* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ Crl.M.C. No. 2342/2020 and Crl.M.A. No. 16482/2020
\+ Crl.M.C. No. 2355/2020 and Crl.M.A. No. 16590/2020

Order Reserved on: 07.12.2020
Order Pronounced on: 17.12.2020

MANOJ KUMAR TIWARI ..... Petitioner

Through: Ms.Pinky Anand, Sr. Advocate with Mr. Neeraj Sharma and Mr.Amit Tiwari, Advocates

versus

MANISH SISODIA & ORS. ..... Respondents

Through: Mr.Vikas Pahwa, Sr.Advocate with Mr.Rishikesh Kumar, Mr.Mohd. Irshad, Advocates for R-1.
Mr.Rahul Mehra, Sr.Standing Counsel with Mr.Kewal Singh Ahuja, APP for State
None for R- 3 to 7 arrayed apparently as proforma parties.

AND

VIJENDER GUPTA ..... Petitioner

Through: Ms.Sonia Mathur, Sr.Advocate with Mr.Gaurang Kanth, Ms.Shivanbi Kher, Mr.A.S. Bakshi, Mr.Puneet Pathak, Advocates

Versus

STATE & ORS ..... Respondents

Through: Mr.Rahul Mehra, Sr.Standing Counsel with Mr.Kewal Singh Ahuja, APP for State
Mr.Vikas Pahwa, Sr.Advocate with Mr.Rishikesh Kumar, Mr.Mohd. Irshad, Advocates for R-2
Respondents no. 3 to 7 arrayed apparently as proforma parties.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner of Crl.M.C.No.2342/2020 vide the present petition under Section 482 Cr.P.C. seeks the setting aside and quashing of the summoning order dated 28.11.2019 of the learned Additional Chief Metropolitan Magistrate-1, Rouse Avenue Courts, New Delhi in CC No. 51/2019, and the proceedings emanating therefrom.

2. The submissions qua the petition Crl.M.C.No.2342/2020 were made on behalf of the petitioner by Ms.Pinky Anand learned senior counsel, on behalf of the respondent No.1/the complainant, Mr.Vikas Pahwa, learned Senior counsel and by Mr.Rahul Mehra, senior standing counsel for the State, NCT of Delhi.

3. So far no notice of the petition had been issued to the respondents No.1 and 2 who were present on advance notice. Respondents No. 3 to 7 arrayed to the petition are proforma parties to the present petition. Petitioner No.6 arrayed in the present memo of parties is the petitioner of Crl.M.C. No. 2355/2020 who too has assailed the same impugned order though the contours of the aspect of summoning in relation to both i.e., the petitioner herein (CrlM.C. No. 2342/2020) and the petitioner of Crl.M.C. No. 2355/2020 are at some variance. However, it is considered appropriate to dispose of both the petitions by a common judgment/order as some of the issues involved are materially common and both the petitions relate to the alleged acts of respondent No.1 arrayed to the Crl.M.C. No. 2342/2020 who is arrayed as respondent No.2 in Crl.M.C. No. 2355/2020. Submissions on behalf of the petitioner in Crl.M.C. No. 2355/2020 were made by the learned counsel Ms. Sonia Mathur, learned senior counsel for the petitioner in Crl.M.C. No. 2355/2020 and the respondents therein were represented by Mr.Rahul Mehra, learned Senior Standing Counsel (for the State) and Mr. Vikas Pahwa learned senior counsel (for respondent No.2 in Crl.M.C. No. 2355/2020) respectively, respondents No.3 to 5 arrayed to Crl.M.C. No. 2355/2020, are also arrayed as proforma parties to the said petition.

4. The complaint case No. 51/2019 emanates from a complaint under Section 200 of the Cr.P.C., 1973 filed by Mr.Manish Sisodia, complainant therein, seeking action against Mr.Manoj Kumar Tiwari, Mr.Parvesh Sahib Singh Verma, Mr.Hans Raj Hans, Harish Khurana, Mr. Vijender Gupta and Mr.Manjinder Sirsa and seeks the issuance of

summons to the said persons arrayed as accused Nos. 1 to 6 respectively for the alleged commission of offences punishable under Section 499 & 500 of the Indian Penal Code, 1860 read with 34 and 35 of the Indian Penal Code, 1860. The complainant has submitted that he is a politician with impeccable integrity and honesty and is a devoted social worker who has served for the benefit of the common people and has been the Deputy Chief Minister of Delhi since February, 2015 and has been holding portfolios as a Minister for Education, Finance, Planning, Tourism, Land & Building, Services, Women & Child, Art, Culture and Languages Department in the Government of NCT of Delhi and is a Cabinet Minister in the Government of Delhi. The complainant had further submitted through his complaint that he has also worked as an RTI Activist and Journalist and his stupendous work in the Education Centre of the Government of NCT of Delhi has been acknowledged by him being awarded the *Finest Education Minister* award on 11.12.2017 by the former President of the country, Mr.Pranab Mukherjee. The complainant has further submitted that his services to people as a Deputy Minister and his strong journalism and social activism has earned him respect and recognition amongst the public and community at large for his honesty, integrity and professionalism in his professional and public life. The complainant has submitted that he has always remained concerned about his reputation, credibility and has always conducted himself with utmost probity and integrity in each of his actions and even whilst discharging the functions as the Education Minister of Delhi he has conducted himself in a very honest

manner and has never imagined of taking any pecuniary advantage for himself or any of his family members.

5. The complainant further submitted through his complainant that the accused persons had jointly and severally made false, defamatory and derogatory statements, both spoken and written and further published them via electronic, print and social media intending to harm with these persons having knowledge and reasons to believe that such statements and imputations would cause irreversible and damage to the reputation, character and goodwill of the complainant in his public and social life and personal life. The alleged defamatory imputations/statements have been tabulated by the complainant through his complaint as under:-

Accused No.1 *(Manoj Tiwari)*	*1.07.2019*	*Held Press Conference making false and defamatory statements inter alia against the complainant* *- I am involved in corruption of Rs.2000 Crores in building the classrooms in Delhi Government schools* *- The contractors who were given the contracts are family members/ relative of the complainant* *Distributed written handouts with defamatory contents*	*Publications* *Telecast on various Television channels and internet.* *FACEBOOK PAGE OF BJP, NDTV, DELHI AAJ TAK, FACEBOOK PAGE OF BJP* *CD with transcript is annexed herewith* ***Webcast** on facebook page of BJP Delhi Link* ***Print Media*** *-Times of India 2.07.2019*

		Posters pasted all over Delhi with defamatory content.	***Hindustan*** ***(Hindi)*** ***NBT (Hindi)*** ***Dainik Bhaskar*** ***Dainik Jagaran*** ***Hindustan Times***
Accused No.2 *Parvesh Sahib Singh Verma)*	*1.07.2019*	*He shared the platform with the accused no.1and uttered same defamatory statements with common intention.* *Re-tweeted defamatory statements by the Accused No.4*	*Telecast and webcast mentioned above.* *Published on twitter handle* ***@p_sahibsingh***
Accused No.3 *Hans Raj Hans*	*1.07.2019*	*Shared the platform with Accused No.1and tweeted defamatory with common intention*	*Telecast and webcast mentioned above.* *Published on twitter handle* ***@HarishKhurana***
Accused No.4 *(Harish Khurana)*	*1.07.2019*	*Shared the Platform with Accused No.1 and tweeted defamatory with common intention.* *Tweeted defamatory statements by the Accused No.*	*Telecast and webcast mentioned above.* *Published on twitter handle* ***@hansrajhans***
Accused No.5 *(Vijender Gupta)*	*1.07.2019*	*Tweeted defamatory contents against the complainant*	*Twitter handle* ***@Gupta_vijender***

Accused No.6 *(Manjinder Sirsa)*	*1.07.2019*	*Series of defamatory and derogatory tweets*	*Twitter handle* ***@mssirsa***

6. The complainant had further submitted through his complaint that the accused persons under the disguise and vile of information obtained under the RTI from the PWD department had drawn wrong inferences with a malicious intent to defame the complainant. The copy of the RTI and the reply were submitted along with the complaint.

7. The complainant has further submitted that the factum that the allegations levelled by the accused persons was false stood explained through his statements in the complaint as under :-

False Allegations	Truth
2872 Crores spent on 12748 classrooms.	*The amount of 2892 Crore is not the cost incurred but the estimated cost*
25 Lakh spent on each classrooms *Rupees 8800/Sq Metre* *2000 crore corruption done by the complainant*	*This includes 9981 Classrooms, 106 MP Halls, 328Labs, 204 Libraries/ Principal & Vice Pricipal Rooms/Staff rooms and 1067 Toilet Block including Stair Cases.* *School Building, Development of Site, Building Services (Compound Lighting, External Service Connection), Rain Water Harvesting, sewage, Treatment Plant, Under Ground Tank, fire Fighting System.* *Richer Specifications Like*

	STP, Pile Foundation, UGT, Tube Well, Acoustics P.A. System. *Richer specification like Granite Flooring/dado, fully body Vitrified tiles, False ceiling in various rooms (Principal room, staff room, Library and MP Halls), GRC tile cladding on external face, Green board for writing, RO System, Water Coolers, Acoustics for MP Halls.* *Cost Per Sq.ft. is 2198.* *Tender cost is 2144 Crores much lesser than the sanctioned/Estimated Cost.*
34 Contractors are relative/family members of the complainant	*All the contractors are CPWD or PWD registered and the tenders were awarded in a transparent manner.* *Not a single contractor is a family member or relative of the Complainant or CM Sh. Arvind Kejriwal.*

8. The complainant had further submitted that aggrieved by the defamatory and scandalous publications by the accused persons the complainant had sent a legal notice through his Advocate which legal notice is dated 3.7.2019 which notice is indicated to have been sent to Mr.Manoj Kumar Tiwari, Mr.Parvesh Sahib Singh Verma and

Mr.Vijender Gupta to which Mr.Vijender Gupta, the petitioner of Crl.M.C. No. 2355/2020 is stated to have sent a reply but admitting his tweet which the complainant termed to be evasive. The complainant had further submitted in his complaint that false and defamatory allegations made by the accused persons were seen and heard by Mrs. Geeta Rawat and Mr.Kuldeep, who are councillors of the Aam Aadmi Party who visited the house of the complainant and raised the doubt and sought a clarification from the complainant.

9. It was thus submitted through the complaint by the complainant that the act done by all the respondents was with the common intent and in a well thought and planned manner to defame the complainant and that by all their acts of commission and omission, the respondents/accused persons having made false, baseless, scandalous, malicious statements and allegations against him they were liable for suitable action in accordance with law.

10. Along with the complaint made by the complainant Mr.Manish Sisodia was annexed the list of witnesses in which the witnesses cited were:-

LIST OF WITNESS

1. Mrs.Geeta Rawat
2. Sh. Kuldeep
3. Shri M.K.Mahabia
Chief Engineers PWD
4. Swathi Krishnamurthy (PIO PWD)
5.Editor in Chief, Delhi Aaj Tak
6. Editor in Chief, NDTV
7.Any other witness with the leave of the Hon'ble Court.

Annexure A-1, the video CD and Pendrive of the Press Conference addressed by the accused persons that is Sh. Manoj Kumar Tiwari & transcript;
Annexure A-2, the Press release handed over and distributed by the accused persons;
Annexure A-3, News reports related to the Press Conference published in various print media,
Annexure A-4, copy of the tweet by the accused persons, copy of photo, posters pasted all over Delhi with stated defamatory content;
Annexure A-5, Copy of the legal notice issued on behalf of the complainant;

Annexure A-6, Copy of the RTI application;

Annexure A-7, Copy of the reply to the RTI application;

Annexure A-8, Copy of the sanction order and;

Annexure A-9, Copy of the break up chart and a certificate under Section 65B of the Indian Evidence Act, 1872.

11. The said certificate under Section 65B of the Indian Evidence Act, 1872 is issued by the complainant himself dated 19.7.2019 which states to the effect:-

"CERTIFICATE UNDER SECTION 65-B OF THE INDIAN EVIDENCE ACT, 1872

I, Manish Sisodia S/o Cpt.D.P.Singh, Sisodia R/o AB-17, Tilak Lane, Mathura Road, New Delhi, do hereby certify as under:-
1.That I say that I am the complainant in the accompanied complaint against the accused persons under section 499/500/34.
2.That I Say that the defamatory Statements (oral) made by the accused persons during the press conference dated 1.07.2019 was telecast on various news channels including Delhi Aaj Tak News Channel. I obtained the CD from the help of Media Cell of AAP of the telecast on Delhi Aaj Tak.

3. That apart from the video mentioned above two other video clips were downloaded and then saved on my office computer and all three videos are extracted in the external disc(pen-drive)
Links from the video got downloaded are https://www.facebook.com/BJP4Delhi/videos/513129059227O4/ and https://www.youtube.com/watch?v=VjELHCyZlns

4. I say that the defamatory tweets made by the accused persons through their verified twitter handles are saved and the printout of the same are taken out and annexed with the present complaint. The details of the computer and printer device and pen drive are mentioned below.

5. I say that all the above mentioned electronic evidences are created with the help of my office computer and printer device under my instruction and supervision.

6. I say that computer and printer used are under my control having laptop 'Dell' Inspiron 15, Reg Model P40F (hereinafter referred to as "the computer") and Printer bearing Model Name CANNON IS 13252 (hereinafter referred to as "the printer") and the Pen Drive used is SANDISK16 GB

7. That the said documents are the computer output of the digital data, printed with the help of appropriate and normal equipment required in normal course to print/produce them.

8. That the computer and printer are in my control and are used by me and my office regularly. The electronic record filed along with this statement is such information that is regularly fed into the computer in the ordinary course of activities and accessed by my office.

9. That the electronic record filed along with this statement, was produced by the computer during the period over which the computer was regularly used to store or process information by my office in the ordinary course of activities.

10. That to the best of my knowledge and belief, the Computer and Printer have been operating properly throughout the period in which the electronic record was accessed, stored and used by my office."

12. As per the contents of the transcript of the Video Conference, Facebook Live BJP page, contents therein, the stated address of the petitioner of Crl.M.C. No. 2342/2020 arrayed as respondent No.3 to Crl.M.C. No. 2355/2020 wherein Sh. Manoj Kumar Tiwari, who had stated therein inter alia in relation to the Ghotala(scam) in which the Deputy Chief Minister and Chief Minister of Delhi were stated to be involved which stated further to the effect that on the basis of information received through the RTI there had been a disclosure received which was held in the hand of Sh. Hans Raj Hans (arrayed as Accused No.3) and after this RTI the Delhi's Education Minister had no right to continue on his post. It was further stated in this address in the press conference by the petitioner Manoj Tiwari that people would have heard that a lot of good work had been done in the name of education but when they went to some schools they found that there were no school buildings, children were giving their examinations outside the school, there were some schools where there were some classes in the morning and in the evening but they taught only three days a week and that there were not requisite number of schools as per the number of students and though it had been claimed by the Delhi Government that they would get 500 new schools and 20 new colleges made, no such new schools were made nor the new colleges were made and they had claimed through hoardings that they had done work in this area but that no such work had been done. It was further stated through this address by the petitioner Manoj Tiwari that the claim made by Mr.Manish Sisodia, the complainant, of getting new rooms constructed was not an actual fact but that the attempt through

this was only to create a Ghotala(fraud/scam) for a sum of Rs.2000crores.

13. As per the statement made in the said Press Conference, the petitioner Manoj Tiwari is alleged to have stated that for rooms in the size of 300 sq.ft., the maximum cost would of Rs.3.50 lakhs to Rs.5 lakhs but even accepting that the rate of construction of such a class room would at a maximum be of Rs.5,00,000/-, to the surprise of the members of the public, the Delhi Government had got one room constructed for a sum of Rs.25 lakhs and that by spending Rs.25 Lakhs per room, the Government had spent Rs.24,86,000/- for one room and the Government had spent Rs.77,54,21,000/- and had made the payment of this amount. It was further stated in the press conference by the petitioner Sh. Manoj Tiwari that 12748 rooms were under construction and the construction of one room costs Rs.25,00,000/- that is a total of 2892 crores and on a survey that they conducted it was found that 892 crores cost shall come in the construction of these rooms and that Sh. Kejriwal and Mr.Manish Sisodia who are the faces of the Aam Aadmi Party had colluded with each other to make a case of corruption.

14. **Through this press conference, it is further stated by the petitioner Sh.Manoj Tiwari that rooms were got constructed at the rate of Rs.8,000/- per square feet when even 7 (seven) Star hotel rooms were constructed at the rate of Rs.5,000/- per square feet and all the money had been looted by Sh.Arvind Kejriwal and Sh. Manish Sisodia and that the persons form the Contractors were relatives of the two and that one class room measured**

approximately 300 square feet and that the Ghotala i.e. the scam was of more than Rs.2,000 Crores and that Sh.Manish Sisodia, the respondent no.1 to CRL.M.C.2342/2020 had clearly committed corruption of more than Rs.2000 Crores and ought to resign and ought to explain whether the amount of money had been sent through hawala and how much amount was sent to Mr.Arvind Kejriwal and how much was sent to Satender Jain and that he, the petitioner complimented his team who had discovered and investigated the fraud and that the petitioner was proceeding further to take action in relation to this Ghotala/scam. There are newspaper reports and tweets also on the record, copies of tweets also placed on record as stated to have been issued by the petitioner stating to the effect:-

"Tweeter Tweets

Manoj Tiwari @ ManojTiwariMP 01 Jul tiny.cc/SisodiaKaGhapla

Pls Listen and decide……. Just tell the public that how a room of 300 Sq. Ft. with Kadi-Tukdi roof can be constructed in 25 Lakh…. 8800 Sqr. Ft.???? where did 2000 Crore of the public of Delhi go ……. give details aap @msisodia @ @ArvindKejriwal Ji.

AAP @ AamAdmiParty

Thread"

"BJP Delhi
Scam of Rs.2000 Crore of Kejriwal Govt. in the name of constructing room in schools- Sh @ ManojTiwariMP.

Manish Sisodiya resigns (sic) should resigned and face the enquiry- Sh @ManojTiwariMP.

Enquiry of 2000 Crore scam shall be done from Lokpal- Sh @ ManojTiwariMP."

15. The tweet attributed to Mr.Vijender Gupta, the petitioner of CRL.M.C.2355/2020 is to the effect:-

"Vijender Gupta @ Gupta_ vijend… 01 Jul

दिल्ली के मुख्यमंत्री @ArvindKejriwal और उप मुख्यमंत्री @msisodia जी मेरे इन 24 सवालों के जवाब दे दो.

मेरा दावा है की मेरे सवालों के जवाब ही कमरों के निर्माण मे आपके द्वारा किए गये घोटाले की पॉल खोल देगा.
पर आप सवालों के जवाब देने से कतरा रहे हैं. लेकिन
मैं जवाब लेकर रहूँगा"

16. The learned Trial Court vide its impugned order dated 28.11.2019 in Complaint Case No.51/2019 took into account the evidence adduced by the complainant as detailed in paragraph 9 of the said order, which reads to the effect:-

"9. The complainant has relied upon the transcript of Press Conference Facebook live BJP page Ex.CW1/1 (colly), the transcript of NDTV Prime Time is Ex.CW1/2 (colly), the transcript of Press Conference of respondent No. 1 Manoj Tiwari on Delhi Aaj Tak Ex.CW1/3 (colly), the copy of the handout distributed in the said Press Conference dated 01.07.2019 by respondent No. 1 alongwith other respondents Ex.CW1/4, the Press release given to the media

by Bhartiya Janta Party Delhi State Ex.CW1/5, copy of the Times of India dated 02.07.2019 containing the contents of the aforesaid Press Conference Ex.CW1/6, copy of the Hindustan dated 02.07.2019 containing the aforesaid false allegations Ex.CW1/7, copy of newspaper of Navbharat Times dated 02.07.2019 containing the aforesaid false allegations Ex.CW1/8, copy of the Dainik Bhaskar Delhi Front Page containing the aforesaid Press Conference Ex.CW1/9, copy of the Dainik Jagran dated 02.07.2019 Ex.CW1/10, copy of the Hindustan Times dated 02.07.2019 containing the content of said Press Conference Ex.CW1/11. The copy of tweet/retweets by respondent No.1 Manoj Tiwari Ex.CW1/12(colly), the copy of tweet/retweets made by respondent no. 2 Parvesh Sahib Singh Verma Ex.CW1/13 (colly), the copies of tweet/retweets made by respondent no. 3 Hans Raj Hans on his twitter handle Ex.CW1/14 (colly), the copy of tweet/retweets by respondent No. 4 Harish Khurana Ex.CW1/15 (colly), the copy of tweet/retweets by respondent no. 6 Manjinder Singh Sirsa Ex.CW1/16(colly), the copy of tweet by respondent no.5 Vijender Gupta Ex.CW1/17, the copy of poster pasted on walls on Delhi Ex.CW1/18, copy of legal notice sent Ex.CW1/19 (colly), copy of the RTI application alongwith reply of respondent no. 4 Harish Khurana Ex.CW1/20 (colly), sanction order for the estimated cost Ex.CW1/21 for the work, spread sheet for the SFC/EFC Memorandum (Combined for All Education Division) Ex.CW1/22, complainant's complaint Ex.CW1/23, the certificate under section 65-B of the Indian Evidence Act Ex.CW1/24, the copies of the CD & Pen drive Ex.P1 and Ex.P-2. The contractor details Ex.CW3/A (colly) to whom the work was awarded, expenditure report upto the month of August 2019 Ex.CW3/2 (colly) issued by Finance Officer Project Zone PWD, the total sanction cost was mentioned in RTI reply dated 06.06.2019 Ex.CW3/3 (colly) as

Rs.2892.65 crores to be incurred by PWD for the whole project."

17. It was further observed by the learned Trial Court to the effect:-

"10. Defamatory statement is one which tends to injure the reputation of a person. It is a publication which tends to lower a person's reputation in the estimation of right thinking members of the society generally or which make them shun or avoid that person. According to section 499 of The Indian Penal Code, a person is said to commit the offence of defamation when he, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person except where the publication is protected by the ten statutory exceptions provided in this provision itself.

11. Before embarking on a discussion as to whether sufficient primafacie material exists for summoning of the accused persons, it becomes imperative to set-out briefly the legal benchmark that is to be satisfied for summoning of an accused for an offence of defamation under section 499 of the IPC -

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

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

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

12. As regard the scope of scrutiny permissible at the stage of summoning, one may turn to Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and others, AIR 1976 Supreme Court 1947, wherein the Hon'ble Apex Court held as under :-

> *"At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.*
>
> *The scope of the inquiry under Section 202 is extremely limited – only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (I) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have".*

13. In order to decide whether to summon respondents for trial, existence of only a prima facie case has to be seen in contrast to the standard of proof "beyond reasonable doubt" required for conviction. In legal terms, the consideration at this stage is whether there exists sufficient grounds to summon them or not(section 204 of The Code of Criminal Procedure). The situation may be different if the respondents are able to make out a defence for them from amongst those defences carved out in the provision itself (section 499 of

The Indian Penal Code). But these defences cannot be looked at this stage according to the law. The defences have to be pleaded and proved by the person charged with defamation. At the initial stage, the Court has to look into the complaint and the statement/evidence of the complainant and has to believe him. The Court has to see whether if the impugned material is prima facie defamatory or not and whether the Court has sufficient grounds to proceed with the case. The allegations referred above are if seen in the entire context of the things and evidence of the complainant seems to be defamatory if they do not fall within any of the statutory defences prescribed by law itself as well as the other legal requirements. The entire burden will be on respondents to plead and prove the defence on which they may rely upon.

14. Therefore, the aforesaid discussions shows that allegations of corruption and using of word "ghotala" and "ghapla" by the respondents are prima facie defamatory per se and refers to complainant Mr. Manish Sisodia making him an aggrieved person within the meaning of section 199 Cr.P.C. Coming on the aspect of the applicability of Section 34 of the Indian Penal Code, there is no gainsaying that common intention is a matter of inference, to be gathered from the totality of circumstances surrounding the crime. Though the specific statements/tweets made by the respondent no.1,2,3 and 4, even looked at in isolation are defamatory per se, however, reading them as a whole manifests a well orchestrated campaign and respondents appears to have acted in unison. The identity in the content, proximity in terms of timing of their statements/tweets suggests a commonality of intent, shared purpose and active participation. The statements in the light of the presummoning evidence led manifest that the underlying common intent was to paint the complainant as a person of dubious integrity, involved in embezzlement of fund through unscrupulous deals. Further the exhortation by the respondents as to sharing of the

statements and holding a joint conference together also strengthens the inference of common intention of the respondent no.1,2,3 and 4. As far as the tweets made by respondent no. 5 and 6 concerned that have been made after few hours of the Press Conference held by the respondent no. 1 to 4, hence, the act of respondent no. 5 and 6 cannot said to be done with common intention alongwith other respondents rather they are individual acts of defamation.

15. The inquiry as contemplated under section 202 of the Code of Criminal Procedure has been duly conducted by examining the complainant and his witnesses to arrive at the conclusion for this stage of the case. Therefore, in view of the aforesaid discussion there exists sufficient grounds to proceed against the respondents Sh. Manoj Kumar Tiwari, Parvesh Sahib Singh Verma, Hans Raj Hans, Harish Khurana under section 500 of the Indian Penal Code read with section 34 of the Indian Penal Code and respondents Sh. Vijender Gupta and Manjinder Singh Sirsa under section 500 IPC.

Accordingly, the respondents be summoned as accused persons on filing of process fees by the complainant. Copy of the complaint alongwith documents be sent alongwith the process. Steps be taken within one week from today.,

and accordingly, the petitioner of CRL.M.C.2342/2020 was summoned to face the proceedings qua the alleged commission of an offence punishable under Section 500/34 of the Indian Penal Code, 1860, along with other co-accused namely Parvesh Sahib Singh Verma**,** Hans Raj Hans, Harish Khurana and the petitioner of CRL.M.C.2355/2020 was summoned along with Mr.Manjinder Sirsa qua the alleged commission of the offence punishable under Section 500 of the Indian Penal Code, 1860.

18. The submissions raised on behalf of the petitioner are to the effect that the evidence that has been led by the complainant is wholly inadmissible without requisite compliance of the parameters of Section 65B of the Indian Evidence Act, 1872. It has been submitted on behalf of the petitioner that the testimonies of the three witnesses examined by the complainant reveals that none of them had stated that they had seen the live press conference where the petitioner made alleged imputations and all witnesses were strangers and the testimony was hearsay and thus, inadmissible and that the testimony of CW-2 was also irrelevant, in as much as, she had only stated that she came to know from twitter, print and electronic media that some wild allegations had been levelled against the complainant and she did not state what statements were made and did not state that she had seen the alleged live press conference and that even the tweets, CD and pen drive were not put to her and played in her presence to testify that these were the same tweets and press conferences of which she had come to know.

19. *Inter alia* it was submitted on behalf of the petitioners that Ex.CW1/1, Ex.CW1/2 & Ex.CW1/3 were only transcripts and were irrelevant in the absence of the legally admissible video contained in the CD and pen drive. As regards the hand outs and press releases Ex.CW1/4 & Ex.CW1/5, it was submitted on behalf of the petitioners that the original copy of the original documents i.e. Ex.CW1/4 & Ex.CW1/5 distributed to the media ought to have been summoned from the media persons who were present and collected during the press conference and that the requisite requirement of Section 65B of

the Indian Evidence Act, 1872 had also not been fulfilled through the testimony of the complainant and that the production of a newspaper is wholly hearsay evidence, which is inadmissible.

20. As regards Ex.CW1/12, the petitioner has submitted that the complainant had merely produced copies by a computer and the alleged tweets made by the petitioner were not stored in any device but on the server of a twitter and therefore, the primary evidence where the information is stored for the first time, was a server and a copy of the said primary evidence ought to have been procured/ summoned from Twitter i.e. the owner and custodian of the server along with the certificate under Section 65B of the Indian Evidence Act, 1872 certifying the account of the petitioner and its contents and that furthermore, the tweet itself indicated that the ingredients of the alleged commission of the offence/defamation were not made out.

21. As regards Ex.CW1/18, it was submitted on behalf of the petitioner that the complainant had produced a computer printout of photograph/poster affixed on a wall and that the correct method was to summon the printer along with the original poster who ought to have stated that the alleged poster was printed by him upon the instructions of the petitioner and was delivered to the petitioner or to his representative and the copy of the photograph of a poster affixed on the wall is inadmissible in evidence in the absence of any certificate under Section 65B of the Indian Evidence Act, 1872 by a person who operated the device by which the photograph was taken and how the same was produced on a paper and by which computer and which printer. It was further contented on behalf of the petitioner as regards

Ex.CW1/24, that the certificate under Section 65B of the Indian Evidence Act, 1872, and Ex.P1 and Ex.P2, the CD and the pen drive, the complainant had himself produced the certificate and the copies of the video which are inadmissible in law.

22. The petitioner has further submitted that the original video i.e. the primary evidence is in custody of Aaj Tak and only they could have produced even the primary evidence or the copy of the same with a certificate and secondly even in the certificate furnished by the complainant, it was stated in paragraph 2 that the News clip of Delhi Aaj Tak News Channel was obtained with the help of the Media Cell of AAP and neither the complainant nor the Media Cell of AAP issued the certificate and that furthermore, even the certificate from the Media Cell person who downloaded the telecast and operated the computer had not been furnished. It was thus submitted on behalf of the petitioner Manoj Tiwari that the news report of Aaj Tak was inadmissible and that likewise the alleged NDTV Video and Facebook Live video were inadmissible. It was also submitted on behalf of the petitioner that the alleged NDTV video and Facebook Live Video ought to have been proved by officials of the said channels. It was *inter alia* submitted on behalf of the respondent that the primary evidence was the memory card of the camera in which the alleged press conference was received and it was the only channel which could have produced primary evidence or copy of the same along with the certificate under Section 65B of the Indian Evidence Act, 1872.

23. It was thus submitted on behalf of the petitioner of CRL.M.C.2342/2020 that the CD and the pen drive ought to have been

played in the Court at the time of the exhibition, which had not been done and that the examination in chief of the complainant nowhere mentioned that the CD and the pen drive were played in the Court and that they contained the video nor was there any observation in the order of the learned Trial Court. It was thus submitted on behalf of the petitioner of CRL.M.A.2342/2020 that the documentary evidence had not been proved in accordance with Section 61-65 of the Indian Evidence Act, 1872 neither while leading the primary evidence nor while leading secondary evidence.

24. Reliance was thus sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***"ARJUN PANDITRAO KHOTKAR Versus KAILASH KUSHANRAO GORANTYAL AND OTHERS" (2020) 7 Supreme Court Cases 1*** to contend that the documents produced by the State were wholly inadmissible in evidence and thus, were based on hearsay. It was further submitted on behalf of the petitioner that the argument raised on behalf of the respondent no.1 i.e. the complainant, Sh.Manish Sisodia that the certificate under Section 65B of the Indian Evidence Act, 1872 can be produced at any stage of trial, is misconceived.

25. It was further submitted on behalf of the petitioner that the observations of the Hon'ble Supreme Court with respect to the stage and with respect where FIRs were registered where the charge sheet was filed along with the material collected during investigation, were cases governed by a different Chapter of the Code and in the said situation there was no evidence recorded before the learned Trial Court and the inadmissibility of evidence was not an issue and that as

laid down by the Hon'ble Supreme Court as the electronic evidence is more susceptible to tampering, the source and authenticity is to be ensured and thus, *prima facie* on the basis of illegal inadmissible evidence, the summoning of the petitioner was found to be incorrect and unsustainable.

26. A catena of verdicts has been relied upon on behalf of the petitioner i.e.:-

(i) Arjun Panditrao Khotkar Vs. Kailash Kushanrao & Ors. (2020) 7 SCC 1

(ii) Subramanian Swamy Vs. Union of India- (2016) 7 SCC 221

(iii) R P Kapur Vs. State of Punjab- (1960) 2 SCR 388

(iv) Samant N Balkrishna & Anr. Vs. George Fernandez & Ors.- (1960) 3 SCC 238

(v) R P Goenka & Ors. Vs. State of UP- 2019 SCC Online All 3815

(vi) Quamarl Islam Vs. S K Kanta & Ors.- 1994 Supp (3) SCC 5

(vii) Pran Nath Lekhi Vs. Union of India & Ors.- (2003) SCC Online Del 619.

(viii) Prem Chandra Jain (Deceased through LRs) Vs. Sri Ram (Deceased through LRs)- 2009 SCC Online Del 3202."

27. On behalf of the respondent No.1 in CRL.M.C.2342/2020, it was submitted that the petition was liable to be dismissed *in-limine* submitting to the effect that the learned ACMM whilst summoning the petitioner and other accused persons had passed a detailed order considering the materials filed along with the complainant the

electronic evidence in the form of CD and Pen- Drive, the Transcripts of the same, Original Copies of Newspaper publications, defamatory press release, defamatory tweets by the petitioner and other accused persons named in the complaint using derogatory words "Ghotala" and "Sisodia ka Ghotala" and the pre-summoning oral testimonies of three CWs including the complainant were enough material to summon the petitioner and other accused persons. The respondent no.1 has further submitted that at the stage of issuing process, the Magistrate was mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he was only to be prima facie satisfied and was not to enter into a detailed discussion on the merits or demerits of the case nor can the High Court go into this in its revisional jurisdiction which is an extremely limited one. The respondent no.1 through its written submissions has further submitted that the perusal of the averments mentioned in the petition clearly shows that there is admission of the fact that the press conference where defamatory and derogatory words were used by the petitioner against the respondent no 1 and that the grounds taken by the petitioner that the imputations made was "matter of truth" or published in "good faith" or for " public good" are to be tested by way of leading the evidence and not at this stage and these are subject matter of trial. Furthermore, it has been submitted on behalf of the respondent no.1 that the petitioner of CRL.M.C.2342/2020 namely Manoj Tiwari has not challenged the factum of holding a press conference and likewise both the petitioner of both the petitions i.e. CRL.M.C.2432/2020 & CRL.M.C.2355/2020 have admitted the

publications, statements and tweets made by them which form part of the criminal complaint filed by the respondent no.1 and that the averments made in the petition i.e. Crl.M.C 2355/2020 at Page No.21 vide paragraphs (vii), (viii), (ix) & ground (J) which read to the effect:-

> ***"(viii) That a bare perusal of the aforesaid statements/ tweets made by the Petitioner would make it clear that after verifying all the facts and figures from the concerned department of the PWD by virtue of the RTI Reply dated 06.06.2019, the Petitioner brought forth the same before the press and public at large. The Petitioner merely asked the Delhi Government officials, in their official capacity, to come forward and clarify the position with respect to the same as the public and citizens of the National Capital Territory of Delhi have a right to be informed of the funds of the public exchequer. The said statements/tweets are thus in the nature of specific questions directed at the ruling party in the National Capital Territory of Delhi and those in power, in their official capacity and the same cannot be viewed as derogatory remarks within the meaning "defamation" as envisaged under Section 500 IPC by any stretch of imagination.***
>
> ***(viii) That it is categorically submitted that the Petitioner has not made any imputations with respect to the Respondent No.2/Complainant or any other officials/members of the Delhi Government in their personal capacities, but has only brought forth the facts and figures as mentioned in the RTI Reply dated 06.06.2019, which is nothing but the truth, which was brought forth by the Petitioner for public good. The same pertains to the conduct of a public servants touching the questions of public importance like utilization of public funds and the public exchequer and is squarely covered within the exceptions to the offence of defamation as laid down under Section 499 IPC.***

(ix) That however, without having regard to the truthfulness of the statements made by the Petitioner, which was simply based on the facts and figures mentioned in the RTI Reply dated 06.06.2019, the Respondent No.2 filed a baseless, false, frivolous and vexatious criminal complaint under Section 200 of the Code of Criminal Procedure, 1973 alleging commission of the offence of defamation under Section 499/500 read with Section 34 of the Indian Penal Code, 1860 against the Petitioner along with some of his colleagues and other persons before the Court of Ld. ACMM, Rouse Avenue Courts, New Delhi titled as "Manish Sisodia vs. Manoj Tiwari & Ors." bearing Complaint Case No. 51 of 2019. True copy of the Complaint Case No. 51 of 2019 titled as "Manish Sisodia vs. Manoj Tiwari & Ors." filed before the Court of Ld. ACMM, Rouse Avenue Courts, New Delhi along with documents is annexed herewith and marked as ANNEXURE P-4 (COLLY).

J. Because the Ld. ACMM miserably failed to appreciate that none of the statements/tweets made by the Petitioner are/were directed against the Respondent No.2/Complainant, in his personal capacity. It is categorically submitted that all such statements/tweets were directed at the officials/members of the ruling party of the Government of NCT of Delhi, in their official capacity and the general public is entitled to ask such questions and seek a clarification from their elected representatives, if the said clarifications entails public good. Therefore, the complaint made by the Respondent No.2/Complainant, in his personal capacity, is not maintainable as there are no personal allegations being made by the Petitioner against the Respondent No.2/Complainant and the same is thus liable to be dismissed at the threshold.",

were used by the petitioner and thus, the contention raised by the petitioner that these imputations were made as a matter of truth or

published in good faith or for public good can only be tested by way of leading evidence and can only be subject matter of trial.

28. The respondent no.1 has further submitted that the contentions raised by the petitioner to the effect that they were expressed in good faith and not to defame the character of the complainant are only legal defences which can be tested only on the anvil of examination and cross-examination of witnesses. *Inter alia* it was submitted on behalf of the respondent no.1 that the petitioners had not availed the alternative remedy of seeking to file a revision before the Sessions Court and that the petitions seeking the quashing of the summoning order ought to be dismissed at the threshold itself.

29. The respondent no.1 has further stated that apart from this, the petitioner although not specifically pleaded in the petition but argued by the Sr. Counsel appearing on behalf of the petitioner to the effect as in column No.1 which submissions were repelled by the complainant as in column No.2 hereunder:-

	"Column No.1	Column No.2
	Petitioner's Submissions	**Response of the complainant**
1.	The electronic evidence in the form of CD/Pen Drive are inadmissible being a secondary evidence and the 65 B certificate is defective.	The test of admissibility of evidence must be taken into consideration at the stage of trial which has not commenced yet. Both complainant and the accused persons will be given to prove the case and defend in the light of the evidence lead by them. At the stage 204 Cr.PC prima facie view must be taken.

		Beside the fact that there is nothing wrong with 65 B certificate and if any it is held in Hon'ble Supreme Court of in Union of India vs. Desai (2018) 166 SSC 273) Nonproduction of the certificate U/s 65-B of the Evidence Act on as earlier occasion was curable defect which stood cured.
2.	Section 199(2) (4) (5)Cr.PC Complaint is not maintainable by the complainant as he is holding a post of Minister in State/UT	The complainant has filed this case in personal capacity, and he is entitled to do so under section 199(6) of the CrPC. The 199(6) is non obstante clause and an exception to 199(2)(4)(5). ***(2018)6 SCC676 K K Mishra Versus State of Madhya Pradesh (Para 7 "The said right however is saved in cases of the category of persons mentioned in sub section 2 of section 199CrPc by sub section (6) thereof.***
3.	Admissibility of Newspaper evidence	The newspaper publications are in addition to all other categories of evidence in the form of electronic and oral evidences. Original copy of the newspaper

		was filed along with the complaint and to prove the said publications witness from the concerned newspaper shall be called at the appropriate stage and same shall be proceed as per the evidence Act at appropriate stage. The stage of post summoning evidence all these newspapers shall be proved by calling the relevant witnesses.
4.	Regarding CW-2 statement	The issue was brought before by the Hon'ble Court whether CW-2 in her statement mentioned about the personal knowledge of the impugned press conference. CW-2 Cleary states that she had the personal knowledge of the imputations made out by the petitioner against complainant after which she confronted the respondent in personal meeting and sought explanation after going through the same. It is not necessary that the imputation being made is on same day/sometimes it may be on subsequent dates if the same is in circulation.

		All these facts stated will put to trail and accused persons are free to cross examination of the witnesses.”

30. Qua CRL.M.C.2355/2020, apart from adopting all submissions raised on behalf of the petitioner of CRL.M.C.2342/2020, it was further submitted on behalf of the said petitioner Shri Vijender Gupta that in as much, the respondent no.2 to that petition i.e. Sh.Manish Sisodia, the complainant of Complaint Case No.51/2019 is the Deputy Chief Minister of Delhi, the institution of the complaint by the complainant in his individual capacity is barred by Section 199(2) and r/w Section 199(4) of the Cr.P.C., 1973 which read to the effect:-

> ***“199. Prosecution for defamation***.—
> .....
>
> *(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.*
> ....
>
> *(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—*

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

...
..."

31. Reliance was thus sought to be placed on behalf of the petitioner of CRL.M.C.2355/2020 on the verdict of the Hon'ble High Court of Allahabad in ***"Ranvijay Singh & Ors. Vs. The State of U.P. and Ors."*** No. 284/2013 a verdict dated 20.12.2019 with specific reference to observations in paragraphs 19 & 20 thereof which read to the effect:-

> ***"19. Regarding second aspect, it is specifically provided under Section 199(2) Cr.P.C. that in respect of the Minister etc. the complaint can be filed through a Public Prosecutor in the Court of Session. Here, the respondent No. 2 was a Minister in the State Cabinet of Uttar Pradesh, and since, the complaint was filed by him in the Court of learned Magistrate, the Magistrate ought to have considered whether the complaint was maintainable before him or not. In my view the complaint was not maintainable before the Magistrate as there is specific provision that the complaint should be filed through a Public Prosecutor in the Court of Session, if Defamation is alleged in respect of performance of the public duty by the person mentioned in Section 199(2) Cr.P.C. In the present case, the news item was published with respect to his functioning as the Minister of Energy in State Government, the complaint could have been filed only through a Public Prosecutor, after taking sanction as prescribed.***

> ***20. It is well settled that the judicial process should not be an instrument of operation or needless harassment. The Court should be circumspect and judicious in exercising the discretion and only after taking all the relevant facts and circumstances into consideration should issue the process. The judicial process should not be an instrument in hands of the private complainant as vendetta to harass the person. The criminal law should not be set into motion as a matter of course as held in the case of Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate & others, MANU/SC/1090/1998 : (1998) 5 SCC 749.",***

on the verdict of the Hon'ble High Court of Calcutta in ***"Kalyan Bandyopadhyay Vs. Mridul De"*** in CRR No.1856/2019, a verdict dated 13.10.2015 with specific reference to observations in paragraph 12 thereof, which reads to the effect:-

> ***"12. In the present case the allegation is that the petitioner by his derogatory statements caused defamation of the Communist Party of India (Marxist). The only identifiable member of that particular political party in the entire complaint happens to be Mr. Buddhadev Bhattacharya, the Chief Minister of West Bengal at the relevant time. Undoubtedly the highlighted statements of the petitioner are indecent, vulgar and derogatory. However there is a Statutory bar under section 199 (2) & (4) of the Cr.P.C for prosecution for the offence of defamation against the Chief Minister of the State at the instance of a private complainant. Under these provisions taking of cognizance in relation to the offence of defamation against certain specified Office holders and Public Servants including a Minister of the Union or of a State (which naturally includes a Chief Minister as well) without the previous sanction of the State Government is not permissible. The only exception in this regard is taking of cognizance of such offence by a Court of Session, and that too only upon***

a complaint made in writing by the Public Prosecutor. But in this case neither the complaint was filed after obtaining sanction from the State Government, nor was the cognizance taken by any Session Court. Consequently the proceedings so far as they relate to the alleged defamation of the Chief Minister of West Bengal at the relevant time are clearly unsustainable on account of the Statutory bar under section 199 (2) & (4) of the Cr.P.C.",

In relation to this aspect, the contention raised on behalf of the complainant was to the effect that the complainant had filed the complaint No.51/2019 in his personal capacity and was entitled to do so under Section 199 (6) of the Cr.P.C., 1973 which has a non obstante clause and is an exception to Section 199 (2)(4)(5) of the Cr.P.C., 1973.

32. Section 199 (6) of the Cr.P.C., 1973 reads to the effect:-

"199. Prosecution for defamation.—
.....
.....
.....
(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

33. Reliance was also sought to be placed on behalf of the complainant on the verdict of the Hon'ble Supreme Court in ***"K.K.Mishra Vs. State of Madhya Pradesh and Ors." (2018) 6 SCC 676*** with specific observations in paragraph 7 thereof, which reads to the effect:-

> ***"7. Section 199(2) Code of Criminal Procedure provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution Under Section 199 (2) Code of Criminal Procedure is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent Authority in the State/Central Government Under Section 199 (4) of the Code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate Court. Section 199(2) Code of Criminal Procedure read with Section 199(4) Code of Criminal Procedure, therefore, envisages a departure from the normal Rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in Sub-section (2) of Section 199 Code of Criminal Procedure by Sub-section (6) thereof."***

34. At the outset, it is essential to observe that as regards the contention raised on behalf of the petitioner in CRL.M.C.2355/2020 in relation to the contended embargo through Section 199(2) & (4) of the Cr.P.C., 1973 in relation to an offence allegedly committed under Chapter XXI of the Indian Penal Code, 1860 which relates to the alleged commission of an offence of defamation through provisions under Section 499 to502 of the Indian Penal Code, 1860 in relation to persons falling within the category of Section 199 (2) of the Cr.P.C., 1973 i.e. the President of India, the Vice-President of India, the

Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of their conduct in the discharge of their public functions, to contend to the effect that a complaint was made by the Public Prosecutor with the previous sanction of the State Government in the case of a person who is or has been the Governor of that State or a Minister of that Government, or of the State Government in the case of any other public servant employed in connection with the affairs of the State and of the Central Government in any other case and to thus contend to the effect that the complaint as made in the instant case could not have been made by the Deputy Chief Minister of the NCT of Delhi to the Magistrate, it is essential to observe that the verdict of the Hon'ble Supreme Court in ***"K.K.Mishra Vs. State of Madhya Pradesh and Anr." (2018) 6 SCC 676*** expressly lays down as submitted rightly on behalf of the complainant that the rights qua the category of persons mentioned in the Sub-Section (2) of Section 199 of the Cr.P.C., 1973 are saved by Section 199(6) of the Cr.P.C., 1973.

35. As submitted on behalf of the complainant in both CRL.M.C.2342/2020 & CRL.M.C.2355/2020, the bare perusal of the provisions of Section 199 of the Cr.P.C., 1973 makes it apparent that the embargo under Section 199 (2) r/w Section 199 (4) of the Cr.P.C., 1973 relates to the institution of a complaint without the sanction of the requisite authorities in terms of Section 199(4) of the Cr.P.C., 1973 only through the Public Prosecutor concerned to the Court of

Sessions only to avail the requisite remedy before the Court of Sessions and as a consequence thereof, takes away the remedy of one forum of adjudication before the Magistrate and that it is only in those circumstances that the requisite sanction of the authorities concerned in terms of Section 199(4) of the Cr.P.C., 1973 in relation to the category of persons specified in Section 199(2) of the Cr.P.C., 1973 is required for institution of such complaint before the Court of Sessions. The contention thus raised on behalf of the petitioners can thus, not be accepted.

36. It is the avowed contention raised on behalf of the petitioners in CRL.M.C.2342/2020 & CRL.M.C.2355/2020 that the evidence led by the petitioners in relation to the electronic evidence sought to be adduced is not admissible in terms of Section 65-B of the Indian Evidence Act, 1872 with reliance having been placed on the provisions of Section 65-B of the Indian Evidence Act, 1872, which reads to the effect:-

> ***"65-B. Admissibility of electronic records.---***
>
> *(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more

computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that

computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]",

and the observations of the Hon'ble Supreme Court in ***"ARJUN PANDITRAO KHOTKAR Versus KAILASH KUSHANRAO GORANTYAL AND OTHERS"*** (supra) wherein the verdict of the Hon'ble Supreme Court in ***"Anvar P.V. v. P.K. Basheer" (2014) 10 SCC 473*** was reiterated observing vide paragraphs 33 & 34 to the effect:-

"33. The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the "original" document — which would be the original "electronic record" contained in the "computer" in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65-B differentiates between the original information contained in the "computer" itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of ***Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108]*** *which reads as "... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...". This may more appropriately be read without the words "under Section 62 of the Evidence Act,...". With this minor clarification, the law stated in para 24 of* ***Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108****] does not need to be revisited."*

37. It has also been submitted on behalf of the petitioners that the requisite certificate under Section 65-B (4) of the Cr.P.C. produced by the complainant as Ex.CW1/24 is meaningless as the requirement of Section 65-B of the Indian Evidence Act, 1872 has not been complied with. It was further submitted on behalf of the petitioner that the only evidence that was led by the petitioner related to electronic evidence and thus, the petitioners could not have been summoned for the alleged commission of the offences punishable under Sections 500/34

in relation to CRL.M.C.2342/2020 nor under Section 500 of the Indian Penal Code, 1860 in relation to CRL.M.C.2355/2020 respectively.

38. In relation to the said contention, it is essential to observe that as laid down by the Hon'ble Supreme Court in ***"Union of India v. Ravindra V. Desai" (2018) 16 SCC 273*** vide paragraph 21 thereof, which reads to the effect:-

> ***"21. We are in agreement with the aforesaid findings. The learned counsel for the appellants rightly argued that non-production of the certificate under Section 65-B of the Evidence Act, 1872 on an earlier occasion was a curable defect which stood cured. Law in this behalf has been settled by the judgment of this Court in Sonu v. State of Haryana [Sonu v. State of Haryana, (2017) 8 SCC 570 : (2017) 3 SCC (Cri) 663] , which can be traced to the following discussion in the said judgment: (SCC pp. 584-85, para 32)***
>
> > *"32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document*

which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

(emphasis supplied),

the non-production of certificate under Section 65-B of the Indian Evidence Act, 1872 on an earlier occasion is a curable defect and as laid down by the Hon'ble Supreme in ***"ARJUN PANDITRAO KHOTKAR Versus KAILASH KUSHANRAO GORANTYAL AND OTHERS"*** (supra) itself to the effect that Section 65-B of the Indian Evidence Act, 1872 does not speak of the stage at which such certificate must be furnished as observed vide observations in paragraph 52 thereof, which reads to the effect:-

"52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , this Court did observe that such certificate must accompany

the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC."

39. It is however essential to observe that in the instant case apart from the CD which the complainant states in paragraph 2 of his certificate under Section 65-B of the Indian Evidence Act, 1872 exhibited as Ex.CW1/24 before the learned Trial Court to having been obtained from the help of the Media Cell of AAP of the telecast on Delhi Aaj Tak, which undoubtedly the complainant would have to prove in accordance with Section 65B of the Indian Evidence Act, 1872 qua which it would be open to the Ld. Trial Court to also resort to invocation of the provisions of Section 311 of Learned Cr.P.C and Section 294 of the Cr.P.C, -the complainant has categorically stated in paragraph 2 of the certificate that two other video clips were

downloaded and saved on his office computer and all three videos were extracted in the external disk and that the defamatory tweets allegedly made by the accused persons through their verified twitter handles were saved with the print outs having been filed along with the complaint and that the electronic evidence having been created with the help of his office computer and printer device under his instructions and supervision and that the computer and the printer in which the video of the Press Conference telecast on 01.07.2019 on various news channels including Delhi Aaj Tak news channel and alleged defamatory tweets were all downloaded and saved in his office computer which was in his control and used by him in his office regularly and that to the best of his knowledge and belief, the computer and the printer had been operating properly throughout the period in which the electronic record was accessed, stored and used by him in his office and to the extent thus, that the contents of the CD and the pen drive and alleged defamatory tweets were saved in the computer of the complainant and produced before the learned Trial Court, the same would undoubtedly fall within the ambit of admissible evidence in terms of Section 65-B of the Indian Evidence Act, 1872.

40. Furthermore, as has been contended on behalf of the complainant CW-2, Ms.Geeta Rawat, the Councilor of AAP had clearly stated to the effect that:-

> "……
>
> *In the month of July 2019, perhaps on 1st/2nd July, I came to know through my twitter handle, print media/electronic media that some wild corruption allegations were levelled against Sh.Manish Sisodia by Sh.Manoj Tiwari, President*

Delhi BJP, Sh.Parvesh Saheb Singh Verma MP, Hans Raj Hans another MP of BJP, Vijender Gupta MLA, Harish Khurana, General Secretary of BJP Delhi and Manjinder Singh Sirsa MLA of BJP Party in a Press conference on 01.07.2019 at their party headquarter at Delhi where except accused Vijender Gupta all were present and sharing the platform of the said press conference. The allegations levelled by them were defamatory, derogatory, false and unsubstantiated. Despite that they made tweets/retweets on their respective twitter handles to publicise the said false and baseless allegations. .....

.....

Apart from me, the other public persons in my ward as well as in Patparganj constituency started raising doubts about the integrity and honesty of Sh.Manish Sisodia but I tried to explain the extract facts to the people but the image of Sh.Manish Sisodia and government of NCT of Delhi was hugely damaged by the accused persons by leveling the said false concocted, defamatory and derogatory remarks made during the course of the said press conference. ....."

41. Undoubtedly, during the course of the proceedings in the present petition at the time of submissions, a Court query was put qua the aspect as to whether Ms.Geeta Rawat examined as CW-2 had attended the Press Conference on 01.07.2019 at the party Headquarters of BJP at Delhi, it was not brought forth that CW-2 had attended the said Conference.

42. It was however, submitted on behalf of the complainant that CW-2 had stated that she had through her Twitter handle, print media/ electronic media learnt of the wild corruption allegations levelled against the complainant *inter alia* by the petitioner of CRL.M.C.2342/2020 and that once the speech in the Press Conference

dated 01.07.2019 of the petitioner of CRL.M.C.2342/2020 was put into the public domain in circulation and continued to remain in the public domain in circulation, it could be heard by CW-2, which she did as stated by her on 01/02.07.2019 and that thus, the same having continued to remain in public domain, fell within the culpable ambit of Section 500 of the Indian Penal Code, 1860, which contention has essentially to be accepted at this stage.

43. As regards CRL.M.C.2355/2020, it is essential to observe that the impugned order dated 28.11.2019 of the learned Trial Court in Complaint Case No.51/2019 itself observes to the effect that the act of the petitioner of CRL.M.C.2355/2020 i.e. the respondent no.5 to the complaint could not be said to have been done with the common intention along with the respondent nos.1 to 4 to that complaint. Furthermore, the testimony of CW-2, Ms.Geeta Rawat examined on 22.08.2019 categorically brings forth that the accused Vijender Gupta was not present in the Press Conference on 01.07.2019 at the party Headquarters at Delhi and had not been sharing the platform of the said Press Conference.

44. The alleged culpable tweet of the petitioner of CRL.M.C.2355/2020 reads to the effect:-

> "Vijender Gupta @ Gupta_ vijend… 01 Jul
>
> दिल्ली के मुख्यमंत्री @ArvindKejriwal और उप मुख्यमंत्री @msisodia जी मेरे इन 24 सवालों के जवाब दे दो.
>
> मेरा दावा है की मेरे सवालों के जवाब ही कमरों के निर्माण मे आपके द्वारा किए गये घोटाले की पॉल खोल देगा.

पर आप सवालों के जवाब देने से कतरा रहे हैं. लेकिन
मैं जवाब लेकर रहूँगा"

45. Through the tweet itself, is the requirement of the complainant to respond to 24 questions of the said alleged Twitter, which questions are to the effect:-

"1. How many rooms and what total cost was sanctioned under Priority I in Directorate of Education?

2. What is the cost of construction per square meter and what is the cost of construction per room under Priority I?

3. What were AA & ES for same were given by DOE and with what conditions?

4. What components were included in the cost estimates including horticulture, landscaping, rain water harvesting etc? List different components as the estimated expenditure?

5. What was the time of completion under Priority I?

6. How many rooms are actually constructed till now under Priority I and at what different time building wise?

7. What was the time over run in handing over of these rooms?

8. How many rooms are still to be constructed under Priority 1, both building/ school wise?

9. What remaining work including horticulture, landscaping etc. is left under Priority I, both building/ school wise?

10. Is there any cost escalation by PWD in construction of rooms under Priority I?

11. If yes, please give details-PWD zone wise and school building wise?

12. What are the reasons for cost escalation?

13. Are these reasons approved by DOE before it was implemented by PWD?

14. Is there any precondition in AA & ES given by DOE regarding how much cost escalation is allowed without prior approval as when the approval is required?

15. Were such approvals of the competent authority taken?

16. If no, what action is taken against concerned officials of PWD?

17. What penalties are imposed on contactor of PWD for time overrun?

18. Whether the work done by PWD is as per specifications?

19. Is the water drainage system built by PWD using pipes on the face of the building on all floors, as per specification of PWD?

20. What are the EORs sanctioned by DOE to PWD for civil workers during 2016-17, 2017-18, 2018-19 scheme wise?

21. What steps are taken by DOE to avoid any duplication of work under EORs and under works carried in Priority I?

22. How many rooms and at what total cost were sanctioned under priority II under DOE?

23. What is the cost of construction per square metre and what is the cost of construction per room under Priority II?

24. What extra components are included in the cost estimates under Priority II vis-a-vis under Priority I? Give list of new components and expenditure on same."

46. Though at first blush, it may appear that the questions that the petitioner of CRL.M.C.2355/2020 seeks to put to the complainant, *inter alia* seeks to bring out the details in relation to construction of rooms for schools, yet the factum that as per Ex.CW1/17, **the tweet of**

the petitioner makes it specific that the answers of the complainant to the questions put by the petitioner would expose the scam in which the complainant was involved, itself, *prima facie* brings the contents of the said tweet within the ambit of Section 499 of the Indian Penal Code, 1860 which reads to the effect:-

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

Illustrations

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

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

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

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

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

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

Illustration

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

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

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

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

Illustrations

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

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without

veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

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

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

Illustrations

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

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

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

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

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

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

Illustration

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

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

Illustration

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

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

for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations

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

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

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

and that the apparent *prima facie* intent of the tweet of the petitioner of CRL.M.C.2355/2020 was atleast with knowledge to believe that the imputations made in the tweet would harm the reputation of the complainant.

47. As regards the aspect as to whether the import of the press conference of the petitioner of CRL.M.C.2342/2020 and of the tweet of the petitioner of CRL.M.C.2355/2020 were for the purpose of any public good, are aspects which can only be determined through the defence of the petitioners and as to whether the acts of the petitioners would fall within any of the exceptions to Section 499 of the Indian

Penal Code, 1860, can only be determined on trial and the contention thus, that has been raised on behalf of the petitioner of CRL.M.C.2355/2020 that the tweet of the petitioner was made only after the concerned department of the PWD clarified all facts and figures by virtue of an RTI reply dated 06.06.2019 and that the petitioner based on the same asked specific questions to the Government Functionaries in their official capacities before the press and public at large and asked the Delhi Government officials in their official capacity to come forward and clarify the position with respect to the same as the public and citizens of the NCT of Delhi have a right to be informed of the funds of the public exchequer and that the said tweet/ questions were thus in the nature of specific queries directed at the ruling party for the NCT of Delhi and those in power in the official capacity and the same could not be viewed and as derogatory remarks within the meaning of defamation as envisaged under Section 500 of the Indian Penal Code, 1860, cannot be accepted at this stage.

48. Thus, Crl.M.C.2342/2020 and Crl.M.C.2355/2020 are both dismissed.

49. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the proceedings that would take place before the learned Trial Court in relation to Complaint Case No.51/2019 qua the petitioner of Crl.M.C.2342/2020 and Crl.M.C. 2355/2020.

ANU MALHOTRA, J.

DECEMBER 17, 2020
SV/ 'neha chopra'