

DLCT110009342024

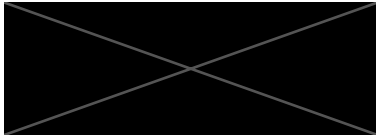


IN THE COURT OF MR. VISHAL GOGNE:
SPECIAL JUDGE (PC ACT) CBI-24
(MP/MLA CASES), RADC

In the matter of

CNR No. DLCT11-000934-2024
CR No. 923/2024

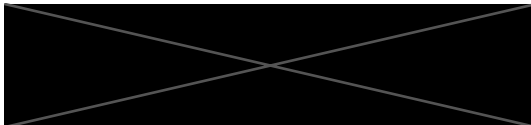
Atishi Marlana



...Revisionist

versus

Praveen Shankar Kapoor



...Respondent

Date of Institution	:	30.09.2024
Reserved for Judgment on	:	18.01.2025
Judgment pronounced on	:	28.01.2025

ORDER

1. The present order decides the revision petition instituted by Ms. Atishi Marlena, the present Chief Minister of Delhi, against the summoning order of the Ld. ACMM-03, RADC dated 28.05.2024 whereby the revisionist has been summoned for the offence of defamation under section 500 IPC.
2. The complaint which occasioned the summoning of the revision was filed under Section 200 of the Code of Criminal Procedure, 1973 by Praveen Shankar Kapoor (*hereinafter referred to as complainant*) alleging commission of the offence under section 500 of Indian Penal Code, 1860 by the respondents in the said complaint namely Atishi Marlena and Arvind Kejriwal (respondents No.1 and 2 respectively in the complaint).
3. The complainant is stated to be the Media Head and Spokesperson of the Delhi Unit of Bharatiya Janata Party (*hereafter referred to as BJP*)
4. The summoning order did not find sufficient grounds to summon respondent no.2.

Allegations

5. The gist of the allegations made by the complainant can be gainfully culled from the impugned order dated 28.05.2024 as under:

6. The complainant asserted, as a background of his own allegations pertaining to section 500 IPC, that the CBI registered an FIR on 17.08.2022 and the ED registered its ECIR on 22.08.2022 pertaining to the alleged excise/liquor policy scam in Delhi and since the allegations levelled were regarding serious corruption issues, the AAP and its leaders, in order to divert the issue, and to project themselves as victims of political vendetta started levelling baseless allegations against Bharatiya Janata Party (*hereafter referred to as BJP*) by saying that BJP is approaching their MLAs and offering them bribes to the tune of Rs. 20-25 Crores for switching sides.

7. It was further averred by the complainant that on 24.08.2022, soon after registration of FIR's by CBI and ED, Sh. Sanjay Singh held a press conference and levelled allegations that the BJP has approached four of its legislators asking them to switch sides and join BJP, or else will face false cases from the CBI and ED. Alongwith Sanjay Singh, Sh. Ajay Dutt, Sh. Sanjeev Jha, Sh. Somnath Bharti and Sh. Kuldeep Kumar were also part of the said press conference. Similar conferences/social media events were also purportedly held by other leaders of the AAP.

8. The complainant cited media reports to state that the ED had summoned respondent no. 2 (Arvind Kejriwal) in connection with the Delhi Liquor Scam for the first time in October, 2023 but he disobeyed the summons on repeated occasions and when

he was summoned for the fifth time by the ED in January, 2024, he posted certain content on Twitter on 27.01.2024 in order to divert the attention of the masses and to project himself as a victim of political vendetta. The following allegations were purportedly made by Mr. Kejriwal on 27.01.2024 through the post on 'X' (formerly known as Twitter) :

“phichle dino inhone hmare Delhi ke 7 MLAs ko sampark kar kaha hai- “kuch din baad kejriwal ko girftaar kar lenge. Uske baad MLAs ko todenge. 21 MLAs se baat hogyi hai. Auro se bhi baat kar rahe hai. Uske baad Delhi me Aam Admi Party ki sarkar gira denge. Aap bi aa jao. 25 crore रुपये denge aur BJP ki ticket se chunaav ladva denge.”

Halaki unka dava hai ki unhone 21 MLAs se sampark kiya hai lekin hmari jankari ke mutabik unhone abhi tak 7 MLAs ko hi sampark kiya hai aur sabne mana kar diya.

Iska matlab kisi sharab ghotale ki jaanch ke liye mujhe girftaar nahi kiya ja raha balki Delhi me Aam Admi Party ki sarkar girane ke lie shadiyantra kar rahe hai. Phichle no saalo me hmari sarkar girane ke liye inhone kai shadiyantra kiye. Lekin inhe koi safalta nahi mili. Bhagwan ne aur janta ne hmesha hmara saath diya. Hamare sabhi MLA bhi mazbuti se saath hai. Iss baar bhi yeh log apne napaak irado mai fail honge.

Yeh log jante hai ki Delhi ki janta ke liye hamari sarkar ne kitne kaam kiye hai. Inki paida ki gayi tamam adchano ke bavajud humne itne kaam kiye hai. Delhi ki janta “AAP” se beintehaa pyaar karti hai. Isliye chunavo me “AAP” ko harana inke bus ki baat nahi. Toh ek farzi sharab ghotale ke bahane girftaar karke sarkar girana chahte hai.”

9. The above mentioned post (formerly known as tweets) was allegedly re-posted by Ms. Atishi Marlena on 27.01.2024.

10. Thereafter, Ms. Atishi made the same set of allegations in a press conference on 27.01.2024. These were reproduced by the complainant as under:

*“BJP ka Operation lotus 2:0 !!
BJP ne AAP ke 7 MLAs se sampark kiya
Unhone kaha ki kejriwal ji ko girftaar karne ke baad ek-ek
MLA ko todkar delhi sarkar girayenge
21 MLAs se baat ho chuki,
ek-ek vidhayak ko 25 crore ki offer ki hai
inka maksad kejriwal ji ko girftaar karke sarkar girane ka
hai aise hi yeh phele Maharashtra, Karnataka, Goa,
Madhya Pradesh mai bhi kar chuke hai.”*

11. The contents of the aforesaid press conference were purportedly posted by AAM Aadmi Party's X handle which was re-posted on the same day i.e. 27.01.2024 by Ms. Atishi.

12. The second set of defamatory imputations ascribed to Ms. Atishi allegedly arose from a press conference held by her on 02.04.2024. The complainant projected the motive for the said press conference to be the circumstance of her name having purportedly cropped up during the custodial interrogation of Mr. Kejriwal in the Delhi Excise Case. It was asserted by the complainant that the press conference on 02.04.2024 was conducted by her in order to divert the issue and play the victim.

13. In the aforesaid press conference held by alleged accused no. 1 on 02.04.2024 she purportedly made the following statements:

*“..... ke madhyam se mujhe Bharatiya Janata party join
karne ke lie approach kiya, mujhe yeh kaha gaya ki ya toh
main Bharatiya Janata party join karlu, apna career bacha
loon, apna political career badha loon aur agar Bharatiya*

Janata Party nahi join kari toh anne wale ek mahine main ED dwara mujhe girftaar kar liya jayega.

Yeh ek mere bahut kareebi vyakti ke madhyam se mujhe btaya gaya unhone kaha ki pradhanmantri Narendra Modi ji aur Bharatiya Janata party ne apna mann bana liya hai ki aam admi party ko aur uske sabhi netao ko ab vo kuchlna chahte hai khatam karna chahte hain.

Pehele unhone Aam Admi Party ke shirsh netritv ko arrest kar ke jail main daal diya. Pehele Satyender Jain ji ki girftari hui, phir Manish Sisodia ji ki girftari hui, phir Sanjay Singh ji ki girftari hui aur ab Delhi ke mukhya mantri Arvind Kejriwal ji ko bi girftar kar liya gaya hai.

Ab Bharatiya Janata Party ka yeh irada hai ki aane wale do mahine me lok sabha se pehele vo Aam Admi Party ke 4 aur netao ko girftaar karne wale hain. vo mujhe girftaar karenge, vo Saurabh Bhardwaj ko girftaar karenge, vo Durgesh Pathak ko girftaar karenge aur vo Raghav Chaddha ko girftaar karenge.

Bhartaiya Janata Party ne yeh umeed kari thi ki Arvind Kejriwal ji ki girftari ke baad Aam Admi Party bikhar jayegi, Aam Admi Party toot jayegi, Aam Admi Party ka morale down ho jayega. Kyunki Aam Admi Party ki saari senior leadership jail main hain, hirasat main hain. Lekin Sunday ki ramleela maidan ki rally ke baad jaha par delhi bhar or desh bhar se lakho log aaye, phichle 10 din se Aam Admi Party ke sadak par chal rahe sangarsh ke baad ab Bharatiya Janata party ko lagta hai ki Aam Admi Party ke top 4 leaders ko girftar karna kafi nahi tha. Ab aane wale samayein me agle 4 bade netao ko jail main dala jayega. Mujhe jail me dala jayega, Saurabh Bhardwaj ko jail main dala jayega, Durgesh Pathak ko jail main dala jayega aur Raghav Chaddha ko jail main dala jayega.

Mujhe yeh btaya gaya ki aane wale kuch dino me mere personal residence par ED ki raid hogi. Na sirf mere ghar mai ED ki raid hogi, mere rishtedaro, mere parivaar walo ke ghar me raid hogi. Uske baad hum sab logo ko summons bheje jayenge aur summons ke kuch hi samyein baad hume girftaar kiya jayega.

Main aaj is manch ke madhyam se, ap sabhi ke channels ke madhyam se Bharatiya Janata Party ko yeh batana chahti hoon ki hum apki dhamkiyon se darne wale nahi hain. Hum Arvind Kejriwal ke sipahi hai, Bhagat Singh ke chele hain, jb tak aam admi party ke har neta, har vidhayak, har karyakarta me akhiri saas tak bachi hai toh hum Arvind Kejriwal ji ke netritav me iss desh ko bachane ke liye, iss desh ke samvidhan ko bachane ke liye, iss desh ke logo ko ek behtar zindagi dene ke liye hum kaam karte rahenge. Ap chahe ek ek admi ko jail me uthake daal do, ap chahe ek ek vidhyak ko jail me uthake daal do, ap chahe ek ek karyakarta ko jail me uthake dalo. Ap har vyakti jisko jail me daloge uski jagah daso aur log Arvind Kejriwal ji ki iss ladai ko ladne ke lie samne ayenge aur ap ko hara ke rahenge.....”

14. The said press conference was stated to have been streamed live on the X handle of Ms. Atishi. It was further stated that the allegations levelled by her in the press conference were widely published in the print and electronic media on 02.04.2024 and 03.04.2024.

15. The complainant alleged that the above allegations have been made by Ms. Atishi in a deliberate manner and with malicious intent. The statements were represented as being not only false, scandalous, concocted, but also defamatory to harm the reputation of BJP and its members. The complainant claimed that in the entire speech, Ms. Atishi neither revealed specific details about the source of information nor did she provide any details regarding the allegations. This circumstance was projected as indication of her *mala fide* intentions to demean the reputation of the BJP and its members including the complainant.

16. The complainant claimed to have been defamed by the damage to his reputation before the society at large on account of the widespread telecast of the aforesaid statements of Ms. Atishi and Mr. Kejriwal.

Pre-summoning Evidence

17. During the course of pre summoning evidence before the Ld. ACMM, the complainant was examined on 04.05.2024 and 16.05.2024 as CW-1 wherein he reiterated his allegations and deposed in consonance with the complaint. The complainant/CW1 also deposed that on 02.04.2024, he alongwith Mr. Vikram Mittal, Head of Media Relations, Department, BJP Delhi and an employee of their party namely Mr Aman Pandey went for a cup of tea outside the BJP Delhi Headquarters. Several persons present at the tea stall were in discussion amongst themselves and were purportedly saying as under:

“Bharatiya Janata Party bahut galat kar rahi hai ki Arvind Kejriwal ko girftaar kar lia, mantri Atishi ko bhajpa main shamil hone ka davab de rahe hai or AAM Admi Party ki sarkar girana chahte hai”.

18. CW-1 further stated that the people were discussing that the conduct of the BJP in this regard was immoral.

19. The complainant specified his grievance on account of purported personal defamation to him as under:

As I have stated earlier, the Bhartiya Janata Party is a recognized national party. It is the world's largest political

party and I am an office bearer of the Delhi unit of BJP. Whenever any person tarnishes the image of BJP, my image being an established leader of the party also gets tarnished.

Mr. Arvind Kejriwal and Ms. Atishi Marlena with common intention have leveled false allegations without any evidence. The false allegations leveled by them have tarnished the image of the party and myself in the eyes of public.

20. The following documents were tendered by CW-1 in support of his presummoning evidence:

Srl. No.	Documents	Exhibit
1.	Copy of X Post dated 27.01.2024 by alleged accused no. 2 and reposted by alleged accused no. 1.	Ex. CW1/1.
2.	Copy of press conference was posted by Aam Admi Party X handle which was reposted the same day by alleged accused no. 1 dated 27.01.2024.	Ex. CW1/2
3.	The copy of the complaint dated 30.01.2024 bearing the seal/receiving of the office of Commissioner of Police.	Ex. CW1/3
4.	Copy of the relevant extract of the news report dated 01.04.2024.	Ex. CW1/4 (running into 04 pages)
5.	The video of the press conference held by Ms. Atishi Marlena is in the pendrive and the envelope containing the pendrive.	Ex. CW1/5
6.	The transcript of the video.	Ex. CW1/6 (running into 03 pages)
7.	The news report published in a prominent news channel namely News18.	Ex. CW1/7 (running into 03 pages)
8.	The said news report of the press conference was also published in Business Standard on 02.04.2024.	Ex. CW1/8 (running into 07 pages)
9.	Copy of legal notice	Ex. CW1/9
10.	The original complaint alongwith its annexures, bearing signatures of complainant at point X and Y.	Ex. CW1/10 (colly.)
11.	Affidavit of complainant which bears his signature at point Z, Z1 and Z2	Ex. CW1/11
12.	The news report regarding issuance of 9 th summon to Mr. Arvind Kejriwal	Ex. CW1/12

13.	The news report regarding his arrest by Directorate of Enforcement	Ex. CW1/13
14.	Certificate u/s 65B of the Indian Evidence Act in respect of electronic documents placed on record and issued by Sh. Aman Pandey	Ex. CW1/14 (running into 04 pages)
15.	The press release issued by Directorate of Enforcement,	Ex. CW1/15
16.	The copy of the order dated 29.07.2022 passed by the Hon'ble Lokayuta, Delhi	Mark A

21. The complainant also examined Mr. Aman Pandey as CW2 who deposed as under:

I work in BJP, Delhi unit and look after press releases and media coordination. I have issued certificate under section 65 B of Indian Evidence Act in respect of the electronic documents. The same is already Ex. CW1/14 (running into 04 pages). It bears my signatures at point A, which I identify.

On 02.04.2024, I alongwith complainant and Sh. Vikram Mittal, Media Relationship Head went to the tea stall outside our office at Pandit Pant Marg. Some other common people were already there. Those persons were discussing the following:

“ki bhajpa galat kar rahi ha. Unhone Arvind Kejriwal ko girftaar kar liya hai aur ab Atishi ke upar bi bhajpa mai shamil hone ka dabaav bana rahi hai. Delhi mai Aam Admi Party ki sarkar ko girane ki koshish kar rahi.”

Summoning Order dated 28.05.2024 (impugned order)

22. The summoning order dated 28.05.2024 did not find sufficient grounds to proceed against Mr. Arvind Kejriwal on the reasoning that the imputations ascribed to him were neither specific nor attributable to any identifiable person. He was also stated to not have been present in the said conferences held by Ms. Atishi on 27.01.2024 and 02.04.2024.

23. The Ld. ACMM, however, proceeded to summon Ms. Atishi on the finding that she had made specific defamatory statements against complainant Praveen Shankar Kapoor and these defamatory statements had been sufficiently published in the electronic media/social media which may have made the right thinking members of the society turn against the complainant. The impugned order found that the statements made by Ms. Atishi may *prima facie* have lowered the reputation of the complainant among right thinking members of the society. The impugned order further found that the statements had been made knowingly and with the intention to harm the reputation of the complainant.

24. This court heard detailed arguments from Mr. Ramesh Gupta, Ld. Sr. Counsel on behalf of revisionist Ms. Atishi Marlana and Sh. Ajay Burman, Ld. Sr. Counsel for respondent/complainant Mr. Praveen Shankar Kapoor.

25. At the outset, it is noted that the revision petition is delayed in institution by one day. The Ld. Sr. Counsel for the revisionist prayed for condonation of delay stating that it was inadvertent and not excessive. The Ld. Sr. Counsel for the respondent rather submitted that the delay had been occasioned consciously by the revisionist.

26. In order to enable a decision on merits and in view of the minuscule nature of the delay, the delay in the institution of the petition is condoned.

Submissions on behalf of the revisionist (Ms. Atishi Marlana)

27. The principal ground urged in the Revision Petition is that complainant Praveen Shankar Kapoor does not satisfy the criteria of being an ‘some person aggrieved’ within the meaning of section 199 of the Cr.P.C. The Id. Senior Counsel for Ms. Atishi agitated that the purported imputations made by Ms. Atishi did not directly or indirectly name or indicate the present complainant as the person or being among the persons who were attempting to lure away the MLAs of the AAP with an offer of bribe. It was asserted that it was fanciful for the complainant to presume that his reputation had been harmed only because his party viz the BJP had been accused of trying to break the AAP.

28. A significant measure of submissions on behalf of the revisionist focused on the nature of a political party. In fact, during the course of submissions pertaining to the question of a political party being an ascertainable class or body, a series of decisions in two cases pertaining to Congress leader Dr. Shashi Tharoor and AAP leader Mr. Arvind Kejriwal were cited and discussed by the opposing counsels.

29. In each of these cases, the order of the Ld. Magistrate summoning the accused was sustained by the Hon’ble High Court of Delhi and later stayed by the Hon’ble Supreme Court.

30. In the case pertaining to Dr. Shashi Tharoor, the allegation was that he had made certain defamatory imputations against the

Prime Minister. Upon being summoned by the court of the Ld. Magistrate for commission of the offence under section 500 IPC and challenge subsequently being made before the Hon'ble High Court of Delhi, the court vide order dated 29.08.2024 (**Dr. Shashi Tharoor vs State & Anr. 2024 SCC OnLine Del 6005**) decided the relevant issues as under:

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".

36. 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.

37. The further question for consideration in the present case is, whether in the facts and circumstances, only Shri Narendra Modi stands defamed in person or if the imputations also defames the political party i.e. BJP along with the members of the party and if respondent No.2 being the Vice President, BJP, Delhi Pradesh is competent to file the complaint for defamation.

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.

31. The above order was subsequently stayed by the Hon'ble Supreme Court through its order dated 10.09.2024 (***Shashi Tharoor vs State of NCT Delhi 2024 SCC OnLine SC 2543***) upon noticing various decisions including ***S Khushboo vs Kanniammal (2010) 5 SCC 600*** and ***Subramaniam Swami Vs. Union of India (2016) 7 SCC 221***.

32. The allegations in the matter pertaining to Mr. Arvind Kejriwal related to tweets made by him alleging deletion of names of voters at the instance of the Bhartiya Janata Party. In its order dated 02.09.2024, reported as ***Arvind Kejriwal & Anr. Vs. State 2024 :DHC : 6678***, the Hon'ble High Court held that :

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.

33. While reiterating its observations in ***Dr. Shashi Tharoor*** (order dated 29.08.2024), the Hon'ble High Court decided the question of the BJP being an ascertainable class as under:

33. On the other hand, learned counsel for respondent No.2 submits that the expression "some person aggrieved" in Section 199 Cr.P.C. is not necessarily limited to the "person defamed". Placing reliance upon Chhotalal Lallubhai v. Nathabhai Bechar, ILR (1901) 25 Bom 151, it is urged that if the complaint could be filed only by the person defamed, Explanation 1 to Section 499 of Indian Penal Code would become a dead letter and, as such, the expression "some person aggrieved" is not necessarily limited to the "person defamed". The aforesaid proposition is stated to have been further referred in Gurdit Singh v. Crown, ILR (1924) 5 Lah 301 which was referred to the Division Bench of the High Court and the view taken in Chhotalal Lallubhai v. Nathabhai Bechar (supra) was upheld. Reference is further made to observations in John Thomas v. K Jagadeesan (Dr) (supra), Subramanian Swamy v. Union of India (supra) and R. Rajagopal v. V Sathyamoorthy (supra).

34. Upon a SLP being filed against the above decision of the Hon'ble High Court, the following observations were made by the Hon'ble Supreme Court in ***Arvind Kejriwal & Anr. Vs. State Petition for Special Leave to Appeal (Crl.)No (s). 13279/2024 dated 30.09.2024***:

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

8. Some understanding on the threshold level required for attracting charges of defamation can be gathered by perusing

the ratio in S. Khushboo v. Kanniammal & Anr. reported in (2010) 5 SCC

600. In particular, the following paragraph of the aforementioned judgment is relevant:

“44. We are of the view that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, we are therefore inclined to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the “freedom of speech and expression” is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.”

9. Additionally, in the context of defamation, the Court had observed the following in *Subramanian Swamy v. Union of India, Ministry of Law & Ors. reported in (2016) 7 SCC 221*:

*“198. The said provision is criticised on the ground that “some person aggrieved” is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of “some person aggrieved” is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of “some person aggrieved”. While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the “person aggrieved” is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In *John Thomas v. K. Jagadeesan* [*John Thomas v. K. Jagadeesan, (2001) 6 SCC 30 : 2001 SCC (Cri) 974*]*

while dealing with “person aggrieved”, the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In S. Khushboo [S. Khushboo v. Kanniammal, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299], while dealing with “person aggrieved”, a three-Judge Bench has opined that the respondents therein were not “person aggrieved” within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on M.S. Jayaraj v. Commr. of Excise [M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552] and G. Narasimhan [G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680 : 1972 SCC (Cri) 777] and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “some person aggrieved”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words “some person aggrieved” are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a “person aggrieved” is too specious a submission to be accepted.”

10. As is discernible from the above, the threshold for placing reasonable restrictions on the freedom of speech and expression is indeed very high. Additionally, as is evident in S. Khushboo (supra), there exists a presumption in favour of the accused.

35. The Ld. Senior counsel for Ms. Atishi cited the decisions of the Hon'ble Supreme Court in both, ***Shashi Tharoor*** and ***Arvind Kejriwal***, to argue that not only had the construction placed by the Delhi High Court on the question of each member of a political party being seen as an ‘some person aggrieved’, when purported defamatory imputations were made against the political party, been stayed by the Apex Court but that a higher

threshold had been laid out for the offence of defamation to be discerned if it was detrimental to freedom of speech. The stance on behalf of Ms. Atishi essentially was that with the Hon'ble Supreme Court pausing the effect of the decisions of the Hon'ble High Court of Delhi in these cases, the present complainant could derive no strength from the said decisions of the Hon'ble High Court.

36. Besides, the Ld. Sr. Counsel for the revisionist cited the decision of the Hon'ble High Court of Calcutta in ***Kalyan Bandyopadhyay vs Mridul De CRR 1856 of 2009*** to assert that a political party, the BJP in the present facts, could not be termed an identifiable body or association so as to permit one of its members viz complainant Praveen Shankar Kapoor to institute the complaint under section 500 IPC against Ms. Atishi Marlena. The following para from the decision in ***Kalyan (Supra)*** was cited.

13. Regarding the alleged defamation of the political party, this Court, in relying on the citations referred above, is in respectful agreement with the decision of the Kerala High Court that the Communist Party of India (Marxist) is not a determinable, definite or identifiable body or association of such nature that each and every member of the same stands to get individually defamed when an insinuation is made against the party as a whole. The Complainant therefore cannot be held to be defamed individually, and consequently is not an "some person aggrieved" in the given case. On this count also therefore the complaint filed in the court of the Ld. Chief Metropolitan Magistrate would be untenable.

Submissions on behalf of the respondent (complainant Mr. Praveen Shankar Kapoor)

37. It was the thrust of the arguments advanced by the Ld. Sr. Counsel for complainant Praveen Shankar Kapoor was that since the BJP is an identifiable association, the complainant, as the Media Head of the Delhi Unit of the BJP is 'some person aggrieved' much like any other office bearer or member of the party in terms of section 199 Cr. PC upon the defamatory tweet and press conferences held by Ms. Atishi.

38. The Ld. Senior Counsel for the complainant placed a more nuanced interpretation on the effect of the orders of the Hon'ble Supreme Court in *Arvind Kejriwai* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024). It was agitated in the context of the stay orders granted by the Apex Court that the said Special Leave Petitions were yet to be admitted so as to attain the status of appeals. It was contended that the ratio of the decisions in *Arvind Kejriwai* (dated 02.09.2024) and *Shashi Tharoor* (dated 29.08.2024), as rendered by the Hon'ble High Court of Delhi, was still alive and applicable to the present facts. Reference was made to the decision in *Kunhayammed and Ors. Vs State of Kerala MANU/SC/0432/2000* to canvas the argument that prior to being admitted as an appeal and in the absence of a specific order staying the judgment appealed against, the interim order granted at the initial stage of a SLP being taken up could not

carry the effect of staying the ratio of the judgment which had been sought to be appealed through the SLP.

39. As a response to the Ld. Senior Counsel for the Revisionist pointing to the non examination of the tea seller and other persons present outside the Delhi Office of the BJP, the Ld. Senior Counsel for the complainant maintained that it was the prerogative of a complainant to examine one or many witnesses at the stage of pre-summoning evidence and it was still the independent exercise for the court to be cognizant of the entire complaint as well as accompanying documents. Further, that necessary averments regarding the perceptions of the public persons, which indicated that the office bearers of the BJP had fallen in their estimation, had been made in the complaint.

40. The Id. Senior Counsel submitted that the entire complaint and not just the pre summoning evidence were required to be considered at the stage of summoning an accused. This submission was made on the back of the decisions in *Deepak Gaba and Ors. Vs State of Uttar Pradesh AIR 2023 SC 228* and *Pepsi Foods Ltd and Ors vs Special Judicial Magistrate and Ors AIR 1998 SC 128*.

41. It was also contended on behalf of the complainant that if the imputations, which are the subject matter of defamation, are defamatory *per se*, the ‘some person aggrieved’ would be discharged from the burden of proving that his reputation has been lowered in the eyes of the right thinking members of

society. The Ld. Sr. Counsel for the complainant maintained that the imputations ascribed to Ms. Atishi were defamatory *per se* and complainant Praveen Shankar Kapoor therefore fulfils the character of 'some person aggrieved'. Reliance was placed upon the following observations in *John Thomas vs Dr. K Jagadeesan (2001) 6 SCC 30*:

10. *Shri Siva Subramaniam, learned senior counsel for the appellant, contended that the imputations contained in the publication complained of are not per se defamatory. After reading the imputations we have no doubt that they are prima facie libellous. The only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.*

13. *The collocation of the words "by some persons 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 the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel*

aggrieved by it. If K.J. Hospital is a private limited company, it is too farfetched to rule out any one of its Directors, feeling aggrieved on account of pejoratives hurled at the company. Hence the appellant cannot justifiably contend that the Director of the K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in Section 199(1) of the Code.

42. The Ld. Sr. Counsel agitated that it was only prima facie satisfaction which was required to be formed by the Magistrate when summoning an accused and it was not necessary to discuss the merits or demerits of the case. The decision in ***Fiona Shrikhande vs. State of Maharashtra and Ors AIR 2014 SC 957*** was highlighted with reference to the following excerpts:

11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint,

without at all advertent to any defence that the accused may have.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.

43. The decision in *Nagawwa Vs. Veeranna Shivalingappa Konjalgi & Ors. AIR 1976 SC 1947* was also cited on behalf of the present complainant wherein the Hon'ble Supreme Court laid out the parameters for issuance of process against an accused by the Magistrate as under:

5.It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the

High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under s. 202 of the Code of Criminal Procedure which culminates into an order under s. 2042 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

44. The Ld. Senior Counsel for the complainant further submitted that once the complaint was prima facie found to be disclosing the offence of defamation, the complainant would be

at liberty to pursue the same while the accused may defend herself during trial. Reliance was placed on the following excerpts from the decision in ***R Rajagopal @ R.R.Gopal & Anr. Vs Sathyamoorthy Crl. R.C.No.840 of 1998.***

16. On going through the decisions cited above, I find that in all these judgments the crux of the contention was whether in the given circumstances, relating to the facts involved in those particular cases, the complainant was an 'some person aggrieved' or not. However, in my opinion, those decisions do not discuss in detail, the term some person aggrieved. In my opinion, a reading of Section 199(1), Cr.P.C., which indicates that the complaint has to be filed by "some person aggrieved by the offence", cannot be given a restricted meaning, so as to mean that the complaint has to be made by the person who has been defamed "alone". The term "made by some person aggrieved by the offence", is totally different from saying the complaint made by the person aggrieved by the offence. If it had been the intention of the framers of law that the person defamed alone can file a complaint, then the language in Section 199 would appear to be "except upon a complaint made by 'the person' aggrieved by the offence" and not upon a "complaint made by 'some' person aggrieved by the offence." The words "some person" appearing in the section instead of "The person" would make all the difference.

19. The learned counsel for the respondent also relied upon the decision of the Madras High Court reported in Samithurai Thevar.K and others Vs. T.E.S.Batchu 1970 LW Crl 7), wherein His Lordship K.N. Mudaliar has followed the decision reported in Mrs.Pat Sharpe Vs. Dwijendra Nath Bose (1964 (1) Cri.L.J. 367 and has held that it must be determined in each case to its own circumstances, whether the complainant could be said to be in a legal sense a person "Aggrieved". However, in the latest decision of the Supreme Court reported in John Thomas Vs. Dr.K.Jagadeesan (2001 SCC (Cri) 974), the term some person aggrieved by the offence has been dealt with in extenso and their Lordships have held that the complainant need not necessarily be the defamed person himself. 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.

This decision in my opinion would clinchingly settle the issue beyond all doubt that as to whether the complainant was or was not aggrieved by the publication is a matter of evidence.

20. In the facts and circumstances of the case, it is seen that the complaint itself discloses that the complainant was an elected MLA in 1980 and 1991 and was also a Minister for Commercial Taxes during 1993 and he is the Head Quarters Secretary of AIADMK and also the District Secretary of the party at Ramanathapuram District and this party having been recognised as a political party by the Election Commission of India, of which the defamed person Jayalalitha is the General Secretary. According to his further averments in the complaint, the defamed article had been published against Jayalalitha, as well as her party members and consequently, he is an 'some person aggrieved'. The matter is at the threshold and evidence had not been let in. It is still open for the complainant to establish in Court as to how he is aggrieved and it is open for the accused as well to show that the complainant does not come under the category of some person aggrieved. Therefore, in the circumstances of the case, I feel that the article which apparently on the face of it, appears to be a defamatory one, it is just and proper that the matter has to be decided only during the course of trial.

45. The right of a person accused of corruption to institute proceedings under section 500 IPC was sought to be reiterated with the support of the decision in ***Jagat Singh Negi vs Surat Singh Negi*** *Crl. Rev No. 401/2022* decided by the Hon'ble High Court of Himachal Pradesh wherein it was stated with reference to a decision of the Hon'ble Supreme Court as under:

7. It was laid down by the Hon'ble Supreme Court in State of Haryana vs Bhajan Lal 1992 Supp. (1)SCC 335, that if any imputations of corruption are made against a person holding a high office, such a person has a right to approach the Court under Section 500 of IPC besides suing for damages.....

Arguments in rebuttal on behalf of revisionist

46. In rebuttal to the assertions of the Ld counsel for the respondent regarding the argued effect or non effect of the stay orders granted by the Hon'ble Supreme Court in the matters of Mr. Arvind Kejriwal and Dr. Shashi Tharoor, the Ld. Sr. Counsel for the revisionist relied upon the following three decisions of the Hon'ble High Court of Delhi:

- (i) *Alka Gupta vs Medical Council of India & Anr. 2014 SCC OnLine Del 2866*
- (ii) *Virbhadra Singh & Anr vs Cenral Bureau of Investigation & Ors 2017 SCC OnLine Del 7747*
- (iii) *Globe Capital Market Limites vs Vineet Securities Private Limited and Another 2022 SCC OnLine Del 2932*

47. The Ld Sr. Counsel maintained that these three decisions carried the import of complete cessation of the orders of the High Court once the Hon'ble Supreme Court had directed a stay on such orders.

Discussions and reasons

48. Section 499 IPC (punishable under section 500 IPC), which defines defamation, is reproduced below:

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.

49. Section 499 IPC also explains the possibility of defamation of a collection of persons by incorporating the following explanation:

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

50. Further, section 499 IPC emphasises the possibility of an imputation being defamatory if it lowers the moral or intellectual character of the person in the estimation of others through explanation 4 noted below:

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.

51. The special requirement for cognizance to be taken of the offence under section 500 IPC only upon a complaint made by 'some person aggrieved' has been crafted through section 199 Cr. PC as under:

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.

Political party as a class

52. This court is quite convinced that the matter of ‘some person aggrieved’ of defamation of a political party is absolutely incapable of being reduced to a debate akin to a private company where principles of continuity based on entry or exit of members enable such an entity to continue as an identifiable association. A political party, quite distinct from corporation is engaged in the greater endeavour of democratic processes. A company rather operates on principles of commerce, profits and expansion *per se*. It is perhaps for this reason that the Hon’ble Supreme Court has reiterated the ‘high threshold’ test for defamation in matters involving public discourse between political personalities and political parties through its orders in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024) while staying the operation of the orders of the Hon’ble High Court of Delhi in these cases. What is under stay by virtue of these orders of the Apex Court is the question relating to a political party being an identifiable class so as to enable filing of defamation complaints by any of its members. The dictum in *S Khushboo* and *Subramaniam Swami* regarding a higher threshold is neither under contention in these cases nor the subject of any stay. Infact, the necessity for deciding allegations of defamation of a political party on the elevated threshold, founded as it is on the freedom of speech, has been reiterated in the orders of the Apex Court in *Arvind Kejriwal* and *Shashi Tharoor*. It is only upon

allegations contained in a complaint qualifying the high threshold that the secondary question of a political party being an ascertainable class can be considered.

53. Hence, this court would observe at the outset that the allegations in the present complaint and appreciation of the pre-summoning evidence led by the complainant is subject to a standard of 'higher threshold' for defamation in matters of public discourse involving political personalities and parties. This question precedes the necessity of determining whether a political party is an identifiable class and whether the complainant is 'some person aggrieved' from such a class within the meaning and interpretation of section 199 Cr. PC.

54. The paramount question is the threshold upon which the offence of defamation must be triggered in cases involving political discourse. It is only if the given set of allegations satisfies and crosses the threshold for treating political speech as defamation that the question, under section 199 Cr. PC, of the complainant being 'some person aggrieved' as part of a political outfit would arise. The latter question is under consideration with the Hon'ble Apex Court and the observations of the High Court of Delhi in *Shashi Tharoor* and *Arvind Kejriwal* have been stayed. Yet, the outcome of the present revision petition does not turn on the question raised before the Hon'ble Supreme Court. The principal issue is whether the complaint at hand, alongwith the pre-summoning evidence led by the complainant, raise the

prima facie possibility of the alleged utterances by Ms. Atishi Marlena constituting defamation upon the established standard of a higher threshold for defamation in cases relating to public discourse among political personalities and parties in view of the settled legal position in *S Khushboo*, which has been reiterated in the orders of the Apex Court in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024). Besides, the exercise of determining the commission of defamation is not subject to a strait jacket formula, being dependent on a case and circumstance specific appraisal as highlighted by the Apex Court in *Subramaniam Swami* and several other cases.

55. The court is able to identify multiple parameters which could be employed for determining the high threshold contemplated by the decisions in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024), upon noticing *Khushboo* and *Subramaniam Swami*. These parameters are based either on facts or established principles founded in the constitution and are noted below.

A. Factual parameters

56. The factual parameters pertain to appraisal of :

- I. Pre summoning evidence led by the complainant.
- II. Pending enquiry before the Crime Branch, Delhi Police upon the allegations made by Ms. Atishi, as forwarded by Virendra Sachdeva, President, Delhi Unit of the BJP.

B. Constitutional parameters

57. The normative guidance for judging the threshold for defamation in matters of public discourse among political personalities and parties emerges from an appraisal of the allegations and assertions made by Ms. Atishi Marlena upon the touch stone of :

- I. Freedom of speech.
- II. Right to know of the citizen.

58. The factual aspects are taken up first by the court.

Factual Parameters

I. Pre summoning evidence

Non examination of cited public persons

59. The court is able to appreciate, with acceptance, the submission on behalf of the Ld. Senior Counsel for the Revisionist that non examination of any of the public persons at the tea stall where the damage to the reputation of the BJP was expressed is a glaring omission at the stage of pre-summoning evidence. The court may point out that the essence of defamation as an offence is in the lowering of the image or the damage to the reputation of the person against whom the imputation is made. Thus, the said ingredient of section 500 IPC, in terms of the definition under section 499 IPC, can neither be wished away nor

be presumed by way of legal fiction on the assumption that a statement is defamatory *per se*. The complainant had founded his complaint and own deposition as CW-1 on the averment that when he and his party colleagues namely Vikram Mittal, Head of Media Relations, BJP, Delhi and Aman Pandey went out of their party head quarter for a cup of tea at the tea stall after the press conference by Ms. Atishi on 02.04.2024, they had heard several persons present at the stall discussing the BJP as being in the wrong in having arrested Arvind Kejriwal and having pressurised Minister Atishi to join the BJP. CW-1 further stated that the BJP wanted to bring down the Government of the AAP and the public persons at the tea stall were discussing the conduct of the BJP as immoral.

60. A complainant is not permitted to hit and run. Allegations made by a responsible office bearer of the largest party in the country against the Minister, now the Chief Minister, of one of the smallest parties in the country, must be steadied with evidence, even if it is the incipient stage of pre-summoning evidence. The exercise of power by the Magistrate under section 204 or 203 Cr.P.C. makes the difference between a respondent in a complaint under section 200 Cr.P.C remaining just that or being summoned as an accused. It was thus a rather cavalier effort by complainant Praveen Shankar Kapoor to leave the pre-summoning evidence in the lurch by not examining the crucial witnesses who could have vouched that they thought any less of

the BJP or its office bearers on account of the tweets or press conferences of Ms. Atishi.

61. The tea seller, projected as the mascot, remained hidden and unaccountable. Even if the public persons at the tea stall were lay customers incapable of being traced, the tea seller, as a more permanent presence outside the party office, could easily have been summoned to present his views on the reputation of the BJP.

62. Thus, the reliance by the Ld. ACMM, in the impugned order, upon the solitary account of the complainant himself regarding the conversation at the tea stall for arriving at the conclusion that these public persons considered the BJP to have lost all morals, was a mis-appreciation of the evidence. It were these public persons at the tea stall who were the competent witnesses to depose regarding what they thought of the BJP and its office bearers. The account given by the complainant (CW-1) himself regarding what was said by others at the tea stall is hearsay evidence and also self serving in nature. Damage to reputation is in the eyes of the other. When these 'others' are available, the purportedly 'some person aggrieved' cannot depose on behalf of such 'others'. The complainant needed public persons to say that the reputation of the BJP or its office bearers had fallen in their estimation after the allegations made by Ms. Atishi. The complainant could not himself say what others thought. The order of the Ld. Trial court therefore suffers from

manifest error in assessing the pre-summoning evidence.

63. Similarly, the account given by CW-2 (Aman Pandey), who was also a worker in the Delhi Unit of the BJP and looking after press releases as well as Media coordination, cannot be considered the voice of the public persons who he too claimed to have over heard at the tea stall. His account is also in the nature of hearsay evidence and does not compensate for the non examination of the purported common people present at the tea stall outside the BJP office.

64. The non examination of cited public persons weans away the trust of this court in the credibility of the postulation that the complainant was somehow lowered in the estimation of public persons upon the charges leveled by Ms. Atishi. The present complaint is an arbitrary action without intent to pursue the same with the weight of evidence.

65. The court must also address the contention of the Ld. Sr. Counsel for the respondent that since the allegations made by Ms. Atishi are defamatory *per se*, there is no obligation upon the complainant to establish the same through further evidence.

66. In considering the question whether the allegations made by Ms. Atishi are so defamatory *per se* as would obviate the necessity for Mr. Praveen Shankar Kapoor to examine witnesses to prove his fall from grace in the eyes of the public, this court is unable to distinguish the possible imputations made by Ms. Atishi from the million such imputations noticed as a matter of

regular occurrence in political discourse. On ordinary powers of observation and without being prudish in blanking out known utterances of public figures, it may be safely stated that allegations akin to and perhaps more venal are a fixture in political debate. There is no ground for the court to give a *carte blanche* to complainant Praveen Shankar Kapoor in his obligation to lead meaningful pre-summoning evidence. He cannot expect to piggy back either on the notion of defamation *per se* or grandiose notions about his reputation having been at stake when Ms. Atishi was accusing the BJP of attempts at horse trading.

67. The observations in *John Thomas* regarding defamation *per se* do not aid the complainant when he chose to omit those witnesses from pre-summoning evidence who form the foundation of his allegations under section 500 IPC. Each case relating to section 500 IPC is to be considered on its own facts and the non examination of indispensable witnesses robs the plea regarding damage to reputation of any conviction. The Ld. Trial Court fell into material error in not considering the effect of evidence not being led by the complainant regarding the purported damage to his reputation.

68. The phenomenon of political corruption and use of money power in elections has not only been the subject of numerous discussions in the public arena and even led to constitutional amendments (the anti defection law) but has also found

recognition as a rampant practice in multiple decisions of the Apex Court including the decision in the *Electoral Bonds* case (*Association for Democratic Reforms & Anr. vs. Union of India & Ors. 2024 INSC 113*).

69. While highlighting the close association of politics and money, then Hon'ble Chief Justice D. Y Chandrachud observed in the *Electoral Bonds* judgment :

47. It is believed that money does not vote but people do. However, studies have revealed the direct and indirect influence of money on electoral politics. The primary way through which money directly influences politics is through its impact on electoral outcomes.

48. One way in which money influences electoral outcomes is through vote buying. Another way in which money influences electoral outcomes is through incurring electoral expenditure for political campaigns. Campaigns have a measurable influence on voting behavior because of the impact of television advertisements, campaign events, and personal canvassing. An informed voter is one who is assumed to be aware of the policy positions of the candidate or the party they represent and votes on a thorough analysis of the pros and cons of electing a candidate. On the other hand, an uninformed voter is assumed to not possess knowledge of the policy positions of the candidates. Campaigns have an effect on the voting behavior of both an informed and an uninformed voter. The impact of campaigns on an informed voter is supplementary because campaign activities enable an informed voter to be further informed about the policies and ideology of the political party and the candidate, and their views on specific issues. Electoral campaigns reduce the uncertainty about candidates for an informed voter. For an uninformed voter, electoral campaigns play a much more persuasive role in influencing electoral behavior because campaigns throw more light on candidates.

50. Money also creates entry-barriers to politics by limiting the kind of candidates and political parties which enter the electoral fray. Studies have shown that money influences the selection of

candidates by political parties because parties would prefer fielding candidates who would be able to substantially self-finance their campaign without relying on the party for finance. In this manner, candidates who belong to socio-economically weaker sections face added barriers because of the close association of money and politics.

51. Money also excludes parties which are new to the electoral fray, and in particular, parties representing the cause of marginalized communities. Political parties which do not have enough finance have had to form electoral coalitions with other established political parties who would in exchange shoulder a lion's share of the campaign expenditure of the newly established political party extending to costs related to coalition propaganda, print and digital advertising, vehicle and equipment hire, political rallies, food transportation, and daily expenditure for party cadres. The compromises which newly formed political parties have to make lead to a dilution of the ideology of the party in exchange of its political sustenance. In this manner, money creates an exclusionary impact by reducing the democratic space for participation for both candidates and newer and smaller political parties.

52. The judgments of this Court have recognized the influence of money on politics. They take a critical view of the role played by big business and "big money" in the electoral process in India. The decision in Kanwar Lal Gupta v. Amar Nath Chawla,⁷⁰ notices that money serves as an asset for advertising and other forms of political solicitation that increases a candidate's exposure to the public. The court observed that the availability of large funds allows a candidate or political party "significantly greater opportunity for the propagation of its programme" in comparison to their political rivals. Such political disparity, it was observed, results in "serious discrimination between one political party or individual and another on the basis of money power and that in turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance'".

70. The allegations made by Ms. Atishi are infact in the nature of specific information regarding a possible criminal offence having been committed with the proposed use of large sums of

money by a party with more against a party with less. If the allegations made by her carry the weight of evidence, it would be for the investigation authorities to examine the same. In the alternative, these are allegations of a political nature which are fit to be answered at the hustings rather than in witness boxes of the courts. In neither of these scenarios would the ingredients of defamation under section 500 IPC be satisfied on the 'high threshold' test laid down in *Khushboo* and reiterated in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024)

Parity between imputations made by Ms. Atishi and Mr. Arvind Kejriwal.

71. Since the present order is an exercise in Revision which looks to detect material infirmities in the impugned order, it is next noted that the reasoning of the Ld. Trial Court with respect to the other respondent in the complaint under section 200 Cr. PC viz Arvind Kejriwal is quite peculiar and so is the approach of complainant Praveen Shankar Kapoor to the non summoning of Mr. Kejriwal in the present allegations. The genesis of the present case alleging defamation was the initial tweet by Mr. Kejriwal dated 27.01.2024 wherein he had alleged that seven of his MLAs from Delhi had been contacted and he himself had been threatened with arrest. He further alleged that 21 MLAs

had been approached for bringing down the government of the Aam Aadmi Party. Also that, he had been offered Rs. 25 crores apart from being offered a BJP ticket for contesting elections. It was this tweet which was re-posted by Ms. Atishi on the same date viz 27.01.2024 when she also held a press conference making allegations in quite the same terms.

72. The Ld. Trial Court found the re-posting of the tweet and the press conference dated 27.01.2024 by Ms. Atishi to be *prima facie* defamatory and having harmed the reputation of the complainant. Yet, the progenitor of the same allegations viz Mr. Kejriwal was not proceeded against by the Ld. Trial Court which concluded qua him that the imputations made by him were neither specific nor attributable to any person. The impugned order referred to the use of the words ‘*inhone*’, ‘*unka*’, ‘*unhone*’, ‘*yeh log*’, ‘*inki*’ and ‘*inke*’ by Mr. Kejriwal to come to the conclusion that since a statement ought to be specific and not vague for it to be defamatory, no case was made out against him. Infact, the impugned order specifically recorded that “*Whereas in the present case, the post dated 27.01.2024, Ex. CW1/1 as illustrated in para 3.3 posted by alleged accused no.2 does not specify anyone against whom such imputation is made.....*”

73. It is quite striking that for allegations which entailed non summoning of Mr. Kejriwal, it was his colleague Ms. Atishi who came to be summoned when she had re-posted what he had said. It is inexplicable that the Ld Trial Court found the content of the

re-post dated 27.01.2024 to be defamatory while not finding the basis of this post i.e. the original tweet by Mr. Kejriwal on 27.01.2024 to similarly be defamatory. The impugned order consequently suffers material error and inconsistency going to the root of the issue at hand viz the nature of the purported defamatory statement itself.

74. Even more startling is the approach of complainant Praveen Shankar Kapoor who has not preferred any challenge to the non summoning of Mr. Arvind Kejriwal. Having thus accepted the reasoning of the Ld. Trial Court regarding the non specificity of the imputations made by Mr. Kejriwal, he has still chosen to pray for the summoning of Ms. Atishi claiming that the imputations made by her are defamatory. The conduct of the complainant seems designed to pick and choose the targets of this complainant for defamation. The complaint is vitiated by want of *bona fides*.

75. Moreover, the law works on the principles or standards of a prudent person in law. On ordinary standards of prudence, the court is unable to accept the contention that when allegations of political coercion or attempts at poaching by the BJP are made, the name which springs to mind is that of Praveen Shankar Kapoor, Media Cell Head, Delhi BJP. Considering the more apparent visibility of the taller leaders of any political party, it is improbable in the extreme that the ordinary person on the street would first think of a Media Cell Chief of the party attempting to

commit the improprieties in question.

76. The pre-summoning evidence led by the complainant did not address itself to the exercise either of establishing that Praveen Shankar Kapoor is perceived, even by the ordinary BJP worker let alone the man on the street, as the leader with such position and authority as would invite allegations of horsetrading from the leaders of another political party thereby damaging his reputation. The complainant (CW-1) only made a statement on his own behalf to the effect that as he is the spokesperson and head of the Media Department of BJP, Delhi and associated with the party for the last 30 years, he was identified in the constituency and in Delhi as a BJP person. He further stated that it is for this reason that whenever any allegation is leveled against the BJP, it not only tarnished the image of the party but also his own image. The Ld. Trial Court fell into material error in not appreciating this statement as a self serving account. Defamation being the lowering of reputation in the eyes of others, independent witnesses were absolutely essential for providing a prima facie assessment of the reputation and the consequent purported loss of reputation of CW-1.

77. The present complaint is evidently a case of someone else firing from the shoulder of Praveen Shankar Kapoor. Praveen Shankar Kapoor is not 'some person aggrieved' within the meaning of section 199 Cr. PC but only looking to be 'some person aggrieved'. The machinery of criminal justice delivery

ought not to be activated upon fishing exercises.

II. Pending enquiry before the Crime Branch, Delhi Police upon the allegations made by Ms. Atishi, as forwarded by Virendra Sachdeva, President, Delhi Unit of the BJP.

78. The second leg of factual appraisal of the chain of allegations and consequent developments is the effect of the pending enquiry before the Crime Branch, Delhi Police upon the allegations made by Ms. Atishi, as forwarded by Virendra Sachdeva, President, Delhi Unit of the BJP.

79. The court would record that the specificity and gravity of allegations made by Ms. Atishi Marlena through the tweet and press conferences in question dated 27.01.2024 and 02.04.2024 essentially make her a whistle blower and complainant. Like the maker of any other complaint who alleges acts of corruption by any public servant from the lowest in the hierarchy of public servants to the mightiest in the land, the complaint of Ms. Atishi is worthy of investigation. The conduct, course and outcome of investigation may yet be the prerogative of the investigating officer or agency and the subject of judicial scrutiny. However, to brand the complainant as guilty of defamation would be to defeat investigation itself.

80. Here, a reading of the complaint under section 200 Cr. PC filed by Mr. Praveen Shankar Kapoor reveals that infact the President of Delhi BJP namely Mr. Virendra Sachdeva himself

sought investigation on the allegations made by Ms. Atishi by filing a complaint with the Commissioner of Police, Delhi on 30.01.2024 seeking '*registration of FIR against the corrupt persons for offence of bribing AAP party MLAs*'. The copy of the complaint by Virendra Sachdeva had been filed alongwith the complaint under section 200 Cr. PC by Praveen Shankar Kapoor and reference was also made to this complaint of Mr. Virendra Sachdeva in the complaint under section 200 Cr. PC. It is then a case of complainant Praveen Shankar Kapoor, also a member of the BJP, hunting with the hounds and running with the hares to now project Ms. Atishi as guilty of defamation. Apparently, the top most leader of the BJP in Delhi wants investigation against his own party through registration of a FIR under the Prevention of Corruption Act upon the allegations made by Ms. Atishi while the Head of the Media Cell of the Delhi BJP seeks to prosecute her for defamation. The complaint is reflective of a cloak and dagger approach where officials from the same party viz the BJP have firstly acted to initiate criminal investigation into the allegations of horse trading made by Ms. Atishi Marlana and simultaneously sought to prosecute her for defamation upon having made these very allegations. Regardless of status, a complainant, even if a seemingly powerful person as the Chief Minister, deserves protection, at least from prosecution on the specious allegations of defamation.

81. Quite conveniently, the said complaint dated 30.01.2024 made by Mr. Sachdeva was not exhibited in the pre-summoning evidence. The entire conduct of Mr. Praveen Shankar Kapoor is reflective of selective allegations and convenient assertions. Curiously enough, the complaint under section 200 Cr. PC discloses that the complainant was aware that the President of the Delhi unit of his own party had sought investigation on the allegations made by Ms. Atishi Marlana and Mr. Arvind Kejriwal. As apparent from the decisions in *Deepak Gaba* and *Pepsi Foods* cited by the Ld. Counsel for the respondent himself, the entire complaint is to be considered by the court when the question of summoning an accused to be determined. Besides, the deposition of CW-1 in pre-summoning evidence exhibited the entire complaint under section 200 Cr. PC itself as Ex. CW1/10. Hence, the complaint made by Mr. Virendra Sachdeva dated 30.01.2024 to the Commissioner of Police, being a part of the complaint under section 200 Cr.PC is read as part of the record to be considered by the court for deciding the question whether there are sufficient grounds to proceed and summon Ms. Atishi.

82. Quite contrary to the averment by Mr. Praveen Shankar Kapoor in his complaint under section 200 Cr.PC that since the allegations leveled against the BJP were false, Mr. Virendra Sachdeva, President, BJP, Delhi preferred a complaint seeking registration of an FIR, Mr. Sachdeva himself did not express even a semblance of falsehood in the allegations made by Ms.

Atishi. Mr. Sachdeva did not assert that her allegations were defamatory.

83. The complaint dated 30.01.2024 (Ex. CW1/10), made by Mr. Sachdeva to the Commissioner of Delhi Police, is reproduced below.

To,

30th January, 2024

*The Commissioner of Police
Delhi Police Head Quarters,
New Delhi,*

Sir,

*Sub: Registration of FIR against the corrupt
persons for offence of bribing AAP party MLAs.*

1. I Virendra Sachdeva, President of BJP Delhi would like to bring to your notice that Aam Admi Party, (AAP) Leader/Chief Minister of Delhi, Sh. Arvind Kejriwal on 27th January 2024 had made serious allegations of corruption vide his tweet posted on X (formerly known as twitter). The alleation levelled in the tweet are as follows:-

i. It is alleged in the post that BJP party in order to dismantle and remove the AAP party from the government of Delhi had contacted 21 MLAs of AAP Party and offered them 25 crore each for leaving the AAP Party and joining BJP.

ii. That though BJP had contacted 21 MLAs but only 7 of their MLAs have confirmed about the same, who were offered 25 Crores each for joining BJP.

iii. That he is not being tried to get arrested simply for liquor scam case but to overthrow the AAP part from the Government.

iv. That BJP had been conspiring for last 9 years to somehow or other throw out AAP party from Government.

The screenshot of the tweet is annexed herewith.

2. *Thereafter, Senior AAP leader and Cabinet Minister Ms. Atishi also made same set of allegations vide her post on X (formerly known as twitter) on 27th January 2024, and same day also held press conference alleging the same. During her press conference on 27th January 2024, Ms. Atishi had alleged as follows:-*

- i. That "BJP has started its Operation Lotus 2.0".*
- ii. That BJP is trying to over through the AAP Government from Delhi, for which BJP members have contacted 21 AAP MLAs in last few days and 7 of their MLAs have confirmed that they were offered 25 Crores each for leaving AAP and join BJP.*
- iii. That BJP members who had contacted their MLAs had said that they are going to arrest Sh. Arvind Kejriwal after that they are going to break the leaders of AAP.*
- iv. It is said that the BJP members have said that they are in contact with 21 MLAs of AAP and with help of them they will overthrow the AAP from Delhi Government.*

The link of the press conference that was posted on social media is https://x.com/AamAadmi_Party/status/1751113348647723124?r=0r6CYtmAfvaE4xwtsSkvA&s=8

3. *It may be noted that the same set of allegations have been made by Sh. Arvind Kejriwal and leaders of AAP party previously also. The allegations are very serious in nature. That however, the AAP Party leader Sh. Arvind Kejriwal, Smt. Atishi and its leaders have failed to disclose the name of its MLAs who were contacted and the person who have made the contacts and offered the bribe and their mode of contact and number.*

4. *The allegation levelled by Sh. Arvind Kejriwal and Smt. Atishi are very serious in nature. Corruption at this level and type would have a devastating effect not only impacting social stability but also on the running of the Government and would seriously affect the financial stability of the country. Corruption in India is an issue which affects economy of central, state, and local*

government agencies. Corruption is blamed for stunting the economy of our Country.

5. That MLA s being a public servant and any one offering bribe to such public servant for discharging his functions improperly or to do something which is contrary to law will be an offence under section 8 of the Prevention of Corruption act, 1988 as amended.....

6. It is therefore requested to your good self to kindly direct registration of an FIR and detailed investigation by an Special Investigation Team regarding offer of bribery of huge sum of Rs. 25 Crore made to sitting MLAs of AAP as alleged aforesaid by their senior leaders. The details of the person who made contact with MLAs and the mode and medium of contact needs to be investigated to unearth the truth. It is requested to kindly register an FIR and hold a detailed enquiry in view of the serious nature of allegation made by Sh. Arvind Kejriwal and Smt. Atishi/leaders of Aam Admi Party.

*(Virendra Sachdeva)
President*

Encl:

- 1. Pen Drive containing video of Ms. Atishi Marlana.*
- 2. Screenshot of tweet of Mr. Arvind Kejriwal, National Convenor, AAP.*

84. The complaint made by Mr. Virendra Sachdeva is capable of only one interpretation which is the literal interpretation. He reproduced the allegations made by Ms. Atishi, found them to a matter of serious concern and sought the registration of an FIR under section 8 PC Act upon allegations made by her. This complaint is not directed against Ms. Atishi but against the very own party of Mr. Virendra Sachdeva. It is not for the court to fathom the motivations of Mr. Sachdeva in seeking investigation

of allegations of corruption against his own party. It is only relevant for purpose of deciding the present revision petition that the President of the Delhi Unit of the BJP found the allegations made by Ms. Atishi to be worthy of investigation and he even lent his own weight by asserting the seriousness of the allegations.

85. The impugned order rendered by the Ld. ACMM failed to consider the effect of the complaint dated 30.01.2024 made by Mr. Virendra Sachdeva upon the sustainability of the allegations pertaining to section 500 IPC by his own party colleague viz complainant Praveen Shankar Kapoor. The impugned order is erroneous on this ground too.

86. Since the same party (BJP), from which one member/office bearer viz present complainant Praveen Shankar Kapoor seeks to be 'some person aggrieved' for the offence of defamation, has rather found it fit to press for registration of an FIR under the Prevention of Corruption Act to investigate the allegations of attempt at bribery of Rs. 25 crores each to multiple MLAs of the AAP, the basis for the complainant to be aggrieved of defamation, only as a member of the said party, collapses to oblivion.

87. Since the contention of the complainant is that he is 'some person aggrieved' in the matter of defamation of the BJP as a political party, any pending enquiry upon a written complaint (*made by Virendra Sachdeva on 30.01.2024*) pertaining to

allegations of corruption made by Ms. Atishi is also a clear circumstance in determining whether the complainant is 'some person aggrieved'. The report from the Crime Branch is informative in this regard.

Report from the Crime Branch

88. The court would notice that when this court called for a status report on the said complaint of Mr. Sachdeva for ensuring the factual accuracy of circumstances to be recorded this order, it was reported by the Crime Branch through its report dated 06.01.2025 that a complaint dated 30.01.2024 had indeed been moved by Mr. Virender Sachdeva, President, Bharatiya Janata Party, Delhi Pradesh and been assigned to Central Range, Crime Branch through proper channel for further inquiry. The report further informed the court that Mr. Virender Sachdeva had requested the initiation of legal action under section 8 of the Prevention of Corruption Acts, 1988 against persons who made the alleged offer to sitting MLAs of AAP. The Crime Branch reported that a Notice to assist in the Enquiry along with a questionnaire had been sent to both - Mr. Arvind Kejriwal and Ms. Atishi Marlena. The said notices had required information including:

1. About the allegation made by them like details of the AAP MLAs, who have been contacted with the offer of bribe.

2. Source/means of contact i.e. Physical, telephonic or some other electronic media etc.,
3. Names of alleged person, who approached AAL MLAs for bribe.
4. Date and time of such offers of bribe.
5. Any CCTV footage, Audio-Video clip regarding the above allegations.
6. Allegations were of very serious kind of nature, hence copy of any complaint made to any agency regarding the such bribe incident is asked, with some other information.

89. It was stated by the Crime Branch that till date Sh. Arvind Kejriwal and Ms. Atishi Marlena had not provided any reply regarding the allegations. Also, that since the complaint is pending enquiry for want of reply from the Sh. Arvind Kejriwal and Ms. Atishi Marlena, further enquiry will be carried out on merits/facts as soon as the documents, information or other evidences provided by them.

90. The above report from the Crime Branch amply demonstrates that the police authorities are actively seized of the allegations of corruption forwarded by the President of the Delhi BJP itself. Whether a FIR shall be recorded under the PC Act upon the allegations made by Mr. Kejriwal and Ms. Atishi through their tweets in question, as demanded by the President of

the Delhi BJP itself and what shall be outcome of such investigation is the prerogative of the Crime Branch or other investigation agencies. It is, however, established at the very least that serious allegations of corruption made by one political party i.e. the AAP through Mr. Kejriwal and Ms. Atishi against another political party i.e. the BJP have been found serious enough even by the President of the Delhi Unit of the very party which has been accused of corruption. The Commissioner of Police has also acted with intent and diligence in assigning the matter to the Crime Branch.

91. Apparently, the statement of Mr. Virendra Sachdeva is yet to be recorded before the Crime Branch and no queries have been made from him thus far by the Crime Branch. This court therefore perceives the enquiry by the Delhi Police into the grave allegations, first made by Ms. Atishi and then forwarded by Mr. Virendra Sachdeva to the Police Commissioner, to be at a nascent and crucial stage. This process of enquiry, which may result in criminal investigation, cannot be stymied by a non party to the allegations viz the media head of the Delhi BJP namely Mr. Praveen Shankar Kapoor who has chosen to strike out on his own against the official position of the Delhi Unit President of the BJP. The court finds that the present complaint for defamation is contrived and a conscious effort to thwart investigation into specific allegations relating to corruption and attempts to defeat the electoral process through poaching of MLAs.

92. The present complaint is ill conceived, circuitous and unsupported by any evidence of defamation. Being a tool for defeating criminal investigation, the complaint and the pre-summoning evidence does not justify the summoning of Ms. Atishi as an accused.

93. Having discussed the two factual circumstances relevant to the present revision petition inter alia the pre-summoning evidence and the effect of the pending complaint from Mr. Virendra Sachdeva before the Crime Branch, Delhi Police, the court may summarise its assessment of complainant Praveen Shankar Kapoor as 'some person aggrieved' within the ambit of section 199 Cr.PC as under.

94. The court would convey its clear and unequivocal understanding that being 'some person aggrieved' under section 199 Cr. PC in the context of defamation is not an entitlement arising out of any particular status in law but a perception of the purported 'some person aggrieved' based on having been lowered in the estimation of others through the defamatory allegations. Thus, a person looking to represent himself as 'some person aggrieved' by virtue of being a member of the political party cannot claim legal status as an aggrieved purely upon his legal status as a member of the political party. Membership of a person in corporations imbued with legal personality or other commercial associations like a partnership firm cannot be equated with membership of a political party. The interest of

partners, directors or share holders in firms or companies is not quite the same as the interest of a member of a party. The former is essentially an interest borne out of financial stake and accountability while the latter is purely an interest to serve the country through the medium of a political party. Thus, it would be rather laconic for the court to decide questions of alleged electoral malpractices or political corruption by employing principles of company law. This court does not intend to do so. Mr. Praveen Shankar Kapoor was required to justify his complaint in the light of the seriousness of the allegations made by Ms. Atishi, the forwarding of these very allegations to Delhi Police by his own party resident in Delhi and the Commissioner of Police duly assigning it for enquiry to the Crime Branch. His efforts to somehow claim legal status as ‘some person aggrieved’ fall abysmally short in the context of the above three powerful circumstances. There is absolutely no defamation of the media head of the BJP if the leader of the AAP accuses the BJP of trying to buy their MLAs with huge sums of money.

95. The next area of relevant consideration before this court pertains to the two foundational principles cited earlier.

Constitutional Parameters

96. This court shall endeavour to lend its own understanding of the high threshold contemplated in *S Khushboo* and reiterated in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor*

(dated 10.09.2024) in light of established principles governing freedom of speech and the right to know of citizens.

97. The aspect of freedom of speech in the making of allegations and assertions made by Ms. Atishi through the tweet and press conferences dated 27.01.2024 and 02.04.2024 is taken up first.

I. Freedom of speech.

98. Freedom *per se* shall thrive only if it is guaranteed by the freedom of speech and expression as is secured by the Indian constitution. It is the freedom of speech as an overarching principle which permits one man's subaltern to be another man's naxal, it permits one man's freebie to be another man's welfare, it even permits one man's martyr to be another man's militant. It is also not at all alien for the contemporary discourse to even doubt freedom fighters as abdicators. Each political formation is known to project its own vision of political, economic, social and cultural policy or vision to the electorate. Often enough, these narratives allege violation of constitutional provisions, norms, morality or criminal law by the other. These diverse views are all sheltered by the Fundamental Right to freedom of speech and expression. Why then must the criticism or allegations of political corruption, poaching of elected representatives or the purported misuse of investigation agencies by the ruling

dispensation against small political opponents be outside the protective umbrella of the freedom of speech. This right forcefully enables the existence of different political views and the right of opposition parties to elicit accountability in public affairs. Accountability of the government and the ruling party is a primary expectation of the electorate. Thus, there ought to be a wider latitude to criticism and specific allegations made against the government or the ruling party. Allegations made by Ms. Atishi regarding poaching of MLAs are as much a part of the right to free political speech as they are an effort to report a specific act of alleged corrupt practice. There is no particular reason for the court to discern heightened sensitivity of an allegation and treat it as defamatory only because it is made against the ruling party of the day.

99. The present action alleging defamation by Ms. Atishi is an oblique effort of complainant Mr. Praveen Shankar Kapoor to circumvent both criminal investigation and the right to freedom of speech. Whilst such tactics may be part and parcel of political strategy, a court of law cannot be a party to the creation of a chilling effect on freedom of speech by admitting or acting upon such efforts to silence whistle blowers or smaller political opponents. To summon Ms. Atishi for the offence of defamation in the present allegations would be suppressive of the freedom of speech and the accountability of public office.

100. The repercussions of entertaining the present complaint upon the freedom of speech, by resorting to a low threshold for perceiving defamation, are sublime but certainly not invisible to the court.

101. Firstly, the prosecution of an elected representative (Chief Minister Ms. Atishi Marlena) who alleges horsetrading or the threat of prosecution by the ruling dispensation, under the veil of defamation seeks to suppress the narrative that a large political behemoth is admitting to swallow smaller political outfits by the use of a money power and the threat to unleash investigation agencies. To propagate such a narrative is also a part of the freedom of political speech of the smaller party. The big voice cannot scupper the smaller voice using the weapon of defamation. Any foot soldier of a big enterprise like the party in question (BJP) must necessarily project broad shoulders in accepting an alternative political narrative. Such responsibility accompanies the privilege of being the ruling party. The court is unable to find the allegations to constitute the 'high threshold' for defamation asserted by the order of the Hon'ble Supreme Court in *Arvind Kejriwal* (dated 30.09.2024) wherein the court observed that :

6. The issue as to whether the complainant (respondent No.2) or a political party would be covered under the definition of "some person aggrieved" is within Section 199 Cr. PC will require examination.

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

8. Some understanding on the threshold level required for attracting charges of defamation can be gathered by perusing the ratio in *S. Khushboo v. Kanniammal & Anr.* reported in (2010) 5 SCC

600. In particular, the following paragraph of the aforementioned judgment is relevant:

“44. We are of the view that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, we are therefore inclined to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the “freedom of speech and expression” is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.”

9. Additionally, in the context of defamation, the Court had observed the following in *Subramanian Swamy v. Union of India, Ministry of Law & Ors.* reported in (2016) 7 SCC 221:

“198. The said provision is criticised on the ground that “some person aggrieved” is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of “some person aggrieved” is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this

Court has determined the concept of “some person aggrieved”. While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the “person aggrieved” is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In John Thomas v. K. Jagadeesan [John Thomas v. K. Jagadeesan, (2001) 6 SCC 30 : 2001 SCC (Cri) 974] while dealing with “person aggrieved”, the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In S. Khushboo [S. Khushboo v. Kanniammal, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299], while dealing with “person aggrieved”, a three-Judge Bench has opined that the respondents therein were not “person aggrieved” within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on M.S. Jayaraj v. Commr. of Excise [M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552] and G. Narasimhan [G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680 : 1972 SCC (Cri) 777] and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “some person aggrieved”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words “some person aggrieved” are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a “person aggrieved” is too specious a submission to be accepted.”

10. As is discernible from the above, the threshold for placing reasonable restrictions on the freedom of speech and expression is indeed very high. Additionally, as is evident in S. Khushboo (supra), there exists a presumption in favour of the accused.

102. Once the contours for appreciation of allegations concerning defamation have been laid down by the highest court of the land, it is the bounden duty of the courts of trial to catch the drift. If the assertion of the Ld. Sr. Counsel for the complainant is accepted and complainant Praveen Shankar Kapoor is treated as 'some person aggrieved' under section 199 Cr. PC, flood gates would open for every worker of a party to institute criminal proceedings against the leaders of the opposing political party who may have made comments alleging political corruption or a like misdemeanor. The country being governed by different parties in different states, the chaos to ensue would be unfathomable.

103. It is too visible the state of affairs for the court to remain amiss in observing that political discourse, especially preceding elections, is mired by opposing leaders accusing each other of specific instances of corruption. These allegations are part of the freedom of political speech. Such utterances encompass a wide variety of criticism, allegations and insinuations commonly made by political parties, activists or even lay citizens against other political formations. The present allegations made by Ms. Atishi essentially alleged attempts at political corruption by the BJP for poaching the MLAs of the Aam Aadmi Party. To view these allegations, in the context of defamation, in isolation from the established debate on such topics would be to employ a harsher standard for one political outfit viz Aam Aadmi Party. It is a

matter of common and contemporary occurrence that politicians of all hues routinely accuse the other of either being in truck with a named industrialist or industrial house or even receiving trucks of money from such entities. Even as the cycle of elections settles in one context, it resumes in another. It would not take much digging for a prudent follower of news in circulation to observe almost daily accusations of corruption by one party against another. Almost all these allegations name the purported beneficiary of abuse of power and do generally name the bribe givers or enterprises too. Allegations of poaching of MPs or MLAs are also an evident phenomenon. While much of such accusations are more insinuation than fact, such is the general flavour of political debate centering around corruption especially in the vicinity of elections.

104. In all these discourses, the political question must be answered by the court of the people through elections and not the courts of law through discussions on defamation. Again, it would a case of lowering the threshold for defamation to an absolute minimum for this court to accept that the complainant got defamed because his party got accused of trying to coerce or poach the MLAs of the party of the revisionist. If the interpretation of the complainant is accepted, almost every top leader of every political party in India would become liable to prosecution for defamation. The complainant perhaps does not realise that the embers from the hearth can often set the house

aflame. What goes around may come around. Again, the sagacity of approach indicated by the Apex Court through the 'high threshold test' for defamation in cases of political speech can avoid such unreasonable outcomes.

105. Thus seen, the allegations made by Mr. Arvind Kejriwal and then repeated by Ms. Atishi are neither out of sync with the general content and tenor of political debate concerning accountability and corruption but are also as specific as the allegations made by other political parties among each other. Why then, the court must ask, should the present petitioner (Ms. Atishi) be subjected to a threshold so low as would encompass practically every seasoned politician who would have, during the course of each recent election, accused his rivals of specific acts of corruption.

106. The court would caveat the present observations by stressing that it is not the veracity of the allegations made by Ms. Atishi or investigation into the same which is being considered or directed by this court. The present proceedings essentially aim to determine whether the content of the tweet and press conferences by Ms. Atishi was defamatory so as to render her liable for being summoned by the Ld. ACMM to face trial under section 500 IPC.

107. The court does not find the allegations to be of the expected threshold for triggering the offence of defamation.

108. The second facet of constitutional parameters which ought to be applied in testing assertions of political figures in the realm

of defamation is the right to know of the citizens which is a part of the right to vote. This right and the unequal power dynamics between large and small political parties have been the subject of great concern expressed in the *Electoral Bonds* case and shall be dwelt upon at greater length in the following part of this order.

(ii) Right to know of the citizen.

Right to vote and the right to know

109. The right to information of a voter was also explored in the *Electoral Bonds* case where then Hon'ble Chief Justice D Y Chandrachud summarised the relevant principles as under:

77. The following principles can be deduced from the decisions of this Court in ADR (supra) and PUCL (supra):

a. The right to information of voters which is traced to Article 19(1)(a) is built upon the jurisprudence of both the first and the second phases in the evolution of the doctrine, identified above. The common thread of reasoning which runs through both the first and the second phases is that information which furthers democratic participation must be provided to citizens. Voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation;

110. The court also stressed upon the underlying principles of the anti defection law stating that candidate set up by a political party is elected on the basis of the programme of that political party. A political party was thus found to be a relevant political

unit in the democratic electoral process in India for the following reasons:

94. In summation, a 'political party' is a relevant political unit in the democratic electoral process in India for the following three reasons:

- a. Voters associate voting with political parties because of the centrality of symbols in the electoral process;*
- b. The form of government where the executive is chosen from the legislature based on the political party or coalition of political parties which has secured the majority; and*
- c. The prominence accorded to political parties by the Tenth Schedule of the Constitution.*
- d. The essentiality of information about political funding for the effective exercise of the choice of voting*

111. The court next proceeded to stress the essentiality of information of about political funding for the effective exercise of the choice of voting observing that :

95. In ADR (supra) and PUCL (supra), this Court held that a voter has a right to information which is essential for them to exercise their freedom to vote. In the previous section, we have concluded that political parties are a relevant political unit. Thus, the observations of this Court in PUCL (supra) and ADR (supra) on the right to information about a candidate contesting elections is also applicable to political parties. The issue whether information about the funding received by political parties is essential for an informed voter must be answered in the context of the core tenets of electoral democracy. The Preamble to the Constitution resolves to constitute a social, economic, and politically just society where there is equality of status and opportunity. The discourse which has emanated within and outside the Courts is often restricted to the ideals of social and economic justice and rarely includes political inequality.

99. However, political inequality continues to persist in spite of the constitutional guarantees. One of the factors which contributes to the inequality is the difference in the ability of persons to influence political decisions because of economic inequality. In a politically equal society, the citizens must have an equal voice to influence the political process.¹²⁰ We have already in the preceding section elucidated the close association of money and politics where we explained the influence of money over electoral outcomes. However, the influence of money over electoral politics is not limited to its impact over electoral outcomes. It also spills over to governmental decisions. It must be recalled here that the legal regime in India does not distinguish between campaign funding and electoral funding. The money which is donated to political parties is not used by the political party only for the purposes of electoral campaign. Party donations are also used, for instance, to build offices for the political party and pay party workers. Similarly, the window for contributions is not open for a limited period only prior to the elections. Money can be contributed to political parties throughout the year and the contributed money can be spent by the political party for reasons other than just election campaigning. It is in light of the nexus between economic inequality and political inequality, and the legal regime in India regulating party financing that the essentiality of the information on political financing for an informed voter must be analyzed.

112. In his concurring and separate judgment in the same matter, Hon'ble justice Sanjeev Khanna highlighted the significance of the average voter's right to know stemming from the right to vote which is a constitutional and statutory right. The judgment expressed as below:

19. The right to vote is a constitutional and statutory right, grounded in Article 19(1)(a) of the Constitution, as the casting of a vote amounts to expression of an opinion by the voter. The citizens' right to know stems from this very right, as meaningfully exercising choice by voting requires information. Representatives elected as a result of the votes cast in their favour, enact new, and amend existing laws, and when in power, take policy decisions. Access to information which can

materially shape the citizens' choice is necessary for them to have a say in how their lives are affected. Thus, the right to know is paramount for free and fair elections and democracy.

.....

60. The great underlying principle of the Constitution is that rights of individuals in a democratic set-up is sufficiently secured by ensuring each a share in political power. This right gets affected when a few make large political donations to secure selective access to those in power. We have already commented on pressure groups that exert such persuasion, within the boundaries of law. However, when money is exchanged as quid pro quo then the line between persuasion and corruption gets blurred.

.....

65. Recently, a five judge Constitution Bench of this Court in AnoopBaranwal v. Union of India¹³⁴ has highlighted the importance of purity of electoral process in the following words:

“215. ... Without attaining power, men organised as political parties cannot achieve their goals. Power becomes, therefore, a means to an end. The goal can only be to govern so that the lofty aims enshrined in the directive principles are achieved while observing the fundamental rights as also the mandate of all the laws. What is contemplated is a lawful Government. So far so good. What, however, is disturbing and forms as we understand the substratum of the complaints of the petitioner is the pollution of the stream or the sullying of the electoral process which precedes the gaining of power. Can ends justify the means?

216. There can be no doubt that the strength of a democracy and its credibility, and therefore, its enduring nature must depend upon the means employed to gain power being as fair as the conduct of the Government after the assumption of power by it. The assumption of power itself through the electoral process in the democracy cannot and should not be perceived as an end. The end at any rate cannot justify the means. The means to gain power in a democracy must remain wholly pure and abide by the Constitution and the laws. An

unrelenting abuse of the electoral process over a period of time is the surest way to the grave of the democracy. Democracy can succeed only insofar as all stakeholders uncompromisingly work at it and the most important aspect of democracy is the very process, the electoral process, the purity of which alone will truly reflect the will of the people so that the fruits of democracy are truly reaped.

217. The essential hallmark of a genuine democracy is the transformation of the “Ruled” into a citizenry clothed with rights which in the case of the Indian Constitution also consist of fundamental rights, which are also being freely exercised and the concomitant and radical change of the ruler from an “Emperor” to a public servant. With the accumulation of wealth and emergence of near monopolies or duopolies and the rise of certain sections in the Media, the propensity for the electoral process to be afflicted with the vice of wholly unfair means being overlooked by those who are the guardians of the rights of the citizenry as declared by this Court would spell disastrous consequences.”

66. The Law Commission of India in its 255th Report noted the concern of financial superiority translating into electoral advantage. It was observed that lobbying and capture give undue importance to big donors and certain interest groups, at the expense of the ordinary citizen, violating “the right of equal participation of each citizen in the polity.” While noting the candidate-party dichotomy in the regulations under Section 77 of the Representation of the People Act, 1951, the Law Commission of India recommends to require candidates to maintain an account of contributions received from their political party (not in cash) or any other permissible donor.

113. This court is able to summarise from the above approach of the highest court of the land, enunciated in the *Electoral Bonds* case through separate and concurring judgments by the then Hon’ble Chief Justice and the present Hon’ble Chief Justice that all issues pertaining to the availability, use or possible

misuse of large sums of money in the electoral or democratic processes pertain directly to the right of a voter to obtain information central to her vote. Therefore, to receive information regarding allegations made by a responsible leader of one political party regarding attempts to poach the elected representatives of her party by another party is an intrinsic right of the ultimate stakeholder in polity which is the average citizen. The right of the citizen to gain information about the veracity of such allegations is accentuated when the alleged poacher is a wealthy political outfit and the purported prey is a fledging party. Any action, even by way of a complaint under section 500 IPC, which essentially seeks to muzzle and tarnish the whistle blower would necessarily be curtailing the right of the citizen to know about the details of investigation into the allegations. The court has already noticed the observations in the *Electoral Bonds* case regarding the larger party effectively excluding the smaller party by use of money power. Thus the statement by complainant Praveen Shankar Kapoor (CW-1) during pre-summoning evidence that he is a member of the largest political party in the world viz the BJP must be tempered with the humility which the Hon'ble Apex Court seeks to instill in the larger formations for ensuring participation of smaller formations. For this reason too, it would be an extremely tenuous appreciation of the ingredients of criminal defamation for the court to lower the threshold for defamation so low as to permit the member of the large outfit to

scuttle investigation into allegations made by the smaller outfit regarding efforts to use money for buying the elegance of MLAs. The allegations made by the complainant do not satisfy the 'high threshold' test recognised by the Hon'ble Supreme Court in *Khushboo* and reiterated in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024).

Summation

114. In summation, the order of the Ld. ACMM dated 28.05.2024, summoning of Ms. Atishi for the offence of defamation under section 500 IPC, suffers from material error and infirmity and is liable to be set aside for the following reasons:

- (i) The pre-summoning evidence does not present adequate grounds to summon revisionist Ms. Atishi Marlena as an accused.
- (ii) The allegations made by Ms. Atishi through the tweet and press conferences are in the nature of disclosing the commission of a criminal offence and merit investigation. Ms. Atishi is in the nature of a whistle blower and cannot be treated as having acted to defame the BJP.
- (iii) The official version of the BJP, as reflected by the complaint of Mr. Virendra Sachdeva, Delhi Unit President, to the Commissioner of Police, Delhi has itself sought registration of an FIR under the Prevention of Corruption Act upon allegations

made by Ms. Atishi, thereby improbably causing defamation.

(iv) The allegations made by Ms. Atishi constitute the exercise of the right to freedom of speech concerning political corruption and do not constitute defamation under section 500 IPC.

(v) The said allegations by Ms. Atishi Marlena also activate the right to know as a part of the right to vote of the citizens recognised in the *Electoral Bonds* case and other decisions of the Hon'ble Supreme Court.

(vi) The complaint by Mr. Praveen Shankar Kapoor is an attempt to defeat criminal investigation and suppress the freedom of speech as well as the right to know.

(vii) Mr. Praveen Shankar Kapoor is not 'some person aggrieved' for the offence of defamation under section 500 IPC within the meaning of section 199 Cr.PC.

(viii) Consequently, the repost of the tweet and press conference dated 27.01.2024 as well as the content of the press conference held by Ms. Atishi on 02.04.2024 does not satisfy the 'high threshold' test for defamation in matters of public discourse amongst political personalities and parties recognised by the Hon'ble Supreme Court in the orders in *Arvind Kejriwal* (dated 30.09.2024) and *Shashi Tharoor* (dated 10.09.2024) in reiteration of its previous decision in *Khushboo*.

(ix) A court of law cannot aid the tilting of the democratic balance between unequal political formations and against the right to freedom of speech and expressions as well as the right to

vote through contrived criminal actions for defamation filed by non aggrieved persons.

115. The revision petition is allowed.

116. The impugned order dated 28.05.2024 summoning Ms. Atishi Marlana as an accused under section 500 IPC is set aside. The complaint under section 200 Cr.PC instituted by Praveen Shankar Kapoor is dismissed.

117. Let a copy of this order be sent to the Ld. Trial Court alongwith the TCR.

118. Let the file in revision be consigned to the Record Room.

Dictated and announced in open Court

on 28th January, 2025

**(Vishal Gogne)
Special Judge (PC Act) CBI-24
(MP/MLA Cases), RADC
New Delhi**