF JUDICIAL MAGISTRATE-03
ROUSE AVENUE DISTRICT COURT, NEW DELHI

CNR No. DLCT12-000366-2024
CT No. 23/2024
Satyender Kumar Jain Vs. Bansuri Swaraj & Anr.
PS : Malviya Nagar
U/s: 210(1), 223 IPC

20.02.2025

ORDER ON COGNIZANCE

1. The complainant has filed the present complaint under Section 210(1) and 223 BNSS for the alleged commission of offence under Section 356 BNS by the accused persons i.e. Ms. Bansuri Swaraj (sitting MP) and Aaj Tak news channel.

2. Brief facts of the present case are that it is alleged by the complainant that the accused no.1 made certain defamatory statements against him in her interview which was aired on 05.10.2023 on Aaj Tak news channel / accused no. 2 with intent to defame the complainant and gain undue political advantage. It is stated that the complainant is a man of high repute being a three times Member of Legislative Assembly from Shakur Basti, Delhi and having handled several ministries/ portfolios in GNCTD which includes Health and Family Welfare, Industries, Home, Water, Urban Development and Irrigation and Flood Control Departments. It is further stated that accused no.1 is a practicing advocate and Member of Parliament from

the New Delhi Lok Sabha constituency and hence, is observed / followed by the people of the Capital of India. It is further stated that in the interview given by accused no.1 on 05.10.2023 to Aaj Tak news channel/accused no.2 which was broad-casted nationally and internationally, she made the following defamatory statements against the complainant in context of the raid made by ED at the house of complainant:-

(a) That Rs.3 Crore cash was recovered from the complainant's home;

(b) That 1.8 kg gold and 133 gold coins were recovered from the complainant's home.

3. The complete interview is stated to be available on the link "https://x.com/aajtak/status/1709847850631217230?t=ByUNZ0FdsMG4oKgz0hTxQ&s=19". It is further stated that the complainant's reputation has been completed tarnished because of the said statements of accused no.1 as when two of his well wishers namely Mr. Deepak Kumar Jain and Mr. Pradeep Kumar visited his house on 20.10.2024, they behaved very rudely with him and said that they used to have high regard for him and confronted him with a social post on platform X wherein accused no.1 was seen giving the above mentioned interview. It is further stated that despite the efforts of the complainant to convince them that this is a false agenda and showing of the panchnama of the ED raid, they refused to believe him. It is further stated that this incident made the complainant realize that irreparable injury has been caused to his standing in public eye and

that his reputation and character have been tarnished in the mind of general public. Hence, the present complaint has been filed.

4. Vide order dated 16.12.2024, notice was issued to the proposed accused persons as per proviso to Section 223(1) BNSS. Certain documents have been filed on behalf of proposed accused no.1 to show that no offence of defamation is made out from the facts of the case. Proposed accused no.1 has filed the copy of all the bail orders passed by the Ld. Trial Court upto Hon'ble Supreme Court in the case registered by ED against the complainant herein. Proposed accused no.1 has also filed the copy of the tweet made by ED on its official handle on the platform X on 07.06.2022 alongwith a copy of various news articles quoting the information from the aforesaid tweet. In response, Ld. Counsel for complainant has also filed copies of clippings of certain newspaper articles.

5. Submissions of all the parties have been heard on the point of cognizance.

6. Ld. Counsel for complainant has argued as under :-

(i) That as per the news articles as well as the official tweet of ED, cash was recovered from the accomplices of the complainant whereas the proposed accused no.1 has stated in her interview that the entire amount was recovered from the complainant which is factually incorrect;

(ii) That the matters pertaining to ED and CBI against the complainant are sub-judice and hence, no comments in relation to those matters can be made by anyone;

(iii) That the observations made by the Courts in the bail orders of the complainant cannot be relied upon as they are interlocutory orders and such observations do not have any bearing on the merits of the case which may end in discharge or acquittal in future; and

(iv) That no recovery of cash or gold has been effected from the complainant's house and the same stands corroborated from the panchnama prepared by the ED which shows recovery as "NIL".

7. On the other hand, it has been argued by Ld. Counsel for proposed accused no.1 that no offence of defamation is made out from the facts averred in the present complaint for the following reasons :-

(i) That the alleged defamatory statement is based upon the information which is already propagating in the general public and is in everyone's knowledge for more than two years;

(ii) That the said statement made by proposed accused no.1 in her interview given to proposed accused no. 2 is the reiteration of the facts stated by ED in its official tweet;

(iii) That the present complaint is a complete misuse of process of law as it has been filed only as a part of election campaign and that the motive of filing the complaint can be inferred from the fact that the complaint has been filed more than one year after the telecast of the interview in which alleged defamatory statements were made and just

before the then upcoming Delhi Legislative Assembly elections;

(iv) That observations have already been made against the complainant in the bail order dated 18.06.2022, 29.07.2022 and 17.11.2022 passed by Ld. Special Judge (PC Act), RACC, New Delhi, judgment dated 06.04.2023 passed by Hon'ble High Court of Delhi in Bail Application No.3590/2022 and order dated 18.03.2024 passed by Hon'ble Supreme Court of India in SLP (Crl.) No.6561/2023; and

(v) That the complainant has languished in custody for around 2.5 years and thus, his reputation is already tainted.

8. Ld. Counsel for proposed accused no.2 has advanced the following arguments :-

(i) That proposed accused no.2 is a juristic entity and hence, cannot be summoned for the criminal offence of defamation. Reliance in this regard is placed upon judgments *Manikandan B. & Anr. Vs. Pavan Gaur, 2022 (DLT SOFT) 532; Chief Education Officer, Salem Vs. K.S. Palanichamy, 2012 (2) MWN (Cr.) 354* and *Raymond Limited & Ors. Vs. Rameshwar Das Dwarka Das P Ltd. II(2013) DLT (Crl.) 853*;

(ii) That the interview given by proposed accused no.1 on the channel of proposed accused no.2 was a direct

broadcast and thus, proposed accused no.2 had no control as to what proposed accused no.1 will speak. It is further submitted that the proposed accused no. 2 could not even have run a disclaimer, as it didn't know in advance what would be said by proposed accused no. 1. Reliance in this regard is placed upon judgments *Delhi Development Authority Vs. N.N. Buildcon Pvt. Ltd., 246(2018) DLT 314(DB) and Mahesh Bhatt & Anr. Vs. Union of India & Anr., 147(2008) DLT 561 (DB)*; and

(iii) That the various newspaper clippings placed on record shows that there was a dispute regarding the fact of recovery of cash and gold from the house of complainant. The proposed accused no.2, being a news channel, could not have gone into the disputed area and given its own views on the issue.

9. In rebuttal, Ld. Counsel for complainant has placed on record certain clipping of newspaper articles to show that no recovery was made from the house of the complainant during the search conducted by ED.

10. Having heard the arguments of all the parties concerned, this Court has perused the entire record of the case and gone through the judgments relied upon by the parties.

11. In order to determine whether there exists reasonable ground for taking cognizance, it is necessary to discuss the exact meaning and import of the said term. The expression cognizance indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence said to have been committed by someone. The act of taking cognizance is the judicial application of mind by the Magistrate for purpose of proceeding further in the case.

12. It has been held by Hon'ble High Court of Delhi in judgment ***"Omlata & Ors Vs. State of NCT of Delhi & Anr."*** bearing CRL.M.C. 6195/2023 as under:-

> *"As this Court is concerned about the manner/ procedure to be followed by a Magistrate while taking cognizance, there is no requirement for moving ahead with the other provisions mentioned in the aforesaid Chapter XIV barring what is stated in Section 190 of the CrPC wherein it is provided that while issuing summons the Magistrate is free to take cognizance of any offence upon consideration of three basic factors, which as enumerated therein, is reproduced hereunder:-*
>
> *"(a) upon receiving a complaint of facts which constitute such offences;*
>
> *(b) upon a police report of such facts;*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."*
>
> *11. At the time of taking cognizance, a Magistrate is required to judicially apply the mind and be satisfied on the basis of the facts what are borne out from the statement of the complainant as made in the complaint or what are*

borne out from the report of the Investigating Officer involved or what are the surrounding facts and circumstances based on the prima facie documents and materials in existence or what the contents of the FIR are. The Magistrate is to be aware of the situation/ position as it is at the time of taking cognizance because what is before him are mere allegations which are nothing but a bundle of facts made by a complainant at the preliminary stage which are yet to be tested.

12. In effect, it is the satisfaction of the Magistrate which plays a predominant role while taking cognizance coupled with the fact that there are enough materials to convince him for taking such cognizance. The order passed by the Magistrate taking cognizance has to be a speaking one justifying the steps taken by him which convinced him of taking cognizance. Such order has to be expressive and reflective of the bare minimum reasons. The order taking such cognizance ought to reflect that the Magistrate is indeed aware of and has knowledge of the facts involved. The said order should sound convincing.

13. Any order by which the Magistrate is taking cognizance ought not to be a routine exercise which is a mere knee-jerk reaction which is automated. If there is such an order taking cognizance then the same would be perfunctory and not reflective of the Magistrate having applied its mind. The Magistrate cannot be mechanical in his approach. More so, whence at the end of the day the Magistrate is setting into motion the judicial machinery against the alleged accused person which inevitably involve their personal liberty and freedom. Therefore, the Magistrate must necessarily exercise due care, caution and precaution while taking all the relevant factor(s) into consideration. However, it in no way means that the

Magistrate has to give detailed reasons while taking cognizance as the Magistrate, while taking cognizance, has to only ensure that he does not pass a blanket order without expressing his opinion and judicial mind."

13. The satisfaction of Magistrate for taking cognizance has also been noticed by Hon'ble High Court of Delhi in judgment ***"Sanjit Bakshi vs State Of Nct Of Delhi & Anr"*** bearing CRL.M.C. 4177/2019 wherein it has been held as under:-

"Cognizance implies application of judicial mind by the Magistrate to the facts as stated in a complaint or a police report or upon information received from any person that an offence has been committed. It is the stage when a Magistrate applies his mind to the suspected commission of an offence. The cognizance of an offence is stated to be taken once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the proposed accused. The Court before taking cognizance needs to be satisfied about existence of prima facie case on the basis of material collected after conclusion of investigation. <u>The Magistrate has to apply his mind to the facts stated in the police report or complaint before taking cognizance for coming to the conclusion that there is sufficient material to proceed with the case.</u> Taking of cognizance is a judicial function and judicial orders cannot be passed in a mechanical or cryptic manner. It is not only against the settled judicial norms but also reflects lack of application of judicial mind to the facts of the case. It is equally important to note that at time of taking cognizance a Magistrate is not required to consider the defence of the proposed accused or to evaluate the merits of the material collected during investigation. It is not necessary to pass a

detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind."

14. It has to be kept in mind that BNSS has incorporated the requirement of hearing the accused before taking cognizance, obviously with a specific purpose. The intent for the same can be gathered from the following quote by **Lord Denning M.R.** -

> *"Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf".*

15. The purpose of granting pre-cognizance hearing to the accused is to avoid the issue of process in those cases where it is either false or vexatious or projected only to harass such a person. That being said, what first needs to be ascertained is the extent of right of accused to participate in the proceedings at the stage of cognizance. Section 223 BNSS provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. At present, there is a legal vacuum with respect to the interpretation of the term 'opportunity of being heard'. Hence, this court is making a conscious effort to deduce its meaning from the existing jurisprudence on criminal law. For the said purpose, a brief reference to the right of the accused to participate at the stage of charge in terms of Section 227 Cr.P.C. as laid down by Hon'ble

Supreme Court in judgment ***"State of Orissa vs. Debender Nath Padhi (2005)1 SCC 568"*** is necessary. The relevant portion is reproduced hereunder :-

> *"It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."*

16. With the passage of time, though this right of the accused has been enlarged in the sense that he has been given the right to access the list of unrelied documents but the production of any such document, if relevant, can be sought only after the stage of charge for the purpose of being used in defence evidence. Reliance in this regard is placed upon judgment ***"P. Ponnusamy V. The State of Tamil Nadu [2022] 15 S.C.R. 265".*** Thus, at the stage of charge, limited right of participation is given to the accused and he has not yet been permitted to produce any material in his defence. However, material of sterling quality which could have bearing on the framing of charges can be summoned. Reliance in this regard is placed upon judgment ***"Nitya Dharmananda @ K. Lenin & Anr. V. Sri Gopal Sheelum Reddy also known as Nithya Bhaktananda and Anr. AIR 2017 SC 5846".***

17. The stage of cognizance precedes the stage of charge and thus, the right of the accused to participate at the stage of cognizance cannot be wider than his right at the stage of charge. Thus, in the opinion of this court, the proposed accused persons can only be permitted to make submissions on the basis of the documents and material placed on record by the complainant and cannot be permitted to put forth their own documents subject to the exception laid down in Nitya Dharmananda's judgment (*supra*).

18. It is in the backdrop of the aforesaid legal proposition that this court is required to decide if there is sufficient material on record to take cognizance for the offence of defamation. Section 356 BNS 2023 defines the offence of defamation as under :-

> *"356. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.*
> ***Explanation 1:*** *It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*
> ***Explanation 2:*** *It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*
> ***Explanation 3:*** *An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

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

19. Thus, the essential ingredients for constituting the offence of defamation are as under :-

(i) Making or publishing any imputation concerning a person;

(ii) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representation;

(iii) The said imputation must have been made with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned.

20. Harm to a person's reputation has been explained in Explanation-4 as lowering the moral or intellectual character of the person in the estimation of others or lowering the character of the person in respect of his caste or of his calling or lowering the credit of that person. In the present case, the complainant is aggrieved by the statements made by proposed accused no.1 that Rs.3 Crore cash, 1.8 kg Gold and 133 Gold Coins were recovered from his house. The

complainant has placed on record the true transcript of the interview given by proposed accused no.1 containing the alleged defamatory statement. The complainant has also placed on record a pen drive having the video recording of the said interview. Even otherwise, the fact of having made the alleged defamatory statement has not been denied by the proposed accused no.1. The question remains whether the making of the aforesaid statement amounts to defamation in the given facts and circumstances of the case.

21. Ld. Counsel for complainant has submitted that no recovery was made from the house of complainant during the raid conducted by the officers of Directorate of Enforcement. The copy of the seizure memo showing recovery as "NIL" has been placed on record by the complainant. Per contra, Ld. Counsel for proposed accused no.1 has submitted that the statement was made by proposed accused no.1 relying upon the following tweet made on the official handle of ED on platform X:-

> *"ED has conducted searches on 06.06.2022 under PMLA, 2002 at the premises of Satyender Kumar Jain and others. Various incriminating documents, digital records, cash amounting to Rs.2.85 Crore and 133 Gold Coins weighing 1.80 kg in total from unexplained sources have been seized."*

22. Ld. Counsel for proposed accused no.1 has also placed on record the clipping of various news articles published on the basis of aforesaid ED tweet. The first and foremost challenge before this court

is whether the documents placed on record by proposed accused no.1 can be looked into at this stage. Though, as per the above discussed legal proposition, the accused cannot be permitted to produce any documents at the stage of cognizance except material of sterling quality, but in the present case, the complainant has not challenged the veracity of any of the aforesaid documents and has rather admitted the same. Further, the tweet made by ED on platform X is a very material document for the present case. In view of the ratio laid down in Nitya Dharmananda's judgment (*supra*), the said document can be relied upon by the court, it being of sterling quality. Some documents are in the nature of judicial proceedings being orders passed by various courts. Therefore, this court is of the opinion that there should not be any restraint in referring to the copy of tweet made by ED and judicial orders filed by the proposed accused persons. If even these documents are discarded from consideration at this stage, then the very purpose of giving pre-cognizance hearing right to the accused would be rendered nugatory. However, the copy of newspaper clippings are not being looked into at this stage.

23. Coming backs to the facts of the present case, in the opinion of this court, the first argument advanced by Ld. Counsel for proposed accused no. 1 that the present complaint has been filed mala-fidely due to the then upcoming Delhi elections is misconceived. This court cannot lose sight of the fact that the present complaint has been filed on 06.12.2024 by the complainant with respect to the statement made by proposed accused no. 1 on 05.10.2023, after having been released

on bail on 18.10.2024. Firstly, the question of bona-fides, by itself, is not a material consideration to decide the question of cognizance. Even otherwise, the chronology of dates shows that the present complaint has been filed by the complainant within 2 months of being released from the custody. Merely because filing of present complaint coincided with the then upcoming Delhi Legislative Assembly elections cannot be a sole ground to infer ulterior motive on the part of the complainant, at this preliminary stage.

24. Ld. counsel for proposed accused no. 1 has also relied upon the observations made against the complainant in orders dated 18.06.2022, 29.07.2022, 17.11.2022, 06.04.2023 and 18.03.2024 passed by various courts to justify the alleged defamatory statement made by proposed accused no. 1. The said argument is meritless and deserves to be rejected for the reasons that the case registered against the complainant herein is sub-judice and any observations made by the concerned courts in the bail orders is not an expression on the merits of the case. The allegations made against the complainant herein in the case registered against him are yet to be tested on the touchstone of evidence.

25. The next argument of Ld. Counsel for proposed accused no.1 is based upon the tweet made on the official handle of ED. A reading of the said tweet shows that it does not specify exactly as to from whom the recovery of cash and gold was made. However, it has been mentioned that searches were conducted at the premises of Satyender Kumar Jain (complainant) and others. The impression that a common

man must have got from the aforesaid information is that cash and gold have been recovered from complainant's and his accomplice's premises. The spirit of the information which was put on public platform by ED is that complainant herein has a role to play in the recovery of cash and gold which was effected during the searches conducted at his and his accomplice's premises. Before the alleged defamatory statement was made by proposed accused no.1, the same information was doing rounds in print media as has been shown on record by the complainant himself. It has to be kept in mind that the test of the defamatory nature of a statement, is its tendency to excite against the complainant, the adverse opinions or feelings of other persons. The statement is judged by the standard of opinion which prevails among ordinary, right-thinking members of society, reasonable people of time and place, and not the opinion which prevailed in another time, or in another country or among a special class or abnormally constituted people. Further, the Ld. Counsel for complainant has placed on record news article dated 07.06.2022 published on 'The Print' website in which it has been claimed by AAP (political party to which the complainant belongs) that though nothing was found at the complainant's house during the searches conducted by ED but rumors were spread about recovery of 'unexplained' cash and gold coins during raids. This implies that the complainant's party itself admits the fact that impression is being created by the information displayed by ED that recovery of cash and gold has been effected from the house of complainant. Thus, it cannot be said that the statement made by proposed accused no.1 was prima facie false or

was made with the intent to harm the reputation of the complainant. Rather, there appears substantial truth in the statement made by proposed accused no.1.

26. Keeping in view the nature of information that was propagating in general public through print media and other sources, it is quite probable that the statement made by proposed accused no.1 was made in good faith and not with intent to harm the reputation of complainant.

27. It is also pertinent to note that the complainant as well as proposed accused no. 1 are members of different political parties. It is very common amongst politicians to make attempt to use any piece of information, adverse to their rival political parties, that they are able to lay hands on, to their benefit by highlighting the same in media. It is the duty of the politicians to bring fore in the notice of general public, the shortcomings of their opponents. At the same time, it is the duty of the Court to differentiate between such statements and defamatory statements while protecting and balancing the fundamental right of freedom of speech and expression. It has been held in judgment ***'Pandey Surendra Nath Sinha And Anr. vs Bageshwari Pd. AIR 1961 PATNA 164'*** as under :-

> *"The statement is protected if it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common*

convenience and welfare of the society; and the law has not restricted the right to make them within any narrow limits."

28. While emphasizing the importance of freedom of speech and expression in dealing with cases of defamation, it has been held by the Apex Court in **S Khushboo vs Kanniammal (2010) 5 SCC 600** as under :-

> *"It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the `freedom of speech and expression' is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused."*

29. The Hon'ble Supreme Court has rather laid down the requirement of 'high threshold' test for defamation in matters involving public discourse between political personalities and political parties. The same has been reiterated by the Hon'ble Supreme Court through its order dated 30.09.2024 in Arvind Kejriwal & Anr. Vs. State Petition for Special Leave to Appeal (Crl.)No (s). 13279/2024 and order dated 10.09.2024 in Shashi Tharoor vs State of NCT Delhi 2024 SCC OnLine SC 2543. In order dated 30.09.2024 passed in ***Arvind Kejriwal & Anr. Vs. State,*** it has been observed as under :-

"In a democratic nation like India, freedom of speech is a fundamental right guaranteed under Article 19(1)(a) of the Constitution. Therefore, a defamatory complaint under Section 499 of the IPC must necessarily be made by 'some person aggrieved' under Section 199 of the Cr.P.C. As such, the threshold has to be higher than usual, especially in context of public discourse amongst political personalities and parties."

30. It is upon this elevated threshold that the statement made by proposed accused no. 1 is to be analyzed and tested for determining if the offence of defamation is made out. In the considered opinion of this court, the statement made by proposed accused no. 1 was a mere reiteration of the information which was already propagating in the public and hence, cannot be said to have been made with the intent to harm the reputation of the complainant. Hence, in view of the above discussion, the statement made by proposed accused no. 1 cannot amount to the offence of defamation.

31. With respect to the arguments advanced on behalf of proposed accused no. 2, the legal proposition that cognizance is taken of the offence and not the offender is sufficient to reject the arguments. The contention raised by Ld. Counsel for proposed accused no. 2 is that the proposed caused no. 2, being a juristic entity, cannot have the necessary *mens rea* to commit the offence of defamation. It be noted here that the Court is not enquiring into the aspect of summoning of accused persons but is only ascertaining whether any offence, at all, has been committed. Therefore, the

arguments put forth and judgments filed on behalf of proposed accused no. 2 are not relevant at this stage.

32. In view of the above discussion, this court is of the considered opinion that there does not exist sufficient ground for taking cognizance of the offence punishable u/s 356 BNS. No other offence appears to be made out from the complaint and documents annexed therewith. Accordingly, cognizance in the present case is declined.

Announced in the open Court **(NEHA MITTAL)**
Date: 20th February, 2025 **ACJM-03/RADC**
NEW DELHI