



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

Date of decision: September 02, 2024

+ CRL.M.C. 1013/2020, CRL.M.A. 4072/2020

ARVIND KEJRIWAL & ORS.

..... Petitioners

Through: Mr. Mohit Mathur, Sr. Advocate with
Md. Irshad, Mr. Karan Sharma, Mr.
Rajat Bhardwaj, Mr. Mohit Siwach,
Mr. Harsh Gautam, Mr. Mayank
Sharma and Mr. Kaustabh Khanna,
Advocates.

versus

STATE AND ANR.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Mr. Abhinav Kumar Arya,
Mr. Shivesh Kaushik and Mr. Priyam
Agarwal, Advocates for R-1.
Ms. Sonia Mathur, Sr. Advocate with
Mr. Piyush Beriwal, Mr. Neeraj, Mr.
Himanshu Sethi, Mr. Nikhil Kumar
Chaubey, Ms. Shubhi Bhardwaj, Mr.
Nikhil Chandra Jaiswal and Ms.
Ronika Soni, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

CRL.M.C.1013/2020 & CRL.M.A.4072/2020

BACKGROUND FACTS

1. Petitioners No.1 to 3, namely Shri Arvind Kejriwal (Chief Minister of Delhi), Ms. Atishi Marlena and Shri Sushil Kumar Gupta along with Shri Manoj Kumar were summoned vide order dated 15.03.2019 passed by



learned ACMM-I, Rouse Avenue District Courts for offence of defamation under Section 500 IPC, on a complaint filed by respondent No.2 (Shri Rajiv Babbar), Authorized Representative, Bharatiya Janata Party (BJP), Delhi Pradesh. A Criminal Revision Petition preferred by the petitioners challenging the aforesaid order dated 15.03.2019 along with Shri Manoj Kumar, was dismissed by learned Additional Sessions Judge/Special Judge (PC Act) vide order dated 28.01.2020.

2. Aggrieved against the same, present petition under Section 482 Cr.P.C. has been preferred on behalf of petitioners for quashing of impugned orders dated 15.03.2019 passed by learned ACMM, and 28.01.2020 passed by learned ASJ.

3. The case of the complainant/respondent No.2 is that on 07.12.2018, when he reached the party office, one Naveen Shah amongst persons present there stated in presence of others :

"Ae kya dohora charitra hai, bhai aapka BJP ka? Hum hi help Kare aur aap humara hi vote katt diye? Centre mein tumhe lane mein hum purvanchalion ne tumhme madat nahi kiye? Kahan gaya tumhara Sab ka saath Sab ka Vikash?"

Despite explaining to aforesaid person that deletion of names is the responsibility of the Election Commission, he remarked :

"Kya baat kehete hain! Kejriwal khud kehe rehe hain. Wo jhoot thori na bolenge?"

4. Thereupon, one Dinesh Gupta, who was accompanying said Naveen Shah showed him tweet and video of Shri Arvind Kejriwal and told:



“Dekhiye Kejriwal saaf saaf kehe rahe hain ki BJP ne naam delete karwaya hai... Wo jhoot kyun kahenge? Aur wo akela nahi, Atishi, Manoj Kumar, Sushil Kumar Gupta sab kehe rehe hain, ae dekhiye. Sab log thori naa jhoot bolenge!”

In the aforesaid tweet, Shri Arvind Kejriwal imputed :

"Aggarwal samaj ke Delhi may total 8 lakh vote hain. Unmese laghbagh 4 lakh vote katwa diye? Yani 50%. Aaj tak yeh samaj BJP ka kattar voter tha. Iss bar notebandi and GST ki wajah se ye naraz hai to BJP ne inke vote hi katwa diye? Behad sharamnaak".

(Available at

<https://twitter.com/ArvindKejriwal/status/1069893132349816832>”

5. Further, in response to a tweet by an AAP worker/follower alleging BJP deleting names of voters, Shri Arvind Kejriwal tweeted :

"Not 40k, Total 30 lakh votes deleted. 4 lakh baniyas, 8 lakh muslims, 15 lakh poorvanchalis and 3 lakh rest".

6. It is further alleged that in a video tweet uploaded by AAP, Shri Arvind Kejriwal is heard saying:

"Purvanchaliyo se nafrat karti hai @ BJP4India Isliye katwaye voter list se 15 lakh purvanchaliyo ke naam".





The video tweet is available at
“<https://twitter.com/AamAadmiParty/status/1070926127324028928>”

7. Respondent No.2/complainant further claimed that the reputation of BJP has been lowered in the eyes of people because of *malafide*, deliberate and false statements/imputations made by Shri Arvind Kejriwal, Ms. Atishi Marlena, Manoj Kumar and Sushil Kumar Gupta, knowing fully well that they were making it mischievously and the statements would impair the reputation of BJP. The said tweet by Shri Arvind Kejriwal is further stated to have been re-tweeted by 1909 persons and liked by 5871 persons.

8. So far as petitioners Ms. Atishi Marlena (then Spokesperson of AAP) and Shri Manoj Kumar, MLA, Kondli constituency, AAP are concerned, it is the case of respondent No.2 that they addressed a Press Conference and alleged that on direction of BJP, names of 30 lakh voters from Baniya, Purvanchali and Muslim community had been deleted. The news report with reference to said conference is stated to have been published in leading newspapers of Delhi and the link of the same has been provided in the complaint along with the link of video clipping on YouTube.

9. It is further the case of respondent No.2 that petitioner Shri Sushil Kumar Gupta during a press conference alleged that on direction of BJP, Election Commission had deleted large number of voters from Vaishya (Baniya) community. The news related to press conference along with the link is further relied upon.



10. The case of respondent No.2 is that aforesaid allegations/imputations of removal of names of voters of certain communities from Electoral List is a blatant lie since adding or deleting the names of the voters is the sole responsibility of the Election Commission, which is a constitutional body and the same cannot be done on the directions of a political party. The allegations are also stated to have been refuted by Election Commission as 'baseless and without facts'. The political functionaries of BJP are further claimed to have urged AAP from various public platforms to produce the record of 30 lakh voters whose names have been deleted from the voters list and produce evidence as to how BJP had any role in deletion of those names from voters list but the petitioners failed to produce any such evidence in public domain.

11. It is further the case of respondent No.2 that the allegations were made against BJP in a calculated manner with the sole intention to portray a negative image of BJP in relation to voters belonging to said communities. In consequence thereof, the reputation of complainant/respondent No.2 is claimed to have been damaged beyond repair and also provoked the said communities to commit breach of peace.

CONTENTIONS ON BEHALF OF THE PETITIONERS

12. Learned counsels for the petitioners assail the order passed by learned MM summoning the petitioners as well as the order passed by learned ASJ in Revision Petition on the following grounds :

- (i) That the statements were made in good faith and are *bonafide* expression of opinion. The same were not intended to harm or



likely to cause harm to the complainant. Relying upon *Shah Rukh Khan v. State of Rajasthan*, 2007 SCC OnLine Raj 733 and *Sardar Charanjit Singh v. Arun Purie*, 1983 (4) DRJ 86, it is emphasized that intention to harm is *sine qua non* for the offence under Section 499/500 IPC.

- (ii) That the evidence relied upon by complainant/Respondent No.2 based upon newspaper reports is hearsay and inadmissible evidence. In support of the contention, reliance is placed upon *Quamarul Islam v. S.K. Kanta & Ors.*, (1994) Supp (3) SCC 5.
- (iii) Placing reliance upon *Pepsi Food Ltd. v. Special Judicial Magistrate*, (1998) 5 SC 749 and *Subramaniam Swamy v. Union of India & Ors.*, (2016) 7 SCC 221, it is contended that Magistrate is required to carefully scrutinize the evidence and satisfy that ingredients of Section 499 IPC are made out. It is urged that the case is fit for exercise of powers under Section 482 Cr.P.C., since no offence under Section 499/500 IPC is disclosed and reference is made to *Prabhu Chawla v. State of Rajasthan*, (2016) 16 SCC 30, *Dhariwal Tobacco Products Ltd. v. State of Maharashtra*, (2009) 2 SCC 370, *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.*, (1998) 1 SCC 692 and *Krishnan & Anr. v. Krishnaveni & Anr.*, (1997) 4 SCC 241.
- (iv) Learned counsels for the petitioners further contend that complainant does not fall in category of 'aggrieved person' under sub-section (1) of Section 199 Cr.P.C. as he was neither directly,



nor indirectly referred to in the imputed statements. Reliance is further placed upon *Krishnaswamy v. Kanaran & Anr.*, MANU/KE/0169/1970, *G. Narasimhan & Ors. v. T.V. Chokkappa*, MANU/SC/0119/1972; *V. Radhakrishna and 6 Others v. Alla Rama Krishna Reddy & Anr.*, Criminal Petition No. 11861/2017 decided on 05.01.2008 by High Court of Andhra Pradesh, *S. Khushboo v. Kanniammal and Anr.*, MANU/SC/0310/2010, *Prabhu Chawla and Ors. v. Shivnath Soni and Anr.*, RLW 1988 (2) 359 High Court of Rajasthan, *Laxminarayan Singh & Anr v. Shriram Sharma*, 1985 M.P.L.J. 187, *Ganesh Anand Chela v. Swami Divyanand*, 1980 SCC Online Del 66, and *Charmesh Sharma v. State of Rajasthan*, 2012 SCC OnLine Raj 815.

- (v) It is pointed out that the alleged imputations did not provoke any violence or breach of peace, as alleged by respondent No.2 and the complaint is claimed to be politically motivated.
- (vi) Learned counsel emphasizes that cognizance could not have been taken by the learned MM on the basis of said complaint, since it could not be inferred that imputations were attributed to a clearly identifiable and determinable class of persons. He further emphasizes that political party is an indeterminate, unidentifiable and indefinite entity and, as such, could not have been defamed. In support of the contentions, reliance is placed upon *Aroon Purie v. Sukhbir Singh Wahla*, CRM No. M-12372/2016 (O&M) decided



by Punjab & Haryana High Court on 17.01.2017, *Prem Pal Singh & v. Ors. v. Phool Singh & Ors.*, MANU/RH/0149/1980, *Krishnaswamy v. Kanaran & Anr.*, MANU/KE/0169/1970, *Shri Kalyan Bandyopadhyaya v. Shri Mridul De*, CRR-1856/2009 decided by High Court of Calcutta on 30.10.2015, *P. Karunakaran v. C Jayasooryan*, 1992 SCC OnLine Ker 125, *Aruna Asaf Ali & Ors. v Purna Narayan Sinha*, 1983 SCC Online Gau 35, *Raj Kapoor v. Narendra & Ors.*, MANU/GJ/0138/1973, *Dhirendra Nath Sen v. Rajat Kanti Bhadra*, 1969 SCC Online Cal 81 and *Narottamdas L Shah v. Patel Maganbhai Revabhai & Anr.*, 1984 SCC OnLine Guj 100.

- (vii) It is further urged that complaint could not have been filed by Shri Rajiv Babbar/complainant/respondent No.2 as Authorized Representative of BJP, Delhi Pradesh, without taking leave of the Court in terms of proviso to sub-section (1) of Section 199 Cr.P.C. The complaint is further stated to be not maintainable as the same is filed by complainant in individual capacity by wrongly joining different petitioners in respect of separate causes of action which arose on different dates in different press conferences/tweets.

Reliance is further placed upon *Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead) By LRS.*, (2004) 12 SCC 509, *Fr. Thomas Maniankerikalam v. State of Kerala*, (2002) SCC OnLine Ker 351, *Y. Vijayalakshmi @ Rambha v. Manickam*, [2005 (3) CTC], *A.C. Narayan v. State of Maharashtra* (2014) 11 SCC 790



and P. Nazeer Etc. v. Salafi Trust & Anr., (2022) SCC OnLine SC 382 to contend that a criminal complaint cannot be instituted on the basis of Power of Attorney.

CONTENTIONS ON BEHALF OF RESPONDENT NO.2

13. On the other hand, learned counsel for respondent No. 2 supports the summoning order and submits :

- (i) That by way of present proceedings under Section 482 Cr.P.C., petitioners cannot circumvent the procedure of law, since Revision Petition preferred by petitioners has been dismissed. Present proceedings are stated to have been filed with the sole purpose to delay the trial. It is pointed out that grounds taken in this petition were also taken up in the Revision Petition. She emphasizes that powers of the High Court under Section 482 Cr.P.C. must be exercised sparingly and cautiously, when the petitioners have already availed the remedy of challenging the impugned order of summoning by way of Revision Petition. Reliance is placed upon *M.N. Damani v. S.K. Sinha, (2001) 5 SCC 156, V.P. Wadhwa v. C.S. Parasher, 2011 SCC OnLine Del 2173 and TRL Krosaki Refractories Ltd. v. SMS Asia (P) Ltd., (2022) 7 SCC 612.*
- (ii) That **Explanation 2 to Section 499 IPC** refers to defamation of a ‘company’ or ‘association’ or ‘collection of persons’ and the defamatory imputations have been made against Delhi Unit of ‘BJP’ which is an identifiable and determinate body. Further, the complaint has been filed by respondent No.2/complainant in



capacity of Vice President of BJP, Delhi Pradesh, after being duly authorized by the President, BJP Delhi Pradesh. Reliance is further placed upon *R. Rajagopal @ R.R. Gopal & Ors. v. Satyamoorthy*, 2002 (5) CTC 579, *Sahib Singh Mehra v. State of Uttar Pradesh*, AIR 1965 SC 1451, *Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr.*, CRL.M.C. No.6574/2014 decided by High Court of Kerala on 07.01.2022, *John Thomas v. K. Jagadeesan (Dr)*, (2001) 6 SCC 30, *Tek Chand Gupta v. R. K. Karanjia and Others*, 1969 CrL.L.J 536 (Allahabad High Court), *Radhakrishna & Ors. v. Alla Rama Krishna Reddy*, 2018 SCC OnLineHyd 98, upon *Aroon Purie v. Sukhbir Singh Wahla (supra, G. Narasimhan v. T. V. Chokkappa*, (1972) 2 SCC 680 and *Emperor v. Wahid Ullah Ahrari*, AIR 1935 All 743.

Learned counsel emphasizes that BJP, a national political party is an organized group of persons having certain ideology with a political and social outlook and is registered with the Election Commission of India under Section 29A of the Representation of the People Act, 1951. It is urged that under Section 13A of the Income Tax Act, 1961, a political party is also liable to file returns and is recognized as a legal entity.

- (iii) Learned counsel for respondent No.2 further emphasizes that false and baseless allegations were levelled by the petitioners that BJP got deleted the name of voters of particular communities from the voter's list in Delhi though admittedly the Election Commission is



the competent authority for addition or deletion of names of voters. Further, no voters list is maintained on the basis of caste or religion of the voters by the Election Commission. Consequently, the allegations are stated to have been mischievously levelled by the petitioners with intent to lower the reputation of BJP, BJP (Delhi Pradesh) and its office bearers, functionaries and workers.

- (iv) Relying upon *M.A. Rumugam v. Kittu*, (2009) 1 SCC 101, learned counsel further urges that the defence of publication for public good or claiming *bonafides* as contended by the petitioners, can only be proved during the course of trial.
- (v) Learned counsel for respondent No.2 submits that complaint has been filed in accordance with law by Shri Rajiv Babbar, Vice President, BJP, Delhi Pradesh on being authorized by the President, BJP, Delhi Pradesh and there is no infirmity in this regard as the same is duly supported by the constitution of BJP. Further, since BJP is not a natural person, the complaint is filed by the complainant on due authorization and there is no basis to object under Section 199 Cr.P.C. that complaint could not have been filed through Authorized Representative.

It is urged that the petitioners tried to cause confusion by filing incorrect Memo of Parties describing respondent No.2/complainant, which was noticed by this Court vide order dated 28.02.2020. Learned counsel emphasizes that the correct description of the complainant/respondent No.2 as filed in the



complaint is ‘Rajiv Babbar, Authorized Representative of Bharatiya Janata Party, Delhi Pradesh’ and points out that the constitution of BJP empowers the ‘Vice-President’ to carry out the responsibilities as directed by the President. Further, in place of the President, the Vice-President when directed by the President, may also discharge all the functions of the President.

FINDINGS

14. Maintainability of petition under Section 482 Cr.P.C.

There is no dispute as to the principle of law in respect of exercise of powers under Section 482 Cr.P.C. as referred to in the judgments relied upon by learned counsel for the petitioners and respondent No.2.

The observations of this Court in *Dr. Shashi Tharoor v. State and Anr., CRL. M.C. 1394/2020 decided on August 29, 2024* may be beneficially referred:

“12. It is well settled that when substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done. Keeping in perspective the same, the underlying object for exercising powers under Section 482 Cr.P.C. is to secure the ends of justice and there is no limitation prescribed for seeking the relief under Section 482 Cr.P.C. Since the offence under Section 500 IPC has a significant bearing on the person’s right to life and liberty and if a complaint is made of defamation, the Court exercising powers under Section 482 Cr.P.C. or in writ jurisdiction under Article 226 of the Constitution of India, may interfere, if a clear case of abuse of process of law is made out. The petition cannot be thrown out at the threshold on technical objection itself and the issues should be examined, to determine, if a case of abuse of process has been made out or not...”



This Court is of the considered opinion that the issues raised in the present petition require examination to determine if a case of abuse of process has been made out or not, though the Revision Petition preferred on behalf of the petitioners has already been dismissed by the Court of Sessions. The objections taken on behalf of respondent No.2 on the point of maintainability are accordingly dismissed.

15. Is the imputation made by petitioners' *prima facie* defamatory within the ambit of Section 500 IPC for the purpose of summoning?

There can be no second opinion that 'defamation' should not be permitted to be used to stifle criticism or accountability of any government organization or political party. A fear of 'defamation' should not be permitted to a 'censorship' which may be antithetical to any democracy. Citizens and parties should be free to express their honest opinions without any fear of retribution, to be dragged in litigation.

16. However, at the same time it needs to be kept in perspective that reputation is a prized attribute of any individual and entity, and also stands protected under Article 21 of the Constitution of India. A misleading and false information in a political arena is likely to sway the public opinion and may give an uncalled for political advantage. In view of above, imputations or statements should have a factual foundation and should not be used to discredit other political parties and spread a negative image, which may be damaging to the reputation of the concerned party.

17. The offence of defamation under Section 500 IPC primarily consists of three essential ingredients, namely, (i) making or publishing of an



imputation concerning any person (ii) such imputation must have been made by words either spoken or by visible representations and (iii) such imputation must be made with intention to cause harm or with the knowledge or having reasons to believe that it will harm reputation of the person concerned.

18. The nature of imputations made by the petitioner Shri Arvind Kejriwal at different stages in different tweets is to the effect :

"Aggarwal samaj ke Delhi may total 8 lakh vote hain. Unmese laghbagh 4 lakh vote katwa diye? Yani 50%. Aaj tak yeh samaj BJP ka kattar voter tha. Iss bar notebandi and GST ki wajah se ye naraz hai to BJP ne inke vote hi katwa diye? Behad sharamnaak".

.....
"Not 40k, Total 30 lakh votes deleted. 4 lakh banyas, 8 lakh muslims, 15 lakh poorvanchalis and 3 lakh rest".

.....
"Purvanchaliyo se nafrat karti hai @ BJP4India Isliye katwaye voter list se 15 lakh purvanchaliyo ke naam".

Apparently, the imputations do not have any factual or legal base. The addition or deletion of names of voters at instance of any political party, has been categorically denied by the witness examined from the office of Chief Election Officer, in the pre-summoning evidence led on behalf of respondent No.2/complainant. Even otherwise, a political party hardly has any role in addition or deletion of the names in the voters list, as the said task is assigned to the Election Commission to be taken in accordance with law.

The reiteration of the said imputations by way of press conferences and tweets by petitioners Ms. Atishi Marlena and Shri Sushil Kumar Gupta is also available in press reports and YouTube. The entire process of



deletion of names in respect of particular communities in the voters list, is specifically attributed at the instance of BJP, since it allegedly apprehended that the voters from the said communities would not vote in favour of BJP.

19. The imputations clearly imply that Bharatiya Janata Party entered into corrupt or unethical practice, for the purpose of deletion of names of voters of particular communities, which could adversely influence the public opinion against the BJP and sway the voters away from the said communities from voting in favour of BJP at the relevant time prior to elections. *Prima facie*, the tweets and press conferences appear to be malicious and defamatory to BJP and specifically to Delhi Pradesh (BJP) i.e. the State Unit and the office bearers of the party, with serious consequences of having targeted particular communities.

20. This Court is of the considered opinion that there is a fine distinction between legitimate criticism of the policies of a political party or the government or an organization and intentional malicious imputations, which may be defamatory. The issue highlighted by the petitioners regarding discrepancies in the list of voters prepared and uploaded on the website of Election Commission may have been crucial and critical from the perspective of citizens, but imputing that the exercise of deletion of names of certain communities was at instance of BJP clearly exhibits that the imputations were made with *malafides*. *Prima facie*, the imputations lower down the reputation of BJP and undermine the trust of the voters in the said party.



21. The defence of the petitioners that the aforesaid imputations were in good faith and *bonafide* for the protection of the interest of the voters or public good, needs to be established and proved by the petitioners during the course of trial. The petitioners have no *locus standi* at the stage of issue of process and the scope of enquiry under Section 202 Cr.P.C. before the learned MM is limited only to the ascertainment of truth or falsehood of the allegations made in the complaint on the material and evidence placed by the complainant before the Court. Reliance in this regard may be placed upon *Nagawwa v. V.S. Konjalgi*, (1976) 3 SCC 736, *M.A Rumugam v. Kittu @ Krishnamoorthy*, (2009) 1 SCC 101 and *M.N. Damani v. S.K. Sinha*, (2001) 5 SCC 156.

22. Reliance placed by learned counsel for the petitioners upon *Sardar Charanjit Singh v. Arun Purie* (supra) (a single Judge judgment of this Court) to contend that the persons who fill a public position must not be too thin skinned in respect of the comments made upon them, cannot come to their rescue, since the imputations made in the present case, *prima facie* do not appear to be fair and justified and are defamatory in nature. The judgment relied upon by learned counsel for the petitioners, is distinguishable.

23. Whether summoning order is based on hearsay and inadmissible evidence?

Placing reliance upon *Quamarul Islam v. S.K. Kanta & Ors.* (supra), learned counsel for the petitioners has urged that summoning order is bad in law since it is based only on hearsay and inadmissible evidence. Further,



none of the witnesses was examined to prove the alleged newspaper reports or video clippings.

24. There is no dispute on the proposition of law that the ‘newspaper report’ is a hearsay evidence. The same needs to be proved by examining the Reporter who heard the statement and production of editorial office of the newspaper or publisher. Newspaper report by itself, is a secondary evidence.

25. However, it may be noticed that along with the complaint, the complainant/respondent No.2 has duly filed a certificate under Section 65B of the Indian Evidence Act, along with a list of witnesses wherein the Editor, Jagran Prakashan Limited, Kangkan Acharya, www.firstpost.com and other witnesses have been relied upon.

It is well settled that scope of enquiry under Section 202 Cr.P.C. is restricted only to finding out the truth or otherwise of the allegations made in the complaint, in order to determine whether process is to be issued or not under Section 204 Cr.P.C., or the complaint may be dismissed under Section 203 Cr.P.C., if there is no sufficient ground for proceeding on the basis of statements of the complainant and witnesses examined on his behalf. The question whether the evidence is sufficient for conviction is to be seen at the stage of trial and not at the stage of enquiry under Section 202 Cr.P.C. The non examination on oath of any or some of the witnesses cited by the complainant does not by itself denude the Magistrate concerned to take the cognizance and issue process under Section 204 Cr.P.C.

It has been held in *Shivjee Singh v. Nagender Tiwari and Others*, Crl. Appeal No.1158 of 2010 decided on 06.07.2010 by the Hon’ble Apex Court



that examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant in furtherance of the directions given by the magistrate in terms of proviso to section 202(2) Cr.P.C. is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint.

26. In view of aforesaid legal position, at the stage of issue of summons for the purpose of Section 202/204 Cr.P.C., learned MM was only required to examine whether the basic ingredients for purpose of summoning under Section 499/500 IPC are *prima facie* made on the basis of pre-summoning evidence led on behalf of the complainant. It was not necessary to examine all the witnesses at the said stage itself. The possibility of any manipulation in the imputations on the basis of press reports is ruled out since imputations are *verbatim* available by way of video clippings on the internet and the same cannot be overlooked at this stage. The summoning order cannot be held to be bad in law merely on the ground that the witnesses were not examined to prove the newspaper reports or the tweets at the stage of pre-summoning stage, since the concerned witnesses can be duly summoned at post-summoning stage for proving the relevant documents/clippings in accordance with law.

27. Whether the imputations have been made against a determinable, definite or identifiable group? Further, if respondent No.2 falls within the ambit of “some aggrieved person” under Section 199 Cr.P.C.?

Learned counsel for the petitioners submits that complaint is politically motivated and contends that complainant does not fall in category



of 'aggrieved person' under sub-section (1) of Section 199 Cr.P.C. as he was neither directly, nor indirectly referred to in the imputed statements. Reliance is further placed upon *Krishnaswamy v. Kanaran & Anr.* (supra),, *G. Narasimhan & Ors. v. T.V. Chokkappa* (supra); *V. Radhakrishna v. Alla Rama Krishna Reddy & Anr.* (supra), *S. Khushboo v. Kanniammal and Anr.* (supra), *Prabhu Chawla and Ors. v. Shivnath Soni and Anr.* (supra), *Laxminarayan Singh & Anr v. Shriram Sharma* (supra), *Ganesh Anand Chela v. Swami Divyanand* (supra) and *Charmesh Sharma v. State of Rajasthan* (supra).

Learned counsel further emphasizes that cognizance could not have been taken by the learned MM on the basis of said complaint, since it cannot be inferred that imputations are attributed to a clearly identifiable and determinable class of persons. It is urged that political party is an indeterminate, unidentifiable and indefinite entity and, as such, could not have been defamed. In support of the contentions, reliance is placed upon *Aroon Purie v. Sukhbir Singh Wahla* (supra), *Prem Pal Singh & v. Ors. v. Phool Singh & Ors.* (supra), *Krishnaswamy v. Kanaran & Anr* (supra), *Shri Kalyan Bandyopadhyaya v. Shri Mridul De* (supra), *P. Karunakaran v. C Jayasooryan* (supra), *Aruna Asaf Ali & Ors. v Purna Narayan Sinha* (supra), *Raj Kapoor v. Narendra & Ors.* (supra), *Dhirendra Nath Sen v. Rajat Kanti Bhadra* (supra) and *Narottamdas L Shah v. Patel Maganbhai Revabhai & Anr.* (supra).

28. On the other hand, learned counsel for respondent No.2 submits that **Explanation 2 to Section 499 IPC** refers to defamation of a 'company' or



‘association’ or ‘collection of persons’ and the defamatory imputations have been made against BJP including BJP, Delhi Pradesh which is an identifiable and determinate body. She submits that BJP is an organized registered party with a certain ideology and a political and social outlook which is registered as a national party with the Election Commission of India under Section 29A of the Representation of the People Act, 1951. It is reiterated that BJP is a determinate, identifiable and definite body, competent to file the proceedings through an authorized representative before the Court of law. Reliance is further placed upon *R. Rajagopal @ R.R. Gopal & Ors. v. Satyamoorthy*, (supra), *Sahib Singh Mehra v. State of Uttar Pradesh* (supra), *Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr* (supra) *John Thomas v. K. Jagadeesan (Dr)* (supra), *Tek Chand Gupta v. R. K. Karanjia and Other* (supra), *Radhakrishna & Ors. v. Alla Rama Krishna Redd* (supra), *Aroon Purie v. Sukhbir Singh Wahla* (supra), *G. Narasimhan v. T. V. Chokkappa* (supra) and *Emperor v. Wahid Ullah Ahrari*, AIR 1935 All 743.

29. It is pertinent to observe that similar issues were raised before this Court in *Dr. Shashi Tharoor v. State and Anr.* (supra), wherein petitioner therein was summoned under Section 499/500 IPC on complaint filed by Shri Rajiv Babbar, Vice President, BJP, Delhi Pradesh with reference to defamatory imputations made by the petitioner in 2018 against Shri Narendra Modi, Hon’ble Prime Minister of India, Bharatiya Janata Party, RSS and also hurt the Hindu sentiments. It was vehemently urged on behalf of petitioner therein relying upon most of the authorities referred to in the present petition



that a political party could not be defamed, since it is an indeterminate, indefinite and unidentifiable body. Further, the *locus* of complainant/respondent No.2 Shri Rajiv Babbar therein, who is also the complainant in the present case was challenged on the ground that he did not fall within ambit of “aggrieved person” under Section 199 Cr.P.C.

30. The observations made by this Court in paras 34 to 36 in *Dr. Shashi Tharoor v. State and Anr.* (supra) may be beneficially referred:

“34. The issue for consideration is whether the political party can be considered as an identifiable, definite and determinate body and if the complainant/respondent No.2 falls within ambit of “person aggrieved”.

35. Section 499 IPC provides for defamation of “any person” and Explanation 2 states that it may amount to defamation to make an imputation concerning a ‘company’ or ‘an association’ or ‘collection of persons’ as such. In terms of Explanation 2 referred to above, any member of such group or class can bring an action for defamation subject to it being determinate and identifiable. Also, under Section 11 IPC, the word ‘person’ includes any company or association or body of persons whether incorporated or not.

The term ‘association’ in Explanation 2 to Section 499 IPC connotes a juristic personality and like a ‘company’ can sue and be sued in the name of the ‘association’. It is important to underline that if a collection of persons or an association or company is defamed, any of the members representing such company or association or collection of persons, may file a complaint but the imputation must be shown to be defamatory to the persons constituting the ‘company’ or ‘association’ or ‘collection of persons’.

36. In the aforesaid background, it may be noticed that a political party under paragraph 2(1)(h) of the Election Symbols (Reservation and Allotment) Order, 1968 means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. Under the aforesaid Order, a symbol is reserved for a recognized political party for exclusive allotment. Further, if a



member of the party contests an election he is required to make a declaration in his nomination papers that he has been set up by that party in the election and the party also fulfils the requirement of the conditions stated in the Order. Thus, a member of the party is provided with certain rights and liabilities in law. Even under **Section 29A of the Representation of the People Act, 1951** as amended up-to-date, a political party may also be registered with the Election Commission of India. Further, **under Section 13A of the Income Tax Act, 1961**, a political party is also liable to file return of income. The political party, as such, is a distinct definite identity which may expand or contract with addition or deletion of the members but in no way is indeterminate, as the members at any point of time can be determined and are definite. A constitutional recognition is enjoined on the political party and is also a separate person apart from its members.

In view of above, this Court is of the considered opinion that “BJP” is a determinate and identifiable body and the complaint for defamation under Section 500 IPC is maintainable. It may further be observed that if a well defined class is defamed, each and every member of that class can maintain a complaint.”

31. Further, after taking note of judgments passed in *G. Narsimhan v. T.V. Chokappa* (supra), *John Thomas v. K. Jagadeesan (Dr)* (supra), *Sahib Singh Mehra v. State of Uttar Pradesh* (supra), *The Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr.* (supra), *K. Pawan Kalyan v. D. Kiran Kumar & Ors.* (supra), *R. Rajagopal @ R.R. Gopal v. Satyamoorthy* (supra) along with judgments which have been relied and referred to by the petitioners herein, it was held in paras 46, 48 & 49 as under:

“46. This Court is of the considered opinion that considering the dictum of law as laid down in the judgments referred to above, if a well defined class is defamed, which is identifiable, definite and determinate, each and every member of that class can file a complaint. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the Court depending upon the facts of each case.



Prima facie, the imputations against a sitting Prime Minister are despicable and deplorable and apart from defaming Shri Narendra Modi, Hon'ble Prime Minister of India, also defame the Bharatiya Janata Party as well its office bearers and members. Since the complaint has been filed by the Vice President, BJP, Delhi Pradesh, he falls within the ambit of "some person aggrieved" under Section 199 Cr.P.C. The objection raised by the petitioner that respondent No.2/complainant has no reason to feel hurt by the said imputation as the same was not targeted towards the members of the party and was made in good faith, is a matter to be determined during the course of trial.

47. XXX XXX XXX XXX XXX XXX XXX XXX XXX

48. *Respectfully, this Court is of the considered opinion that findings in **Aroon Purie and Another v. Sukhbir Singh Wahla** (supra), **Shri Kalyan Bandhyopadhyay v. Shri Mridul De** (supra) and **V. Radhakrishna v. Alla Rama Krishna Reddy** (supra) need to be seen in the light of observations in **John Thomas v. K. Jagadeesan (Dr)** (supra) and **G. Narasimhan and Ors. v. T. V. Chokkappa** (supra) referred to above and are fundamental to the issue under consideration. Further, in **Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr.**(supra) after referring to **G. Narasimhan's** case (supra) and **Sahib Singh Mehra's** case (supra), it has been held that when an association is a determinate and identifiable body, the defamatory words used against the association could be treated as defamation of the individuals, who composed it. So, any member of the association can maintain a complaint under Section 500 IPC. The **SLP (Crl.) No.2368/2022** preferred by the accused against judgment passed by Kerala High Court has been dismissed by the Hon'ble Apex Court vide order dated 25.03.2022.*

49. *For the foregoing reasons, no grounds are made out for quashing the proceedings, at this stage, under Section 482 Cr.P.C. It is expedient in the interest of justice to permit the proceedings before the learned Trial Court to continue. The defence, if any, that the defamatory imputations were covered by the Exceptions to Section 499 IPC needs to be considered on the basis of evidence in the trial....."*



32. It may further be observed that additional judgments relied upon by petitioners, i.e. *Charmesh Sharma v. State of Rajasthan* (supra) and *P. Karunakaran v. C Jayasooryan* (supra) and *S. Khushboo v. Kannimal & Anr.* (supra), referred to by the petitioners are also distinguishable on facts.

In *Charmesh Sharma v. State of Rajasthan* (supra), a complaint was filed by the petitioner being an active member of Indian National Congress and alleged that Shri Narendra Modi, Chief Minister of Gujarat had criticized the former Prime Minister Shri Jawahar Lal Nehru, by stating that Shri Jawahar Lal Nehru did nothing for children. High Court of Rajasthan held that there was neither any intent on the part of the non-petitioner to cause harm, nor the complainant is a kith or kin of late Shri Jawahar Lal Nehru and, as such, the complainant is not an ‘aggrieved person’. The aforesaid case is apparently distinguishable on facts and does not further the case of the petitioners.

Further, in *P. Karunakaran v. C Jayasooryan* (supra), a complaint was filed against a publication with respect to insufficiency of sandalwood pieces for cremation of Shri Rajiv Gandhi, President of the Congress. A complaint was filed claiming that the said article was defamatory and lowered the reputation of members of Indian National Congress. High Court of Kerala observed that the complaint did not disclose any specific defamatory statement against any specific and identifiable body of persons and the reputation of complainant was not affected either in person or as a member of Indian National Congress.



In *S. Khushboo v. Kannimal & Anr.* (supra), it was observed that the statement of the appellant merely referred to increasing incidents of pre-marital sex in the context of survey on sexual habits of people. It was held that the statement was not directed at any individual and the same is not in the nature of obscene communication. In view of above, *prima facie*, no case for offences under Section 153A, 499, 500, 509, 299, 292 IPC and Section 4 & 6 of Indecent Representation of Women (Prohibition) Act, 1986 is made.

33. This Court has already observed in preceding paragraphs that the imputations are defamatory in nature against Bharatiya Janata Party including the State Unit i.e. Bharatiya Janata Party, Delhi Pradesh as well as the officer bearers of the party. This Court is further of the considered opinion that since defamatory imputations are clearly in respect of an ‘ascertainable class’ or ‘body’, the complainant who is the Vice President of BJP, Delhi Pradesh and has been duly authorized, is competent to file the complaint, in accordance with law.

34. Learned counsel for the petitioners relying upon *Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead) By LRS., (2004) 12 SCC 509, Fr. Thomas Maniankerikalam v. State of Kerala, (2002) SCC OnLine Ker 351, Y. Vijayalakshmi @ Rambha v. Manickam, [2005 (3) CTC], A.C. Narayan v. State of Maharashtra (2014) 11 SCC 790 and P. Nazeer Etc. v. Salafi Trust & Anr., (2022) SCC OnLine SC 382* has further contended that the complaint filed on the basis of power of attorney/authorization in favour of respondent No.2 is not maintainable and the same could not have been filed without seeking the leave of the Court under Section 199 Cr.P.C.



35. In order to appreciate the contentions of the petitioners, provisions of Section 199 Cr.P.C. may be briefly reproduced :

“199. Prosecution for defamation.

*(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by **some person aggrieved** by the offence :Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.*

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

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

*(4) **No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction –***

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

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

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



(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

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

36. Sub-section (2) to sub-section (6) of Section 199 Cr.P.C. are not relevant for purpose of present proceedings, since sub-section (2) of Section 199 Cr.P.C. requires the complaint to be instituted by the Public Prosecutor on receipt of previous sanction of the Competent Authority in the State/Central Government, in case the offence of defamation is alleged to have been committed in respect of the acts and conduct, in the discharge of public functions by the concerned person.

37. The proviso to sub-section (1) of Section 199 Cr.P.C. merely enables a person under eighteen years of age or an idiot or lunatic or a person who is sick or infirm or woman who according to the local customs and manners ought not to be compelled to appear in public, to be filed through ‘some other person’ with the leave of the Court. Apparently, the proviso to sub-section (1) of Section 199 Cr.P.C. does not provide that a ‘company’ or an ‘association’ or a registered political party is not entitled to file a complaint through authorized person without the leave of the Court.

This Court is of the considered opinion that the aforesaid proviso merely enables the persons as specified therein who may be under a disability to file the complaint, to seek leave of the Court to file the



complaint through some other person. The same does not, in any manner curtail or restrain the filing of complaint in case of a company, or association or identifiable class of persons through Authorized Representative.

38. Learned counsel for petitioners relying upon *A.C. Narayan v. State of Maharashtra* (supra) submits that complaint under Section 200 Cr.P.C. through a general power of attorney holder is not maintainable.

In *A.C. Narayan v. State of Maharashtra* (supra), relied upon by petitioners, with reference to Section 138 & 142 NI Act of Negotiable Instruments Act, 1881, it was held that filing of complaint through power of attorney is perfectly legal and attorney holder is competent and can depose and verify on oath, to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of payee/holder in due course or possess due knowledge regarding said transaction. The observations therein that functions under general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney, are also not disputed. The general power of attorney itself can be cancelled and be given to another person. It was also held that attorney holder cannot file a complaint in his own name as he was the complainant but he can institute criminal proceedings on behalf of the complainant.

39. In the aforesaid context, it may be appropriate to notice that in *John Thomas v. K. Jagadeesan (Dr)* (supra) a complaint for defamation punishable under Section 499/500 IPC, on behalf of a hospital was filed by one of the Directors of the hospital. The publisher took an umbrage that



‘K.J. Hospital’ is a private limited company whereas complainant is a private individual as Director of the hospital. The issue for consideration was, if the defamation pertains to an association of persons or body corporate, who could be the complainant. Referring to Section 199 Cr.P.C., Hon’ble Apex Court observed that collocation of words by ‘*some person aggrieved*’ definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the Court on facts of each case. If a company is described as engaging itself in nefarious activities, its impact would fall on every Director of the company and hence he can feel the pinch of it. Similar is the case of a firm. The complaint filed by the Director of the company was held to be maintainable.

40. Present complaint has been filed by Shri Rajiv Babbar, Authorized Representative of the **BJP, Delhi Pradesh** after being duly authorized by the party president of BJP Delhi Pradesh to file the complaint in terms of the constitution of the party. The complainant Shri Rajiv Babbar also happens to be a witness of the alleged proceedings which are based on tweets, video clippings and press reports and as such is competent to file the complaint under Section 499/500 IPC.

41. Other authorities relied upon by learned counsel for the petitioners in this regard are distinguishable and may be briefly noticed:

- (i) In *P. Nazeer Etc. v. Salafi Trust & Anr.* (supra), the observations were made in the context of filing of proceedings in respect of the societies registered under the Societies Registration Act, 1860 and



it was noticed that Section 6 of said Act provides that societies registered under the Act may sue or be sued in the name of the President, Chairman, Principal Secretary or Trustees, as shall be determined by the rules and regulations of the society. It was accordingly held that unless the plaintiff in a suit which claims to be a society, demonstrates that it is registered entity and that the person who signed and verified the pleadings was authorized by the bye-laws to do so, the suit cannot be entertained.

On the other hand, filing of complaint for commission of offence under Section 499/500 IPC is governed by Section 499 IPC read with Section 199 Cr.P.C.

- (ii) The issue for consideration in *Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead) By LRS.* (supra), was whether an application under Section 302 Cr.P.C. to continue the proceedings under Section 138 NI Act could be filed upon by power of attorney holder or the same should have been filed by heirs of deceased. The proposition of law is apparently distinguishable.
- (iii) In *Fr. Thomas Maniankerikalam v. State of Kerala* (supra) (a single Judge judgment of Kerala High Court), a contention was raised that holder of power of attorney is not a person aggrieved by the offence and is therefore not competent to file the complaint under Section 500 IPC.

It was therein observed that if power of attorney holder on his own right is not a person aggrieved by the defamatory publication,



he cannot file the complaint. However, it was factually noticed that complaint had been filed by defamed person through power of attorney and was maintainable and it was held that complaint through power of attorney does not offend Section 199(1) Cr.P.C. It was also observed that ‘infirmity’ under the proviso to Section 199(1) Cr.P.C. must certainly take into account the inability of the complainant to appear personally in Court to present the complaint itself.

The proposition in the aforesaid case is distinguishable as in the present case apart from BJP, BJP Delhi Pradesh which is not a natural person, is the aggrieved person along with functionaries including officer bearers of the party who were holding responsible position in the party. BJP, Delhi Pradesh being an identifiable class is competent to maintain the complaint through an authorized person i.e. the complainant/respondent No.2 who also stands duly authorized by the President, BJP, Delhi Pradesh.

This Court is of the considered opinion that general rule in criminal law is that criminal offences being against the State, any person can set the law in motion. Section 198, 199 Cr.P.C. and Section 142 NI Act carve out an exception. Section 199 Cr.P.C. specifies that *some person aggrieved* can only set criminal law in motion but does not lay down that said ‘aggrieved person’ is barred from filing complaint on the basis of power of attorney/authorization. Under the proviso to Section 199(1)



Cr.P.C., certain other persons in their own right are permitted to file complaints subject to leave of the Court.

- (iv) *Y. Vijayalakshmi @ Rambha v. Manickam* (supra) relied upon by petitioners, also pertains to competency of power of attorney holder to file the complaint under Section 138 NI Act and is distinguishable.

42. Under the constitutional scheme, the citizens have a right to know the truthful and correct information, in order to form appropriate opinion about the social processes. However, at the same time, a political party cannot be permitted to sponsor the print media for political purpose, thereby stinging mud and making mischievous, false and defamatory imputations on the rival political parties. The imputations in the present case are *prima facie* defamatory, with intention of vilifying Bharatiya Janata Party and gaining undue political mileage by attributing that Bharatiya Janata Party was responsible for deletion of names of about 30 lakh voters belonging to particular communities.

In the facts and circumstances, the summoning order passed by the learned Trial Court for commission of offences under Sections 499/500 IPC does not call for any interference. The defence taken by the petitioners that the imputations were made *bonafide* and in public good, needs to be proved and established during the course of trial.

For the foregoing reasons, petition is dismissed. Interim orders are hereby vacated. Parties are directed to appear before the learned Trial Court on **03rd October, 2024**.



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Pending applications, if any, also stand disposed of.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

A copy of this judgment be forwarded to the learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

SEPTEMBER 02, 2024/sd