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

% ***Reserved on: 10.01.2024***
Pronounced on: 05.02.2024

\+ **CRL.M.C. 6347/2019**

ARVIND KEJRIWAL ..... Petitioner

Through: Mr. Manish Vashishth, Senior Advocate with Mr. Karan Sharma, Mr. Rishabh Sharma, Mr. Vedanth Vashishth, Mohd. Irshad & Ms. Harshita Nathrani, Advocates.

versus

STATE & ANR ..... Respondents

Through: Mr. Manoj Pant, APP for the State.
Mr. Raghav Awasthi, Mr. Kunal Tiwari and Mukesh Sharma, Advocates for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

INDEX TO THE JUDGMENT

SWARANA KANTA SHARMA, J.

PRELUDE

1. The **sheer magnanimity of reputational injury** caused by posting defamatory content against a person who holds his reputation dear to him, which may often be dismissed as a mere tweet or retweet, has been urged to be examined, persuading this Court to adjudicate this critical issue since now **the Cyber World turns Whispers into Symphony.**

2. In today's digital age, the dynamics of law change, as exemplified by the present case, where this Court has been posed with a situation where reputational harm has been alleged by the complainant by a repost in cyberspace. In this evolving digital age, physical damage to someone's reputation is not the only possibility but **it is the cyber world which now has taken over the real world**, where if any defamatory statement is made, the effect of reputational harm is amplified. **In the realm of defamation, statements made in the physical world may resemble a mere whisper, but when echoed in the cyber domain, the impact magnifies exponentially**.

3. The issue before this Court through the present petition is one which requires this Court to lay down certain principles based on jurisprudence of defamation, in the light of the evolution of cyberspace, and its extensive usage as a means to damage the reputation of someone. The Court is posed with a situation where an alleged defamatory content has been posted by an original author,

and then the same content has been retweeted/reposted on the popular social media platform 'Twitter' (***now 'X'***) by the present petitioner.

4. While the Courts may still struggle, faced with issue as to what will amount to 'publishing' and whether 're-tweeting' of a defamatory content also amounts to publishing so as to be covered under the definition of Section 499 of Indian Penal Code, 1860 (*'IPC'*), the concerns arising out of such vast reach of defamatory content and corresponding reputational injury to a person has given rise to the **following important question of law**:

> ***Whether 'Retweeting' any defamatory content will be covered in the meaning of 'publication' or not, in terms of Section 499 of IPC & whether the act of the person 'retweeting' such content though not being the original author of the tweet, will also be liable to attract action under Section 499 of IPC or can he take refuge under the argument that he was not the original author of the content?***

5. In case reported as *2017 SCC Online Delhi 1191*, this Court had observed that it was for the Trial Court to decide if retweeting an allegedly defamatory content/tweet would attract rigours of Section 499 of IPC or not, by way of a full fledged trial. These observations are as under:

> "26. …Whether retweeting would attract the liability under Section 499 IPC, is a question which requires to be determined in the totality of the circumstances and the same will have to be determined during trial and any

> interference at this stage by this court is likely to prejudice the findings of the Trial Court…"

6. In this background, this Court is of the opinion that whether a retweet is defamatory in content or not, so as to attract rigours of Section 499 of IPC, will of course be a matter of trial. However, whether *'Retweeting'* by a person, a defamatory content, will amount to *'publication'* or not so as to form the ingredient of Section 499 of IPC for the purpose of summoning of an accused, will essentially have to be decided prior to commencement of the trial. It is not the issue for adjudication before this Court in the present case to return a finding as to whether it was proved beyond doubt that the retweet in question was defamatory or not. **The issue before this Court is the critical issue as to whether a retweet in itself, being not considered as original content by an original author, can form the basis of summoning an accused for offence under Section 499 of IPC**.

7. This major issue being at the centre of controversy in multiple cases pending before this Court reveal the difficulties currently faced by Trial Courts in this regard and has persuaded this Court to take a comprehensive look at this issue for the purpose of summoning an accused.

BACKGROUND FACTS

8. On 06.05.2018, one Sh. Dhruv Rathee i.e. original author of the impugned/alleged defamatory content had uploaded a video on YouTube, wherein *inter alia*, certain allegations were made against

respondent no. 2 which has been referred to as *'First Offending Publication'* in the petition. On 07.05.2018, Sh. Dhruv Rathee published on his Twitter account, an allegation that the Information and Technology ('IT') Cell of Bharatiya Janata Party ('BJP') had attempted to bribe a person to defame Sh. Dhruv Rathee and he had drawn a reference to Uniform Resource Locator ('URL') of the first impugned publication, which has now been termed as *'Second Offending Publication'* in the petition. On 07.05.2018, the petitioner herein, Sh. Arvind Kejriwal had reposted i.e. 'retweeted' the second offending publication of Sh. Dhruv Rathee, which is termed as the *'Impugned Publication'*, and which read as under:

9. On 28.02.2019, a complaint was filed by the complainant/respondent no. 2 Sh. Vikas Sankritayan @ Vikas

Pandey, against the petitioner Sh. Arvind Kejriwal, for initiating proceedings against him for commission of offences punishable under Section 499/500 of IPC.

The Allegations

10. Respondent no. 2 states that he is the founder and operator of popular social media page "I SUPPORT NARENDRA MODI", and that it shows true and correct information, and has a following of over crores of persons on his social media handles. He alleges that Sh. Dhruv Rathee, who claims to be an engineer and lives in Germany, operates a YouTube channel under the name and style of 'Dhruv Rathee' and has a huge following, and as on date of filing of complaint, he had 16,26,422 subscribers. According to the complaint filed alongwith the supporting evidence before the learned Trial Court, a YouTube video with the title "BJP IT Cell Part-2" was circulated by Sh. Dhruv Rathee on 06.05.2018, wherein certain defamatory statements were made against respondent no. 2, extracts of which are reproduced hereinbelow:

> "...Vikas Pandey is the Second-in-Command of the BJP IT Cell. Through his Social Media Page, "I Support Narendra Modi", which is linked by more than 1 Crore 50 Lakh people, Vikas Pandey spreads fake news. Vikas Pandey has offered a bribe of Rs. 50 Lakhs to Mahavir Prasad through one Abhishek Mishra".
>
> ***
>
> "... Yahaan pe aap dekh sakte hain dosto Mahavir pura try kar rha hai ki kisi trah se Vikas Pandey se directly phone pe baat ho jaaye uski, qki agar uski audio recording saamne aa gyi to puri tarah se inka game over ho jaana tha. Lekin unfortunately iski audio recording saamne nahi aa payi, yahi ek reason hai ki mene is video ko upload

> karne me bhi 2 mahine laga diye, usko do mahine guzar chuke hain. Qki me bhi try kar rha tha Mahavir ko bolne ki. .. ki tu is tarah se try kar ... tu us tarah se try kar ... kiisse directly phone par baat ho jaaye, wo audio recording mil jaati to boht sahi ho jaata. Lekin kher nahi mil paayi, ye bhi boht achha proof hai mujhe lagta hai, ye bhi boht definite proof hai ki BJP IT Cell aise gande kaam karta hai
> .... Or dekh abhi, bhi time hai galti hui hai tujhse uske liye rl,laafi maang Ie, ek naya video bana or desh ki janta se sorry bol de ki haan mene ye galti kari pr me iske liye maafi mangta hu. Or desh ko sach bata ki Vikas Pandey or BJP IT Cell ke baare me, qki ye log desh" ko tabah karne me lage "- hue hain, itni nafrat faila rahe hain aaj ke time me .....
> .... Is video ko share kijiye dosto or janta fak sach pahunchaaiye iske baare me ....”

11. Thereafter, Sh. Dhruv Rathee had also shared the URL of the defamatory video on his Twitter account.

12. It is alleged that the petitioner herein had then retweeted the said defamatory content from his Twitter account, without checking the authenticity of the video, prior to spreading it to the public at large. It is further alleged that Sh. Arvind Kejriwal is followed by a large number of people, and by retweeting the offending content, he had made available the defamatory content to a large number of audience, at national and international level.

13. He further alleged that two of his friends namely Sh. Abhishek Kulshrestra and Sh. Punit Agrawal had called him to express their dismay with regard to the allegations made against him.

History of Judicial Proceedings

14. The respondent no. 2 was examined under Section 200 of the

Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) at the pre-summoning stage, as he had filed the complaint under Section 499/500 of IPC on the allegations mentioned above. The petitioner was summoned as an accused by the learned Additional Chief Metropolitan Magistrate-I, Rouse Avenue Courts, New Delhi (*'Trial Court'*) *vide* order of summoning dated 17.07.2019.

15. Being aggrieved by the issuance of summons and the complaint filed by the respondent no. 2, the petitioner had preferred a revision petition before the Sessions Court which was dismissed *vide* order dated 30.10.2019 by learned Additional Sessions Judge/Special Judge (PC Act) CBI-09, Rouse Avenue Courts, New Delhi (*'Sessions Court'*).

16. Aggrieved by the aforesaid orders passed by the learned Trial Court and Sessions Court, the petitioner Sh. Arvind Kejriwal has approached this Court by way of present petition under Section 482 of Cr.P.C. seeking setting aside of the order dated 17.07.2019 passed by the learned Trial Court in in Ct.Case No.15/2019, and order dated 30.10.2019 passed in Criminal Revision No. 28/2019 by the learned Sessions Court.

ARGUMENTS ON BEHALF OF PETITIONER

17. Sh. Manish Vashishth, learned Senior Counsel appearing on behalf of the petitioner, while assailing the orders passed by both the learned Trial Court and Sessions Court, argues that the learned Trial Court has summoned the petitioner in a mechanical manner and has presumed the alleged statements/re-tweet to be defamatory on the

face of it, without even properly examining the same. It is stated that summoning is contrary to the settled principles of law since the Magistrate has to carefully scrutinize the evidence brought on record and must satisfy itself that the ingredients of the alleged offence are made out, which was not done in this case. It is argued that a bare perusal of the retweet in question would show that the same does not constitute any offence of defamation as the offence of defamation, besides the requirement of *mens rea*, should consist of three essential ingredients i.e. (i) making or publishing any imputation concerning any person, (ii) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations, and (iii) the said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned. It is submitted by learned Senior Counsel that the impugned orders failed to appreciate that the alleged re-tweet was not done with intent to harm respondent no. 2, nor was it likely to harm him in any manner. It is further argued that the learned Trial Court has failed to consider that admittedly, the entire version deposed by PW-2 is hearsay, and an expression of dismay is not defamation. It is contended that the best case as alleged by the respondent no. 2 is that the petitioner has retweeted a link of some video, of which neither the petitioner was creator/author nor publisher of the same, and thus, essential ingredients of the defamation are not attracted in the present case as the same would not amount to publication in terms of ingredients of Section 499 of IPC. It is also stated that the learned Trial Court, while

passing the impugned summoning order, has failed to consider the exceptions provided under Section 499 of IPC, including the exception of public good, and has recorded an erroneous finding that at this stage, the consideration is whether there exists sufficient grounds to summon or not.

18. Further, it is also argued by learned Senior Counsel for the petitioner, that the respondent no. 2 had initially filed a complaint i.e. Ct. Cases 5786/2018 in Saket Courts, South East District, Delhi and on 18.10.2018, he had got his statement recorded before the concerned Magistrate and had withdrawn the complaint *qua* the petitioner, and accordingly the proceedings *qua* the petitioner herein were dropped. It is submitted that withdrawal/dropping of proceedings *qua* an accused in complaint case amounts to acquittal of the accused as per Section 257 of Cr.P.C, therefore, no cause of action whatsoever survives against the petitioner herein and the respondent no. 2 cannot be allowed to bypass the mandate of law by filing a fresh complaint case. It is therefore argued that respondent no. 2 had withdrawn his earlier complaint *qua* the petitioner and had instituted a subsequent complaint against the petitioner alleging that the petitioner through his retweet had defamed the respondent no. 2, without arraying the other accused persons in the present complaint. It is submitted that only recourse available to the respondent no. 2 was to approach this Court under Section 407 of Cr.P.C. seeking transfer of the case to the Court of competent jurisdiction.

19. It is also contended that the petitioner was not named by the respondent no. 2 in his statement dated 18.10.2018 recorded in the

earlier complaint case whereas in the statement dated 01.05.2019 recorded in the present case, the respondent no. 2 because of his *mala-fide* intention, has deposed an entirely different version and named the petitioner. Thus, it is argued that respondent no. 2 has deposed two entirely different versions and purposely named the petitioner, which on the face of it, shows *mala-fide* intentions and oblique motives. Therefore, in view of these submissions, learned Senior Counsel prays that the present petition be allowed and the impugned order be set aside or the case be remanded back to the learned Trial Court for deciding afresh as per law.

ARGUMENTS ON BEHALF OF RESPONDENT NO. 2

20. Sh. Raghav Awasthi, learned counsel for respondent no. 2, who seeks to sustain the impugned orders, argues that the allegations made against the respondent no. 2 are false, malicious and defamatory and the same have lowered his reputation in the eyes of right thinking members of the society. It is contended that without there being any proof in support of allegations levelled against the respondent no. 2, the petitioner herein, who is the Chief Minister of Delhi, has retweeted the video, shared by Sh. Dhruv Rathee on his YouTube channel, without verifying its authenticity and due to the large following of the petitioner herein, the video had reached a large number of people not only in India, but internationally also. On these grounds, it is argued that the impugned orders suffer from no infirmity and the learned Trial Court has rightly summoned the petitioner herein in the present case since a *prima facie* case of

defamation is made out against the petitioner and the issues which the petitioner has raised by way of this petition are all triable in nature.

21. It is further submitted on behalf of respondent no. 2 that the earlier complaint filed by respondent no. 2 before the Saket Courts, Delhi was withdrawn *qua* the present petitioner only since the said Court was not competent to try any matter in relation to the petitioner herein, who is an MLA and Chief Minister of Delhi, and therefore, the respondent no. 2 had no option but to withdraw the complaint from the previous Court with liberty to file a fresh complaint against the petitioner in the court which is competent to try cases pertaining to MPs/MLAs. In this regard, reliance is also placed on decision of this Court in case of ***Satish Dayal Mathur v. Mackinnon Mackenzie and Company*** *MANU/DE/0240/1986* to argue that Section 257 of Cr.P.C would not be applicable. On these grounds, learned counsel for respondent no. 2 prays that the present petition be dismissed.

22. This Court has heard arguments addressed by learned Senior Counsel for the petitioner as well as learned counsel for respondent no. 2, and has gone through the material placed on record and written submissions filed by both the parties.

THE ORDERS IMPUGNED BEFORE THIS COURT

23. The learned Trial Court, while summoning the petitioner herein *vide* order dated 17.07.2019, had passed the following order:

> "11. Defamatory statement is one which tends to injure the reputation of a person. It is a publication which tends to lower a person's reputation in the estimation of right thinking members of the society generally or which make

them shun or avoid that person. 'According to section 499 of The Indian Penal Code, a person is said to commit the offence of defamation when he, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending ,to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person except where the publication is protected by the ten statutory exceptions provided in this provision itself.

12. The complaint clearly set out the imputations made against the complainant by the respondent. The complainant has relied upon the defamatory video Ex. CW1/2 and computer printout of the tweet Ex.CW1/3 of the respondent whereby he re-tweeted the video. These electronic evidences are supported by the complainant's certificate under section 65 B of the Indian Evidence Act Ex.CW1/5. Complainant 'has also filed the transcript of the video on record.

13. Respondent is not the original author of the alleged defamatory video. The only allegations against him is that he re-tweeted the video containing the defamatory allegations against the complainant, without confirming its veracity.

14. In this manner, what the respondent has done, is that he has repeated the defamatory statements on a social media platform, which amounts to its further publication. It is no defence to an action of defamation that the respondent published it by way of repetition. "Talebearers are as bad as tale-makers". Every repetition of defamatory words is a new publication and a distinct cause of action.

15. In order to decide whether to summon respondent for trial, existence of only a prima facie case to summon them has to be seen in contrast to the standard of proof "beyond reasonable doubt" required for conviction. In legal terms, the consideration at this stage is whether there exists sufficient grounds to summon them or not (section 204 of The Code of Criminal Procedure). The situation may be different if the respondent is able to make out a defence for him from amongst those defences carved out in the provision itself (section 499 of The Indian Penal Code). But these defences cannot be looked at this stage according to the law. The defences have to be pleaded and proved by

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

16. In defamation cases, one of the test is whether under the circumstances in which the writing was published reasonable men to whom the publication was made would' be likely to understand it in a defamatory sense. Much also depends on the intention of the maker of the statement which is a subject of trial.

17. Therefore, the aforesaid discussions shows that allegations in the video are prima facie defamatory and refers to complainant Mr. Vikas Sankrityayan @ Vikas Pandey making him an aggrieved person within the meaning of section 199 Cr.P.C. The inquiry as contemplated under section 202 of the Code of Criminal Procedure has been duly conducted by examining the complainant and his witnesses to arrive at the conclusion for this stage of the case. Therefore, in view of the aforesaid discussion there exists sufficient grounds to proceed against the respondent Arvind Kejriwal under section 500 IPC. Accordingly, Sh. Arvind Kejriwal is summoned for commission of offence of defamation under section 500 of the Indian Penal Code."

8. Learned Sessions Court, while dismissing the revision petition filed by the petitioner where the order of summoning was challenged, had passed the following order dated 30.10.2019:

"21. It is not in dispute that republication of libel is a new libel which was so held in the case of Harbhajan Singh vs State of Punjab, 1961 Cri. Law Journal 710. It was further observed therein that the publisher of the libel is strictly responsible, irrespective of the fact whether he is the

originator of the libel or is merely repeating it. Tweeter a micro blogging and social network website, is used for spreading of messages. The Tweets so made on this platform are read by public on Internet who visit the platform of the creator of the Tweet. The platform, like Tweeter, can be used for sharing ideas and dissemination of thoughts. Whenever the user of this platform after reading the Tweet click on the 're-tweet' button of any user, the Tweet reaches the followers of the 're-tweeting' user. Thus, it reaches the new viewers for whom it may amount to publication. Re-tweeting, therefore, would amount to re-publication so far as the followers of retweeting user are concerned.

22. The question in the present revision petition is whether the revisionist had re-tweeted the contents of the video. The learned counsel for the revisionist has submitted that the revisionist has not re-tweeted the video. However, the copy of the re- tweet placed on record shows that the link of video was also mentioned in the re-tweet. The re-tweet by the revisionist shows that he has referred to the link i.e. "youtu.be/BsIKjxaP4Ik" on which the video containing the defamatory contents can be watched. He has further mentioned 'Share and RT'. Thus, it appears that the revisionist had re-tweeted the entire tweet along with mentioning the link on which the video can be watched by his followers on his tweeter account.

23. Learned counsel for revisionist argued that there was no intention on the part of the revisionist to cause any defamation. He referred to the judgment titled as Standard Chartered Bank vs Vinay Kumar Sood, CrL M. C. No.3828/2007 decided on 06.02.2009. He argued that the revisionist does not know complainant therefore, there cannot be any intention on his part to cause harm to the reputation of complainant. In the judgment on which learned counsel has relied, it was observed by the Hon'ble Delhi High Court that the intention to cause harm is most essential sine qua non for the offence under Section 499 IPC. It was held that the offence under Section 500 IPC requires blame worthy mind and is not a statutory offence requiring no mensrea. However, it may be noted here that the Hon'ble Delhi High Court in the Standard Chartered Bank's case (supra) was dealing with a car in which a limited company was arrayed as an accused for the offence under Section 500 IPC. Therefore, the court dealt with the issue of 'mensrea' and held that a company cannot in any case be held guilty

under Section 500 IPC because the most essential ingredients of the offence i.e. 'mensrea' would be missing as a company is juristic entity or an artificial person.

24. Section 499 IPC defines the offence on defamation as under:" 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 expected, to defame that person."

25. A bare perusal of the definition of the defamation would show that the imputation which harm the reputation of the person against whom they are made must be either (a) with an intention, or (b) with knowledge or (c) having reasons to believe that such imputation will harm the reputation of the 'person concerned'.

26. Whether in a particular case there was any such intention, knowledge, reason to believe or not is a question of fact which can be decided by way of leading evidence. Section 499 IPC is also subject to certain exceptions which bring the imputation out of the periphery of defamation. However, these exceptions would always be question of facts which can be decided at the trial. What is the nature of imputation, under what Circumstances it was made, the status of the person who is making imputation and of the person against whom the said imputation is made, whether the imputation were made in good faith etc. are some of the defences which are available to an accused. However, such defence can be considered by the trial court after the evidence is led by both the parties.

27. The impugned order has dealt with all the relevant aspects of the issues involved at the stage of summoning. At this stage, the court has only to see if there are sufficient grounds to proceed further or not and if the impugned order is weighed on this scale then I find no illegality, in propriety or irregularity in the order.

28. With these observations, the revision petition is dismissed.

29. TCR along with the copy of the order be sent to the learned trial court.

30. Revision Petition be consigned to record room.”

ANALYSIS & FINDINGS

I. ARGUMENT THAT THE COMPLAINT WAS WITHDRAWN EARLIER

24. It was argued on behalf of the petitioner that respondent no. 2 had earlier withdrawn a complaint which he had filed against three accused persons in Saket Courts, Delhi with the liberty to approach appropriate Court, and in these circumstances, Section 257 of Cr.P.C. would come into picture which provides that if a complainant withdraws his complaint against an accused, the Magistrate may permit him to do so, thereby acquitting the accused. While opposing these arguments, it was contended on behalf of respondent no. 2 that the previous complaint *qua* the present petitioner, who was accused no. 3 therein, was withdrawn with liberty to file a fresh in the Court having competent jurisdiction to deal with cases pertaining to MPs/MLAs and the same would not amount to an acquittal. In this regard, learned counsel for respondent no. 2 had relied on the decision of this Court in case of ***Satish Dayal Mathur*** *(supra),* wherein it was held as under:

> "17. These observations in my view are very apposite in the facts of the case on hand. Since the learned Additional Chief Metropolitan Magistrate was of the view, though erroneously, that the entire proceedings were illegal because of noncompliance with the mandatory provisions of Section 200, he could not have in all fairness to him passed an order of acquittal in terms of Section 257 the Code and this is what he precisely did. So applying the ratio of the decisions adverted to above which has also been referred to by both the courts below, the order dated 5th August 1983 of the

> learned Additional Chief Metropolitan Magistrate in the previous complaint cannot operate as an acquittal within the meaning of Section 257 so as to bar subsequent prosecution of the petitioner on the same facts."

25. This Court notes that in the present case, the respondent no. 2 herein had filed a complaint i.e. Ct. Cases 5786/2018, titled 'Vikas Sankritayan @ Vikas Pandey v. Dhruv Rathee & Ors.' on 04.07.2018 for offence under Section 499/500 of IPC against three accused persons i.e. Sh. Dhruv Rathee (the original author), one Sh. Mahavir Prasad Khileri and Sh. Arvind Kejriwal i.e. the petitioner herein. On 18.10.2018, the complainant had tendered his pre-summoning evidence, and on the same date, he had also given a statement before the learned MM-01, South-East, Saket Court, Delhi that he wishes to withdraw his complaint against accused no. 3 with liberty to file afresh before the court of competent jurisdiction. This statement reads as under:

> "On SA
>
> I wish to withdraw my complaint against alleged No. 3 Sh. Arvind Kejriwal with liberty to file the same before the Court of competent jurisdiction. I may be permitted for the same.
>
> RO & AC"

26. Further, on the same day, the following order was passed by the learned Magistrate:

> "Complainant submits that he wishes to withdraw his complaint qua alleged No. 3 Sh. Arvind Kejriwal with liberty to file fresh complaint as per law in the court having competent jurisdiction. Statement of the complainant is separately recorded to this effect and name of alleged No. 3 is dropped accordingly.
>
> Complainant is examined as CW1 and discharged.

> Complainant seeks time to file the list of remaining witnesses and for further pre summoning evidence. Heard. Allowed.
>
> Be put up for further pre summoning…"

27. Thereafter, in the aforesaid complaint case, the learned Magistrate had issued summons to the other two accused persons *vide* order dated 23.07.2019.

28. It is, thus, noted that in the present case, the respondent no. 2 had withdrawn his earlier complaint i.e. Ct. Cases 5786/2018, only *qua* accused no. 3, purely on the grounds of lack of jurisdiction of the learned Magistrate in Saket Courts to adjudicate a case related to a sitting MLA, who is also the Chief Minister of Delhi. In this regard, this Court also takes note of the fact that pursuant to directions passed by the Hon'ble Apex Court in case of ***Ashvini Kumar Upadhyay vs. Union of India & Anr.*** *W.P. (C) 699/2016,* a notification no. 35/DHC/Gaz./G-1/VI.E.2(a)/2018 dated 23.02.2018 was issued by this Court constituting special Courts to deal with cases against sitting/former MPs/MLAs.

29. As regards the argument regarding applicability of Section 257 of Cr.P.C., it is important to note that the case i.e. Ct. Cases 5786/2018, at the time when complaint *qua* petitioner herein was withdrawn, was still at the stage of recording of pre-summoning evidence. The petitioner i.e. accused was not before the Court concerned, as he had not yet been summoned, and the learned Magistrate had not applied his mind even to the material before him to arrive at a finding as to whether the accused persons were required

to be summoned or not. Thus, the trial in that complaint case had not yet begun, when the complaint was withdrawn. Having also gone through the decision of this Court in case of ***Satish Dayal Mathur*** *(supra)*, this Court is of the opinion the learned MM-01, South-East, Saket Court, Delhi did not have the jurisdiction to adjudicate complaint case pertaining to the present petitioner, in view of Special Courts constituted by this Court for the purpose of dealing with cases pertaining to sitting/former MPs/MLAs. In view thereof, the learned Magistrate himself did not pass any order of acquittal of the accused no. 3 i.e. petitioner herein. Thus, this Court is of the opinion that such a case would not be covered within the provisions of Section 257 of Cr.P.C., which falls under Chapter XX i.e. 'Trial of Summons-Cases By Magistrates'. Even otherwise, as observed hereinabove, the case of the complainant *qua* the present petitioner, being a sitting MLA, could not have been dealt with by the Magistrate concerned.

II. THE OFFENCE OF DEFAMATION

30. As the present case revolves around the offence of defamation, it shall be necessary to first examine and analyse the concept of defamation and defamatory statements, essential ingredients to constitute this offence under Section 499 of IPC and the judicial precedents highlighting the role of courts while issuing summons to an accused in a complaint filed for offence of defamation.

Meaning and Definition

31. According to Halsbury's Laws of England, Fourth Edition,

Volume 28, the term 'defamatory statement' has been defined as “a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business”.

32. The Black's Law Dictionary, 4th Ed., explains the meaning of ‘defamation’ as “the taking from one’s reputation. The offense of injuring a person’s character, fame, or reputation by false and malicious statements”.

33. In addition, P.H. Winfield in A Textbook of the Law of Tort, 5th Ed. 1950, defines ‘defamation’ as “the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person”.

34. As per R.F.V. Heuston, Salmond on the Law of Torts, 17th Ed. 1977, the wrong of defamation “consists in the publication of a false and defamatory statement concerning another person without lawful justification. That person must be in being. Hence not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased or unborn person is not actionable at the suit of his relatives, however great their pain and distress, unless the statement is in some way defamatory of them”.

Provisions of Law

35. The offence of defamation has been defined under Section 499 of IPC, which reads as under:

> "499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.
>
> *Explanation 1*.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
>
> *Explanation 2*.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
>
> *Explanation 3*.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.
>
> *Explanation 4*.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.
>
> *First Exception.*—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.
>
> *Second Exception.*—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his

character, so far as his character appears in that conduct, and no further.

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

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

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

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

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

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

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

> *Eighth Exception.*—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.
>
> *Ninth Exception*.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.
>
> *Tenth Exception*.—Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

36. Section 500 of IPC, which provides for punishment for defamation, reads as under:

> "500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Essential Ingredients to Constitute Offence of Defamation

37. In case of ***Jeffrey J. Diermeier v. State of W.B.*** *(2010) 6 SCC 243*, the Hon'ble Apex Court had observed that to constitute defamation under Section 499 of IPC, the following ingredients must be fulfilled:

> "29. To constitute "defamation" under Section 499 IPC, there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the

> offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged."

38. The Hon'ble Apex Court in case of ***Subramanian Swamy v. Union of India*** *(2016) 7 SCC 221*, while analysing the constitutionality of offence of defamation, had also enumerated the essentials of Section 499 of IPC, which are as under:

> "168. For the aforesaid purpose, it is imperative to analyse in detail what constitutes the offence of "defamation" as provided under Section 499 IPC. To constitute the offence, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasises on the intention or harm. Section 44 IPC defines "injury". It denotes any harm whatever illegally caused to any per-son, in body, mind, reputation or property. Thus, the word "injury" encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person's body and mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant."

39. The Hon'ble Apex Court in ***Google India Private Limited v. Visakha Industries and Ors.*** *(2020) 4 SCC 162* had also examined the ingredients of Section 499 as well as the meaning of terms

"making of an imputation" and "publishing of an imputation". The relevant observations in this regard are reproduced hereunder:

> "105. Under the said provision, the Law Giver has made the making or publishing of any imputation with a requisite intention or knowledge or reason to believe, as provided therein, that the imputation will harm the reputation of any person, the essential ingredients of the offence of defamation. What is the meaning to be attached to the words "making of an imputation" and "publishing of an imputation"? This question has been set out with clarity in a recent judgment which is reported in ***Mohd. Abdulla Khan v. Prakash K.*** *(2018) 1 SCC 615*. It was held as follows:
>
> > 10. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;
> >
> > (i) Such imputation must be made either
> >
> > (a) With intention, or
> >
> > (b) Knowledge, or
> >
> > (c) Having a reason to believe
> >
> > that such an imputation will harm the reputation of the person against whom the imputation is made.
> >
> > (ii) Imputation could be, by
> >
> > (a) Words, either spoken or written, or
> >
> > (b) By making signs, or
> >
> > (c) Visible representations
> >
> > (iii) Imputation could be either made or published.
> >
> > The difference between making of an imputation and publishing the same is:
> >
> > If 'X' tells 'Y' that 'Y' is a criminal -- 'X' makes an imputation.
> >
> > If 'X' tells 'Z' that 'Y' is a criminal -- 'X' publishes the imputation.
> >
> > **The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the**

imputation is made."

(Emphasis supplied)

40. Therefore, the essence of 'publication' of a content which is defamatory in nature, for the purpose of applicability of Section 499 of IPC, is the 'communication' of such defamatory content to persons other than the person who is being defamed.

41. To reiterate once again, in today's world, when the law with regard to posting of a defamatory content by way of re-tweeting or reposting is still not settled and is evolving, the Court has to adjudicate a case on the basis of test of a reasonable common man and the social background of the parties concerned alongwith the relevant facts and circumstances of the case which will become the edifice of finding for the purpose of evolving jurisprudence in the field of law, not yet effectively treaded or adjudicated upon.

Issuance of Process/Summons vis-a-vis Offence of Defamation: Material Considerations

42. The Hon'ble Apex Court in the case of ***Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya and Ors*** *2023 SCC OnLine SC 1258*, after considering several judicial precedents, had made the following observations on the issue of summoning an accused for an offence of defamation:

> "44. Thus, **when a Magistrate taking cognisance of an offence proceeds Under Section 200 based on a prima facie satisfaction that a criminal offence is made out, he is required to satisfy himself by looking into the allegations levelled in the complaint, the statements**

made by the complainant in support of the complaint, the documentary evidence in support of the allegations, if any, produced by him as well as statements of any witness the complainant may choose to produce to stand by the allegations in the complaint. Although we are not concerned with Section 202 here, if an inquiry or an investigation is conducted thereunder, it goes without saying that the reports should also be looked into by the Magistrate before issuing process Under Section 204. However, there can be no gainsaying that at the stage the Magistrate decides to pass an order summoning the Accused, examination of the nature referred to above ought not to be intended for forming an opinion as to whether the materials are sufficient for a 'conviction'; instead, he is required to form an opinion whether the materials are sufficient for 'proceeding' as the title of the relevant chapter would indicate. Since the Accused does not enter the arena at that stage, question of the Accused raising a defence to thwart issuance of process does not arise. Nonetheless, the fact that the Accused is not before the Magistrate does not mean that the Magistrate need not apply his judicial mind. Nothing in the applicable law prevents the Magistrate from applying his judicial mind to other provisions of law and to ascertain whether, prima facie, an "offence", as defined in Section 2(n) of the Code of Criminal Procedure is made out. Without such opinion being formed, question of "proceeding" as in Section 204 does not arise. What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial. Since initiation of prosecution is a serious matter, we are minded to say that it would be the duty of the Magistrate to prevent false and

frivolous complaints eating up precious judicial time. If the complaint warrants dismissal, the Magistrate is statutorily mandated to record his brief reasons. On the contrary, **if from such materials a prima facie satisfaction is reached upon application of judicial mind of an "offence" having been committed and there being sufficient ground for proceeding, the Magistrate is under no other fetter from issuing process.** Upon a prima facie case being made out and even though much can be said on both sides, the Magistrate would have no option but to commit an Accused for trial, as held in Chandra Deo Singh (supra) ……

45. **In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether 'sufficient ground for proceeding' exists as distinguished from 'sufficient ground for conviction', which has to be left for determination at the trial and not at the stage when process is issued.** Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499, Indian Penal Code is attracted, there is no bar either. After all, what is 'excepted' cannot amount to defamation on the very terms of the provision. **We do realize that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the Accused at the threshold.** However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499, Indian Penal Code, the

> Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons."

III. BALANCING CRITICAL YET COMPETING INTERESTS: FREEDOM OF SPEECH & EXPRESSION Vs. PROTECTING A PERSON FROM REPUTATIONAL INJURY

43. Reputation is a form of honor and **honor has many aspects**. The recognition of reputation as a significant social asset is fundamental, and the **Courts play an important role in ensuring equal protection to every individual, regardless of their standing in society**.

44. By analysing the limited sphere of jurisprudence evolved till date regarding 'retweet' or 'repost' being covered under meaning of 'publication', this Court would note that the **law on defamation on the one hand protects one person's reputation who is the complainant and one person's fundamental right who has been alleged to be an accused to freedom of expression.** Freedom of expression and the use of cyberspace and social media for the said purpose, especially by persons who hold positions of authority and have huge following on their social media accounts, needs to be kept in mind **while balancing the contrasting approaches** to be adopted towards both the parties, when they come to a Court to determine their rights.

45. **In addressing a democratic community, it is crucial to**

emphasize that freedom of speech, while a fundamental right, does not grant individuals the license to inflict harm or tarnish the reputation of others. This distinction becomes particularly pertinent when grappling with the court's dilemma of striking a balance between the cherished value of free expression and the equally essential need to protect an individual's reputation.

46. Thus, a Court, while weighing the value of reputation of one party and freedom of expression of the other, has to keep in mind that in a democratic setup, a person who is complainant in such cases may be **vulnerable in a given set of circumstances** in face of his competing interest with that of the accused. The principle of equal protection under the law mandates that the courts consider the plight of every individual, regardless of their societal status. **In rendering equal protection, the court must balance the right of free speech with the need to prevent unjust harm to reputation. The injurious falsehood of a statement will definitely invite defamation and loss of reputation.**

47. **Whether a person has achieved great heights in society, or finds himself marginalised considering himself as the last and least in terms of access to Court of law to fight for safeguarding his reputation, their right to fair treatment and protection from unwarranted harm remains paramount before any Court of law while adjudicating. This approach and duty becomes more critical when the complainant may be pitted against a person who may have more power, influence and followers.**

IV. MEETING THE CHALLENGE OF ADJUDICATING GREY AREA OF LAW NOT YET EFFECTIVELY ADJUDICATED UPON: LAYING FOUNDATION STONE OF JURISPRUDENCE

48. The evolution of technology and all pervasive influence of social media have transformed the landscape through which reputational harm can occur. As communication has shifted from traditional forms of speech to the digital space, the law must adapt to effectively addressing the new weapons of harm to reputation, particularly in the context of posts and reposts on social media platforms. Unlike private conversations, digital content posted and reposted on social media has the potential for immediate and widespread dissemination. The virality and permanence of online content amplifies its impact, making it a tool for causing reputational harm.

49. The use of cyberspace, as in the present case - the social media platform of Twitter (*now 'X'*), has seen rapid development. The users of cyberspace, for the purpose of posting their content even by way of re-tweeting, should remain conscious of a keen sense of danger in this new technological method of spreading information and ideas. **The content shared at such platforms spreads rapidly, and any content involving the reputation of a person will attract considerable harm in case he is negatively portrayed on the basis of a content which is scandalous or indictable**.

50. **Twitter (*now 'X'*), as a platform, serves as a megaphone that amplifies messages and broadcasts them to an extensive**

audience. It provides the ability to communicate with millions of people at the stroke of a button. The immediacy and accessibility of social media means that defamatory statements disseminated through tweets can rapidly reach individuals worldwide. The audience includes not only followers of the public figure but also anyone who has access to the social media platform and who may come across or be exposed to the tweet. Words which are posted, which may be these days in the form of a video also, will amount to publication and will be actionable in case it contains defamatory content or malice. Needless to say, the extensive circulation of such content in public can cause considerable injury to a person's reputation. Such written and posted content has the inherent quality of being permanent by virtue of the fact that a man's reputation suffers while the video remains available on the public platform and in the cyber space.

51. The number of followers or the reach of an individual's online presence can significantly magnify the impact of a post or repost. As a result, the law needs to evolve to navigate the complexities of this digital era. **The concept of publication, traditionally associated with printed materials, must be re-examined in the context of virtual platforms where information can reach a vast audience in seconds**. Moreover, **the legal system should be attuned to the dynamics of social media influence.**

Pace of Spread of Scandalous Content: From the Echo of Whispers in Pre-Digital Era compared to the Spread at Lightning Speed of Digital Dissemination in Digital Era

52. While deciding such cases, the Courts have to realize that in this advanced age of technology, the content of **defamation which is scandalous in nature, spreads like a wildfire**, leading to instant injury to reputation of a person by sheer extent of its reach to millions within minutes and is not like whispered scandal of the previous past.

53. In other words, **when a public figure tweets a defamatory post, the ramifications extend far beyond a mere whisper in someone's ears.** In social media, where information travels at lightning speed and has the potential to reach a global audience, the act of tweeting transforms the communication into a form of public publication. The audience, in this context, is not restricted to those physically present or within immediate earshot but encompasses the vast and diverse online community. **In the digital age, the boundaries of 'publication' have expanded, and the implications of defamation are heightened due to the potential of widespread dissemination.**

54. The force of causing **injury to reputation in virtual realms can be particularly potent, with the impact transcending physical boundaries and reaching a global audience.** The virtual space provides a platform where individuals, especially those with significant influence, can disseminate information rapidly, leading to swift and widespread consequences for a person's reputation.

55. The **force of a virtual blow is often exemplified by the sheer number of followers an individual commands on digital platforms.** The larger the following, the greater the potential reach and influence of their virtual actions. In the virtual realm, a damaging statement or action can reverberate across social media, online forums, and other digital spaces, magnifying its impact on the targeted individual's reputation.

56. **Unlike physical injury, which may be localized and limited in scope, virtual injury can have far-reaching and long-lasting effects. The force of a virtual blow is intricately tied to the dynamics of online engagement, where the virality and permanence of digital content contribute to the enduring nature of reputational harm.**

57. Recognizing and addressing virtual injury requires an understanding of the power dynamics inherent in the digital landscape. Legal frameworks and societal norms must adapt to consider the implications of reputational harm inflicted through virtual modes, acknowledging the influence exerted by individuals with substantial online followings.

V. 'RETWEETING' A DEFAMATORY IMPUTATION WILL AMOUNT TO 'PUBLICATION' FOR THE PURPOSE OF APPLICABILITY OF SECTION 499 OF IPC

58. **When a person makes a smart move to dodge law, the Courts and the laws have to be smarter to catch that smartness.** Courts play a pivotal role in this process, acting as the vanguards of

justice. **They must not only interpret the law but also possess the foresight to anticipate evolving strategies aimed at circumventing legal consequences.**

59. It has to be noted that a person retweeting a defamatory content, which has the potential of causing reputational injury to a person, cannot wriggle out of his responsibility by merely contending that it was a retweet and not the original tweet. Accepting this view as canvassed by the petitioner would amount to permitting people to retweet any objectionable or defamatory content in cyberspace and social media platforms, without any responsibility being attached to their act of posting such content on social media even if the content has the potential to cause reputational injury to another.

60. The retweeting of the content in the present case which was originally created by some other person who did not have as much public following as the present petitioner, by virtue of the petitioner retweeting that content, represented to the public at large that he believed the content created by another person to be true. It has to be held so since the general public would ordinarily believe that the person retweeting such content on his own Twitter account, must have understood, verified and believed the content to be true. The critical issue to be taken note of in such circumstances is the fact that the petitioner who retweeted the content had much larger following than the original content creator, thus, having multiplied potential of spreading the defamatory content to a much larger audience.

61. The **freedom of expression is essential in a democratic setup to spread one's opinion, however, it cannot extend to the extent of**

affecting the right of the people not to be defamed.

62. In case, **the act of retweeting or reposting is allowed to be misused since it is still considered to be a vacant grey area of law where the sapling of jurisprudence as to whether retweeting defamatory content will be considered publication or not is yet to take place, it will encourage people with ill intentions to misuse this vacant field of law and therefore, despite retweeting the defamatory content, the accused can thereafter conveniently take a plea that he had merely retweeted a content.**

63. In this background, this Court holds that retweeting or reposting defamatory content, **without any disclaimer** as to whether the person so retweeting agrees or disagrees or has verified the content so posted or not, and as to whether he projected to the world at large, who care to follow him, that he believes the content to be true so shared, a person would be republishing the original defamatory content which has the potential of lowering the moral or intellectual character or credit of a person.

64. **A sense of responsibility** has to be attached while retweeting content about which one does not have knowledge. Since in case reputational injury is caused by defaming a person, the person doing so by retweeting must attract penal, civil or tort action against him in absence of any disclaimer.

65. If we assume that the law exclusively attributes harm to the original author of a post in cases of defamation, a potential loophole emerges. Any case has to be adjudicated in its accompanying circumstances and the background of not only the facts but the actors

of the act in question. When a vast majority follows a particular person on twitter, not all, may be aware of the nitty gritties of tweets or retweets. Most common persons who follow a person, who may be an influencer for a particular segment of community will find it enough reason to believe a content just because the content is posted on account of a particular person.

66. This Court, while trying to lay down **foundational stone on jurisprudence of retweeting,** and whether it amounts to publication or not for the purpose of Section 499 of IPC, presents the following scenario to explain the reasons weighing in this Court's mind as to why this Court holds that retweeting amounts to publication for the purpose of Section 499 of IPC:

> Consider an individual, Z, who commands a specific group of followers, who regularly engage with his tweets. Z could potentially evade legal repercussions by instructing one of his followers to post defamatory content or by creating a fake account for the same purpose. Subsequently, the content is re-posted on Z's account, garnering a substantial audience. In such a scenario, the crux of the concern lies in the fact that if the law only holds the original author accountable, it creates an avenue for individuals like Z to escape the clutches of law. Despite being the one actively disseminating the defamatory material on his account, Z might escape punishment if the focus is solely on the initial creator of the content. If the law fails to address situations where the true culprit is the one

amplifying and re-posting defamatory content, it undermines the very purpose of defamation laws that is to protect individuals from false and damaging statements.

67. Therefore**,** this Court is of the view that **rigours of Section 499 of IPC will be attracted *prima facie* in case a person will retweet/repost the alleged defamatory remarks or content, for the purpose of the general public to see, appreciate and believe.**

68. This can also be explained by way of following **illustrations,** which weigh in the mind of this Court and have been purely created by this Court for the purpose of explanation, which are not exhaustive but suggestive in nature:

Illustrations By This Court

(a) *B* posts defamatory content about *Z* on his social media account. *A*, reposts the defamatory content, disseminating it to a larger audience. The act of both *A* and *B* is defamation, unless it falls within one of the exceptions or *A* posts a disclaimer in the repost that the content has not been verified regarding its correctness/ genuineness.

(b) *B*, a well-known influencer, shares a false accusation against *Z* on her blog. *A*, a follower, reblogs the content, amplifying its reach. *A*'s and *B*'s act constitutes defamation, unless it falls within one of the exceptions, or *A* posts a disclaimer in the retweet that the content has not been verified regarding its correctness/ genuineness.

(c) *B* tweets derogatory statements about *Z*, a public figure. *A*, another user, retweets *B*'s content, making it visible to a broader audience. *A*'s and *B*'s action is defamation, unless

it falls within one of the exceptions or *A* posts a disclaimer in the retweet that the content has not been verified regarding its correctness/ genuineness.

(d) *B* publishes a misleading article about *Z* on an online forum. *A*, a forum member, reposts the article, contributing to its wider circulation. *A*'s and *B*'s action is defamation, unless it falls within one of the exceptions or *A* posts a disclaimer in the repost that the content has not been verified regarding its correctness/ genuineness.

(e) *B* uploads an edited video falsely portraying *Z* engaging in inappropriate behavior. *A*, a subscriber, shares the same video on a video-sharing platform, expanding its viewership. *A*'s and *B*'s action is defamation, unless it falls within one of the exceptions or *A* posts a disclaimer while sharing the video that the content has not been verified regarding its correctness/ genuineness.

VI. REACH & INFLUENCE OF THE PERSON RETWEETING DEFAMATORY CONTENT

69. The assertion that the petitioner simply retweeted defamatory content without any intention to harm the reputation of the respondent no. 2 raises a complex legal issue, especially considering the **political standing and maturity of the petitioner,** who also holds the position of Chief Minister of the State of Delhi.

70. The background of the petitioner, being a Chief Minister, **necessitates an acknowledgment of the inherent sense of responsibility that comes with such a significant political role. As**

a leader with political standing and maturity, the petitioner is presumed to be aware of the potential impact of his actions, including retweets, on the public perception. When a public figure, particularly one with a political standing, tweets or retweets a defamatory post, the stakes and repercussions escalate given the broader implications on society. The audience, therefore, becomes the citizenry at large, whose opinions and decisions may be influenced by the information they consume, including defamatory statements published on social media.

71. In other words, the argument of mere retweeting without harmful intent has to be weighed against a public figure's duty to exercise due diligence and care in disseminating information on social media platforms.

72. **Where millions of people follow a particular person such as the petitioner herein on social media platforms such as Twitter (*now 'X'*), anything which is posted by the petitioner on his account is for public notice i.e. notice for all the people who care to follow him.**

VII. WILL EVERY 'RETWEET' ATTRACT ACTION UNDER SECTION 499 OF IPC?

73. Let us consider a scenario where an original author 'Z' posts defamatory content against 'Y' on his Twitter (*now 'X'*) account. The same is retweeted by thousands of users on their profiles. However, interestingly, one such retweet is from a public figure or influencer

with over 10 million followers, whereas the rest of retweets are from those who do not command such levels of popularity. Now, would every such person who retweets the defamatory content, be liable to face action for defamation?

74. In this Court's opinion, while all acts of 'retweeting' may amount to 'publication' of defamatory imputation, the extent of harm caused to the reputation of the aggrieved person would depend on the level of influence and the potential reach of the individual who retweets such defamatory imputation.

75. To illustrate, the reputational harm caused by virtue of retweeting defamatory content, by a person with a mere 10 followers, in contrast to another individual with a substantial following of over 10 million, would be undoubtedly different. The gravity of the situation would also differ substantially in such cases especially in view of explanation 4 of Section 499 of IPC which clearly provides that for an imputation to be defamatory in nature so as to harm's one reputation, it must *inter alia* directly or indirectly, in the estimation of others, **lowers the moral or intellectual character or credit of the person who is being defamed**.

76. Therefore, the social media reach as well as the social and political standing of the person, retweeting the defamatory imputation, is of great relevance. If a **public figure with a millions of followers** retweets any defamatory content, the impact on the aggrieved person's reputation and his character will be much greater, since the larger audience and the influence wielded by a public figure would amplify the spread and longevity of the defamatory content.

Such a person's influence may also make his audience believe the defamatory content to be true, thereby lowering the reputation of the aggrieved person.

77. Conversely, if a defamatory imputation is retweeted by **an individual with negligible followers** or very limited influence, the impact on the complainant's reputation may be less severe or may not even be of a nature to fall within the ambit of offence of defamation, since the limited or negligible reach of such a person would reduce the potential for the defamatory content to gain any significance among the right thinking members of the society, this of course, would be a matter of trial as to whether a person's retweet of defamatory content, with following of ten persons or zero persons would be sufficient to attract action under Section 499 of IPC.

78. If one analyses the facts of the present case in light of aforesaid observations, it is to be noted that in this case also, the respondent no. 2 had examined two witnesses at the pre-summoning stage who had deposed that they followed the present petitioner on Twitter, and they had seen the YouTube video which the petitioner had retweeted on his Twitter account, and after hearing the allegations contained in that video against the respondent no. 2 herein, they had immediately called respondent no. 2 to express their dismay.

79. Certainly, the harm inflicted upon the reputation of respondent no. 2, as claimed, by the actions of the petitioner herein, who not only commands a substantial social media following but also holds the position of the Chief Minister of Delhi, would be exponentially more than that resulting from thousands of retweets by other social media

users. Thus, the petitioner herein cannot take a defence that the complainant had chosen only to prosecute him for retweeting the alleged defamatory imputation, even though several other thousands of social media users had retweeted the same original tweet containing hyperlink/URL of defamatory video.

80. Therefore**, though every 'retweet' of defamatory imputation would ordinarily amount to 'publication' under Section 499 of IPC, it is ultimately for the person so aggrieved to decide as to which retweet caused more harm to his reputation, and *inter alia* lowered his moral or intellectual character or his credibility among the members of society.** This also will be decided by the learned Trial Court on the basis of material before it as to whether the retweet with its accompanying circumstances had the potential to defame the complainant concerned.

VIII. WHETHER PETITIONER IS LIABLE TO BE SUMMONED FOR HIS ACT OF RETWEETING THE ALLEGEDLY DEFAMATORY CONTENT?

81. In the present case, the petitioner had retweeted the original tweet of Sh. Dhruv Rathee, and the said retweet contained the embedded hyperlink/URL to the allegedly defamatory video which had been uploaded on the YouTube channel owned and run by Sh. Dhruv Rathee.

82. **While the petitioner may plead absence of any malicious intent in the act of retweeting, the Court has to consider the**

responsibility that accompanies the petitioner's political and social standing. Needless to say, the large social media following of a Chief Minister of a State undoubtedly implies a wider reach, making any retweet, a form of public endorsement or acknowledgment.

83. When a political person of such standing or a public figure or a **social influencer**, posts some content on his social media account, it can be reasonably believed by the Court while adjudicating such cases, at the initial stage of a case where summoning is in question, that he did understand the repercussions and implications of posting such content and the corresponding harm it can cause to the person aggrieved. In this Court's opinion, the online interactions and engagement on Twitter, which involves publication of defamatory statements and content, and sharing such content with others by retweeting will surely attract liability since it would amount to posting defamatory content as one's own by believing it to be true and thus, sharing it with the public at large.

84. The original author of the alleged defamatory content will also be liable for any action if a complaint is filed against him. However, it is the choice of the complainant, who may decide as to whether the person who retweeted such content had caused him more damage or not, since he had more friends or followers, by sharing a content.

85. In the present case, the defamatory video in question, posted by Sh. Dhruv Rathee and retweeted by the petitioner herein, was aimed at 'exposing' the IT Cell of BJP and as alleged in the video, the respondent no. 2 was the 'second-in-command' of the IT Cell of

BJP and was offering bribes for the purpose of defaming Sh. Dhruv Rathee. Taking note of the same, the argument that the petitioner was not aware that the contents of the material retweeted by him would cause harm to the reputation of the respondent no. 2 cannot be appreciated at the stage of summoning itself, since the adjudication with regard to determination of whether the petitioner herein had acted responsibly or not, and whether as a political person of a long standing, he could have had the knowledge that the content being posted by him would cause defamation or reputational injury to the respondent, is a matter of trial.

86. Further if, the petitioner herein wants to justify his act by any of the defences or exceptions, it can be done only at an appropriate stage of trial and not when he has just received summons and where *prima facie*, the case does not fall under any of the exceptions of Section 499 of IPC. Also, the question regarding an intentional injury or unintentional injury to a complainant's reputation by an accused can only be decided during the course of trial by leading evidence by both the parties. To prove actual defamatory injury by impairment of reputation cannot be decided at the threshold of summoning, when only a *prima facie* view of the matter is to be taken by the learned Magistrate.

87. The original author of the defamatory content i.e. Sh. Dhruv Rathee alongwith another accused i.e. Sh. Mahavir Prashad are already accused in Ct. Cases 5786/2018, which is pending trial before the learned MM-01, South-East, Saket Court, Delhi.

88. Further, whether it was his duty or not, as a political person of

long standing, to have taken some steps to verify the story or allegations against the respondent before posting it on social media, which would make an impact on a huge section of society and corresponding effect on the reputation of the person concerned who is at the centre stage of the defamatory content, will also be considered during the course of trial.

89. **Whether the impugned publication and the alleged defamatory content will help the petitioner as a political person or not, is not in this Court's domain to go into, at this stage. Thus, regardless of whether posting such content or filing a defamation case serves the interests of the petitioner or the respondent in gaining political mileage**, this Court **must adjudicate a criminal matter solely based on the legal provisions outlined in the relevant sections of criminal law and in accordance with established judicial precedents. The decision should be made without any consideration of personal agendas or the potential impact or implications on the political landscape at the threshold of journey of a case i.e. summoning on the basis of adequate material on record.**

90. The present case is still at the stage of the accused having been summoned. He has challenged the issuance of summons and the summoning order and has raised the issues of illegality in issuance of summons which have been adjudicated upon by this Court in the preceding paragraphs. The issues have been decided against the petitioner herein. Resultantly, this Court finds no reason to interfere with the order of summoning passed by the learned Trial Court. The

petitioner herein will have opportunity to raise contentions before the learned Trial Court during the course of trial which will be decided as per law, including the issue as to whether for the purpose of trial case under Section 499 of IPC is made out or not. At this stage, there was sufficient material before the Court concerned to summon the petitioner under Section 499 of IPC.

91. It is for the Trial Court Judge to determine at a pre-summoning stage what is capable of being defamatory for the purpose of summoning. Whether the content has been proved to be defamatory or not is a matter of trial.

CONCLUSION

92. At times, **it is difficult to erase the reputational injury from public memory, as the tweets may be deleted but perceptions are difficult to be deleted from the minds of the community.**

93. This Court, thus, for the purpose of adjudicating the present case, holds that retweeting a content, which is allegedly defamatory, on the Twitter account and projecting it to be as if his own views, will *prima facie* attract the liability under Section 499 of IPC, for the purpose of issuance of summons.

94. Therefore, this Court finds no infirmity with the impugned orders passed by the learned Trial Court as well as learned Sessions Court.

95. Accordingly, the present petition stands dismissed.

96. It is, however, clarified that the observations made hereinabove *qua* the present complaint case are solely for the purpose of deciding

the instant petition challenging the summoning orders, and the same shall not be construed as opinion of this Court on the merits of the case, which will be adjudicated upon during the course of trial.

97. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 5, 2024/ns