2022 INSC 1104

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1791 OF 2022
(Arising out of Special Leave Petition (Crl) No.351 of 2021)

MANOJ KUMAR TIWARI … APPELLANT(S)

VERSUS

MANISH SISODIA & ORS. …RESPONDENT(S)

With

CRIMINAL APPEAL NO. 1790 OF 2022
(@ Special Leave Petition (Crl) No.658 of 2021)

J U D G M E N T

V. Ramasubramanian, J.

Leave granted.

2. The order of summoning issued by the Additional Chief Metropolitan Magistrate-I, Rouse Avenue Courts, New Delhi, in a criminal complaint of defamation filed by Respondent No.1 herein against six individuals, was challenged before the High Court unsuccessfully, by persons arrayed as Accused Nos.1 and 5 and hence both of them have come up with the above Criminal Appeals.

3. We have heard Shri R. Venkataramani and Ms. Pinky Anand, learned senior counsel appearing for the appellants and Dr. Abhishek Manu Singhvi, learned senior counsel, as well as Shri Shadan Farasat, learned counsel appearing for Respondent No.1

4. On 19.07.2019, Respondent No.1 herein filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C'*) against six individuals, on the file of the Additional Chief Metropolitan Magistrate-I, Rouse Avenue Courts, New Delhi, alleging commission of the offences under Sections 499 and 500 read with Sections 34 and 35 of the Indian Penal Code (*hereinafter referred to as 'IPC'*). The case of Respondent No.1 in his complaint was, *that* he has been the Deputy Chief Minister of Delhi since February 2015; *that* on 01.07.2019, Shri Manoj Tiwari, (*A-1 who is the appellant in one of these appeals*) held a Press Conference making false and defamatory statements as though the complainant was involved in corruption to the tune of Rs. 2000 crores, in the matter of award of contracts for building classrooms in Delhi Government Schools; *that* persons arrayed as

Accused Nos. 2 to 4 in the said complaint, shared the platform with the said Shri Manoj Tiwari, during the Press Conference and they also uttered the same defamation statements; *that* Shri Vijender Gupta, arrayed as Accused No.5 in the complaint (*appellant in one of these appeals*) tweeted defamatory contents against the complainant; and *that* the person named as Respondent No.6 in the complaint also made defamatory statements in his tweets. According to Respondent No.1 herein (*the complainant*), all the accused persons acted with common intent and in a well-thought-out and planned manner to defame him, thereby rendering themselves liable for prosecution.

5. After recording the statements of Respondent No.1 and two independent witnesses, in the inquiry under Section 202(1) of the Cr.P.C and after taking note of the documents produced by Respondent No.1, the learned Additional Chief Metropolitan Magistrate passed an Order on 28-11-2019 directing the issue of summons to all the six accused, after holding that there exists sufficient grounds to proceed against the accused Nos.1 to 4 under

Section 500 IPC read with Section 34 IPC and against accused Nos.5 and 6 under Section 500 IPC.

6. The appellants herein (*who were cited as accused Nos.1 and 5 respectively*) challenged the order of summoning by way of petitions under Section 482 of the Cr.P.C, before the High Court of Delhi. The High Court dismissed the petitions, forcing the appellants to come up with the above appeals.

7. Though the petitions filed by the appellants under Section 482 of the Code were dismissed by the High Court of Delhi by a common order, the cases of both of them are not exactly the same. Shri Manoj Kumar Tiwari (A-1), the appellant in one of these appeals, is accused along with Accused Nos. 2 to 4 of committing the offence punishable under Section 500 read with Section 34 IPC. But Shri Vijender Gupta (A-5) is accused of committing an offence punishable under Section 500 IPC alone. In paragraph 14 of the summoning order dated 28.11.2019, learned Additional Chief Metropolitan Magistrate has recorded the following opinion:

> "Further the exhortation by the respondents as to sharing of the statements and holding a joint conference together also strengthens the inference of common intention of the

> respondent no.1,2,3 and 4. As far as the tweets made by respondent no.5 and 6 concerned that have been made after few hours of the Press Conference held by the respondent no.1 to 4, hence, the act of respondent no.5 and 6 cannot said to be done with common intention along with other respondents rather they are individual acts of defamation."

8. Keeping in mind the above distinction between the case of Shri Manoj Kumar Tiwari and the case of Shri Vijender Gupta, let us now proceed to consider the grounds on which the summoning order is challenged by these appellants.

9. The only ground on which accused No.1 assails the order of summoning is that the Court ought not to have entertained a private complaint under Section 200 Cr.P.C especially from a person covered by Section 199(2) of the Code, without following the procedure prescribed in sub-section (4) of Section 199.

10. Accused No.5 who is appellant in the other appeal assails the order of summoning on three grounds namely, ***(i)*** that the respondent No.1 ought to have followed the special procedure prescribed in Section 199(4) of the Code of Criminal Procedure, as he happens to be a Minister of a Union Territory; ***(ii)*** that the transcript of the tweets attributed to him were not accompanied by

a valid certificate in terms of Section 65B of the Indian Evidence Act; and ***(iii)*** that in any case the tweets made by him *per se* do not make out a case of defamation in terms of Section 499 IPC, punishable under Section 500 IPC.

11. Reliance is placed by the learned counsel for the appellants mainly on the decisions of this Court in ***P.C Joshi and Another*** vs. ***State of Uttar Pradesh***[1]***; Subramanian Swamy*** vs. ***Union of India***[2]; and ***K.K. Mishra*** vs. ***State of Madhya Pradesh and Another***[3]***.*** The contention of the learned senior counsel for the appellants is that certain consequences are prescribed in Section 237 of the Code, if it is a case of malicious prosecution initiated under Section 199(2) and that the attempt of Respondent No.1 to bypass the special procedure prescribed in Section 199(2) is with a view to escape the consequences of Section 237 of the Code.

12. Defending the summoning order passed by the Additional Chief Metropolitan Magistrate and the order of the High Court dismissing the challenge to the same, it is contended by Dr. A.M.

1 AIR 1961 SC 387
2 (2016) 7 SCC 221
3 (2018) 6 SCC 676

Singhvi that what is prescribed by Section 199(2) of the Code is a special procedure, which does not exclude the general procedure prescribed under Section 199(6) and that the right of a public servant, as an individual, to prosecute a person for defamation, is guaranteed by Section 199(6), to which the provisions of sub-section (2) of Section 199 have no application. Our attention is also drawn to the 41st Report of the Law Commission of India which led to Section 198B of the Code of Criminal Procedure, 1898 undergoing sweeping changes in the Code of Criminal Procedure, 1973.

13. We have carefully considered the rival submissions. In order to understand the scope and ambit of the two different procedures prescribed in Section 199 of the Code, it may be necessary to have a look at the legislative history of these provisions. Unfortunately, there emerges two versions of this history, one from the amendments made to the Code of 1898 in the years 1943, 1955 and 1964 and the Code of 1973 and the other emerging from the 41st Report of the Law Commission. We shall take note of both versions of history.

Legislative History of Section 199 (and 198, to be precise)

Milestone -1 (year 1898)

14. Section 198 of the Code of Criminal Procedure, 1898, as it originally stood in the Code of Criminal Procedure, 1898 read as follows:-

> "198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence"

Milestone-2 (year 1943)

15. By Criminal Procedure (Second Amendment) Act, 1943, a *proviso* was added to Section 198, to the following effect:

> "Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf."

Milestone-3 (Constitution of Law Commission)

16. After India attained independence, suggestions were made for the appointment of a Law Commission for examining the Central Acts. Initially, a Resolution was moved in the Constituent Assembly

on December 2, 1947 recommending the establishment of a Statutory Law Revision Committee. However, the Resolution was withdrawn upon an assurance given by the then Law Minister Dr. Ambedkar, to constitute a permanent Law Commission to revise and codify the laws. Eventually, the Lok Sabha resolved on November 19, 1954, to constitute a Law Commission to recommend revision and modernization of laws, both substantive and procedural and in particular, the Civil and Criminal Procedure Codes. Pursuant thereto, the Law Commission was constituted in August/September 1955 with M.C. Setalvad, Attorney General of India as its Chairman.

Milestone-4 (year 1955)

17. In the meantime, the Parliament enacted 'The Code of Criminal Procedure (Amendment) Act, 1955, (Act XXVI of 1955)' which received the assent of the President on 10th August 1955 and was published in the Gazette of India on 12th August 1955. By Section 25 of this Amendment Act XXVI of 1955, a new provision in Section 198-B was inserted, providing for a special procedure for prosecution for defamation against public servants in respect of

their conduct in the discharge of public functions. This Section 198-B read as follows:

> **"198B.** (1) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor.
>
> (2) Every such complaint shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.
>
> (3) No complaint under sub-section (1) shall be made by the Public Prosecutor except with the previous sanction,-
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> (a) in the case of the President or the Vice-President or the Governor or Rajpramukh of a State, of any Secretary to the Government authorised by him in this behalf;
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> (b) in the case of a Minister of the Central Government or of a State Government, of the Secretary to the Council of Ministers, if any, or of any Secretary to the Government authorised in this behalf by the Government concerned;
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> (c) in the case of any other public servant employed in connection with the affairs of the Union or of a State, of the Government concerned.
>
> (4) No Court of Session shall take cognizance of an offence under sub-section (1), unless the complaint is made

within six months from the date on which the offence is alleged to have been committed.

(5) When the Court of Session takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrates of warrant-cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded otherwise directs, be examined as a witness for the prosecution.

(6) If in any case instituted under this section, the Court of Session by which the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Court of Session may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor or Rajpramukh of a State) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(7) The Court of Session shall record and consider any cause which may be shown by the person so directed and if it is satisfied that the accusation was false and either frivolous or vexatious, it may, for reasons to be recorded, direct that compensation to such amount, not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(8) All compensation awarded under sub-section (7) may be recovered as if it were a fine.

(9) No person who has been directed to pay compensation under sub-section (7) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding

compensation to such person in any subsequent civil suit relating to the same matter.

(10) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

(11) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (10), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(12) For the purposes of this section, the expression "Court of Session" includes the High Courts at Calcutta and Madras in the exercise of their original criminal jurisdiction.

(13) The provisions of this section shall be in addition to, and not in derogation of, those of section 198."

Milestone-5 (14th Report of the Law Commission on "Reform of Judicial Administration" and the Amendment of 1964)

18. The enactment of the Amendment Act XXVI of 1955 (by which Section 198-B was inserted), coincided with the constitution of the Law Commission in August/September 1955. The Law Commission submitted its 14th Report on "*Reform of Judicial Administration*" in September 1958. The Report was confined only to indicating in broad outline, the changes that were required to make judicial administration speedy and less expensive as seen from the letter of

the Chairman of the Law Commission dated September 26, 1958 addressed to the then Minister of Law. The detailed examination of the Codes of Criminal and Civil Procedure was deferred, as they were likely to consume considerable time.

19. After the Law Commission submitted its 14th Report on the Reform of Judicial Administration, in September 1958, the Government asked the Commission to undertake an examination of the Code of Criminal Procedure. When the Law Commission was carrying out this exercise, the Parliament enacted 'The Anti-Corruption Laws (Amendment) Act, 1964 (Act 40 of 1964)'. By this Act, four different Acts, namely, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898, the Delhi Special Police Establishment Act, 1946 and the Prevention of Corruption Act, 1947 were amended.

20. ***Three important changes were made to Section 198-B of the Code of Criminal Procedure, 1898, by this Act 40 of 1964***. They were:

(a) The brackets and words "(*other than the offence of defamation by spoken words*)" in sub-section (1) of Section 198-B were directed to be omitted;

(b) After sub-section (5), a new sub-section (5A) was directed to be inserted as follows: -

> "(5A) Every trial under this section shall be held in camera if either party thereto so desires or if the Court of Session so thinks fit to do.";

(c) After sub-section (13), a new sub-section (14) was directed to be inserted as follows:-

> "(14) Where a case is instituted under this section for the trial of an offence, nothing in sub-section (13) shall be construed as requiring a complaint to be made also by the person aggrieved by such offence."

The version of history as reflected by the Amendments to the Code of 1898

21. The version of history that could be traced from the Amendments made in the years 1943, 1955 and 1964, to the Code of 1898, can be summed up as follows:

(i) The Code of 1898 enabled, under Section 198, only the aggrieved person to file a complaint.

(ii) The Amendment of the year 1943 carved out an exception in the case of women who could not appear in public, minors, lunatics, sick and infirm persons etc., by enabling them to file a complaint through some other person.

(iii) The Amendment of the year 1955 prescribed a detailed special procedure to be followed in the case of offences under Chapter XXI of IPC, committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State, or a Minister, or any other public servant employed in connection with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions. ***But this procedure was not applicable to the offence of defamation by spoken words as seen from the words "any offence falling under Chapter XXI of the Indian Penal Code (Act XLV of 1860) (other than the offence of defamation by spoken words)"***

(iv) But the words "other than the offence of defamation by spoken words" in Section 198-B(1) were omitted by the Amendment of 1964.

It was from this milestone that the legislation moved to Section 199 of the Code of 1973, which we shall see later.

Milestone-6 (37th Report of the Law Commission leaves the task uncompleted)

22. After the aforesaid amendment of the year 1964, the Law Commission submitted its 37th Report in December, 1967 on the Code of Criminal Procedure, 1898, but it covered only Sections 1 to 176. Paragraph 525 of this 37th Report indicated that the Sections of the Code after Section 176 were proposed to be dealt with in later Reports.

Milestone-7 (41st Report of the Law Commission)

23. Therefore, the revision of the remaining provisions of the Code of Criminal Procedure was undertaken by the subsequent Law Commission, constituted in March, 1968. This Commission submitted its Report, which is the 41st Report, in September 1969. Interestingly, it was recorded in the introductory Chapter of this 41st Report that though the first 14 Chapters of the Code have been exhaustively analysed in the previous report (37th Report) of the Law Commission, the Commission was compelled to revisit even those

recommendations. The reason for this, according to the Law Commission, was that a finely integrated and comprehensive law like the Code of Criminal Procedure cannot be revised piecemeal, as the amendments suggested in one part of the Code were likely to naturally affect, provisions of the other parts of the Code to a greater or lesser extent. Therefore, the 41st Report became a very comprehensive report.

24. As we have seen in paragraph 14 above, the Code of 1898 contained a provision in Section 198, which mandated that the cognizance of offences relating to ***(i)*** breach of contract; ***(ii)*** defamation; and ***(iii)*** marriage, cannot be taken by any court except upon a complaint made by the aggrieved person. The 41st Report of the Law Commission recognized (as seen *from paragraph 15.131*) that Section 198 of the Code dealt with the issue of cognizance of three completely unconnected groups of offences namely, ***(i)*** offence relating to breach of contract to attend on or to supply demands to helpless persons; ***(ii)*** offences relating to marriage; and ***(iii)*** offence relating to defamation. Finding that these

groups of offences have nothing in common and that the grouping of all of them together was faulty, the 41st Report recommended the deletion of the reference to Chapter XIX of the Indian Penal Code, in Section 198.

25. Then the Law Commission took note of the insertion of section 198-B under the Amendment Act XXVI of 1955 and recorded in paragraph 15.138 of the Report, the rationale behind Section 198-B as follows:

> "15.138. Section 198B, which was introduced by the Amendment Act of 1955, deals with prosecution for the offence of defamation where such offence is committed against certain high dignitaries and public servants in respect of their conduct in the discharge of public functions. The section lays down a special procedure for such cases. The Court of Session is empowered to take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor. It is not necessary for the aggrieved person to sign the complaint under this section, but the complaint has to be made with the previous sanction of a specified authority. There are also distinctive features which will be discussed below."

26. According to the 41st Report of the Law Commission, Section 198-B was inserted to provide a special procedure for prosecution for the offence of defamation where such offence is committed against certain high dignitaries and public servants in respect of their conduct in the discharge of public functions. The specialties of

the procedure were, ***(i)*** that the offence was made cognizable; ***(ii)*** that the complaint could be by the Public Prosecutor and need not even be signed by the aggrieved person; and ***(iii)*** that the pre-condition for taking cognizance is that it was sanctioned by a specified authority.

27. It is interesting to see that the 41st Report of the Law Commission fails to note how Section 198-B inserted by the Amendment Act of 1955 was worded and how it was changed in 1964. ***The Amendment Act of 1955 made section 198-B applicable to offences other than defamation by spoken words. This exception was removed only by the Amendment of 1964***. The 41st Report of the Law Commission makes no mention of the 1964 Amendment.

28. Without reference to the Amendment of 1964, the 41st Report of the Law Commission records in paragraphs 15.139 to 15.142, a different version of history starting with the battle that preceded the 1955 Amendment. It appears therefrom that there was a huge opposition to the offence of defamation being made cognizable. The

opposition came from the Indian Federation of Working Journalists. The Press Commission reported that the consequences of making the offence of defamation cognizable, are very dangerous, as it may enable the Police ***(i)*** to arrest without a warrant; ***(ii)*** to take preventive action contemplated under Chapter XIII of the Code of 1898 (presently Chapter XI of the Code of 1973); and ***(iii)*** to conduct searches.

29. After expressing the above apprehensions, the Press Commission recommended that a procedure may be devised so as to strike a balance between those two considerations, viz., ***(i)*** frivolous action by the police and the consequent harassment of the alleged offender; and ***(ii)*** the desirability of police investigation or magisterial inquiry in some cases where it is necessary that the public servant should clear himself of the defamatory allegations.

30. According to the 41st Report of the Law Commission, the Joint Committee which considered the Bill of 1954 agreed that "the offence of defamation against the President, Governor or Rajpramukh of a State, Minister, or other public servant should not be made cognizable." The Report says that it was on the basis of the

suggestions of the Joint Committee that Section 198-B emerged in the form in which it was inserted under the 1955 Act.

31. Paragraph 15.143 of the 41st Report summed up the rationale, scope and ambit of Section 198-B as follows:

> "15.143. Section 198B thus emerged in its present form after much deliberation and discussion. It was substantially different from the original clause in the Bill, and also from the provision suggested by the Press Commission. It brings in the Public Prosecutor, who is expected to make the complaint made with the Government's approval and to conduct the trial before the Court of Session. ***It puts the whole weight of the Government against the accused, in what would otherwise have been a private litigation between the accused and the public servant. This intervention of the State can be justified only on the ground that the Government has an interest in protecting its reputation when it is likely to be tarnished if an attack on its officers goes unchallenged, or in other words, the defamation, besides causing harm to the individual, has caused appreciable injury to the State.***"

32. In a nutshell, ***the 41st Report recognized that the provision in Section 198-B puts the whole weight of the Government against the accused, in what would otherwise have been a private litigation between the accused and the public servant***. This intervention of the State can be justified only on the ground that the Government has an interest in protecting its reputation when it is likely to be tarnished if an attack on its officers goes

unchallenged or in other words, the defamation, besides causing harm to the individual, has caused appreciable injury to the State.

33. The Law Commission's Report recorded in paragraph 15.144 that the primary object behind Section 198B was to provide a machinery enabling Government to step in to maintain confidence in the purity of administration when high dignitaries and other public servants are wrongly defamed. Therefore, the Commission recommended that the special provision is needed only for the high dignitaries who really constitute the Government itself and that it is unnecessary to cover all Government servants irrespective of their position. The Commission opined that Government servants in general can seek permission of the Government and approach the courts for vindicating their official conduct. In essence, the Commission thought that it should be confined to the President and the Vice-President of India, the Governors of States, Administrators of Union Territories and Ministers, whether of the Union or of a State.

34. In fact before making the above recommendation, the Law Commission looked into the data regarding the number of cases

filed throughout the country and the officers/dignitaries on whose behalf they were filed. The Commission recorded as follows:

> "Details as to the number and nature of the prosecutions launched under section 198B since 1955 which were furnished to us by the Courts of Session show that a comparatively large number of cases were on behalf of the subordinate ranks of Government servants. For example, during the period 1955 to 1967 only twenty-five cases were instituted under this section in Punjab, out of which 2 related to Class I officers, 8 related to class If officers and 15 related to other Government servants such sub-Inspectors of Police, Registration Clerk, Accountants, Peons etc. The Total number of prosecutions in any year was very small.
>
> We are of the view that the provisions of the section, exceptional as they are, should be confined to the high dignitaries of the State mentioned above. In the case of defamation of other public servants, the ordinary provisions of section 198 should be enough, so far as the Code is concerned."

35. Apart from making the above recommendation, the 41st Report also suggested something, in relation to sub-sections (13) and (14) of Section 198-B. We may recall that sub-section (13) of Section 198-B made the provisions of this section to be in addition to, and not in derogation of, those of Section 198. Sub-section (14) was in the nature of a clarification to the effect that where a case is instituted under this section for the trial of an offence, nothing in sub-section (13) shall be construed as requiring a complaint to be

made also by the person aggrieved by such offence. With regard to these two sub-sections, the Law Commission recommended as follows:

> 15.153 Sub-section (13) states that "the provisions of section 198B shall be in addition to, and not in derrogation of, those of section 198". The precise meaning and effect of this sub-section was a matter of controversy until it was settled by the Supreme Court. The sub-section is "enacted with a view to state *ex abundanti cautela* that the right of a party aggrieved by publication of a defamatory statement to proceed under section 198 is not derogated by the enactment of section 198B. The expression 'in addition to' and 'not in derogation of' mean the same thing, that section 198B is an additional provision and not intended to take away the right of a person aggrieved, even if he belongs to the specified classes and the offence is in respect of his conduct in the discharge of his public functions, to file a complaint in the manner provided by section 198". The Supreme Court thus negatived the contention that, in every case falling under section 198B, besides the complaint filed by the Public Prosecutor, there must also be a complaint by the aggrieved person.
>
> 15.154. Presumably with a view to making this position clear, sub-section (14) was added to section 198B by the Anti-Corruption Laws (Amendment) Act, 1964. This sub-section states that "where a case is instituted under this section for the trial of any offence, nothing in sub-section (13) shall be construed as requiring a complaint to be made also by the person aggrieved by the said offence". The correct position appears to be that the remedies available to the aggrieved person under the two sections are not mutually exclusive but are parallel to, and independent of, each other. Where the aggrieved person and the Government concerned have decided to proceed under section 198B, it is clear that the complaint need not comply with the condition laid down in section 198. This idea could be readily brought out by inserting the

> usual saving provision in section 198, e.g., the words "save as otherwise provided in section 198B". If this was done, the only point to make clear in section 198B would be that the right of the aggrieved person to bring forward a complaint on his own in the Court of a Magistrate in accordance with section 198 was not in any way affected.
>
> 15.155. We accordingly propose that in place of the existing sub-sections (13) and (14), the following may be put in section 198B:-
>
> > "(13) Nothing in this section shall affect the right of the person against whom the offence referred to in sub-section (1) is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

36. In other words, the 41st Report of the Law Commission recommended the replacement of the then existing sub-sections (13) and (14) of Section 198B with a new sub-section (13). This new sub-section (13) of Section 198B was intended to make it clear that the right of an individual against whom the offence of defamation was committed, to make a complaint before a Magistrate, was preserved and that the said right will not stand affected by the other provisions contained in this Section.

Milestone-8 (Code of 1973)

37. The 41st Report of the Law Commission was submitted in September, 1969. Thereafter, a draft Bill in Bill No.XLI of 1970 was

introduced in the Rajya Sabha in December, 1970. The Bill was referred to a Joint Select Committee of both the Houses of Parliament and what finally emerged, was passed by both the Houses and this became the Code of Criminal Procedure, 1973 (Act No.2 of 1974).

38. It is Section 199 of this Code of 1973, which we are called upon to interpret in this case. Section 199 of the Code of 1973 reads as follows:

> "**199. Prosecution for defamation**.-(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:
>
> Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.
>
> (2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice- President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

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

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

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

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

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

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

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

39. Before proceeding further, it is necessary to take note of the fact that what was recommended by the 41st Report of the Law Commission to be sub-section (13) of Section 198B, in replacement of the then existing sub-sections (13) and (14), which we have extracted in paragraph 35 above, has now become sub-section (6) of Section 199. Keeping this in mind, let us now go back to the

grounds raised by the appellants, for assailing the order of summoning issued by the Magistrate.

Back to the cases on hand

40. To recapitulate, the appellant in one of these appeals (who is A-1) is assailing the order of summoning, only on one ground namely, that a person covered by sub-section (2) cannot bypass the special procedure prescribed in sub-section (4) of Section 199. The appellant in the other appeal (A-5) has raised two additional grounds namely, ***(i)*** that the contents of the tweets sent by him were not *per se* defamatory; and ***(ii)*** that the transcript of the tweets cannot be relied upon without complying with the mandate of Section 65B of the Indian Evidence Act. Let us first deal with the common ground on which both the appellants assail the order of summoning.

Whether special procedure eclipses the general procedure?

41. In support of the contention that a person covered by sub-section (2) of Section 199 has to necessarily go through the special procedure prescribed by sub-section (4) of Section 199, the learned counsel for the appellants has relied upon the decisions of this

Court in ***P.C Joshi, Subramanian Swamy*** and ***K.K. Mishra*** (supra). Therefore, let us see the *ratio decidendi* of these decisions.

42. In ***P.C Joshi*** (supra), the Public Prosecutor, Kanpur filed a complaint in the Court of Sessions, against the Editor and the Printer and the Publisher of an English Weekly, claiming that a news item published therein was defamatory of the Chief Minister of the State. The Order of the Home Secretary sanctioning prosecution under Section 198B(3) of the Code of 1898 was filed along with the complaint. After examining witnesses, the learned Sessions Judge framed the charge. The order framing charge was unsuccessfully challenged by the Editor and Publisher before the High Court and the matter landed up on the file of this Court. The object behind the special procedure prescribed under Section 198B of the Code of 1898 was elaborated in detail by this Court in ***P.C. Joshi*** (supra). In paragraph 7 of the Report in ***P.C. Joshi*** (supra), this Court indicated that Section 198B has made a departure from the normal rule, in larger public interest. After holding so, this Court clarified that the expression "*not in derogation of*" appearing in sub-section (13) of Section 198B clearly indicated that the provisions of Section

198B did not impair the remedy provided by Section 198. This Court said: "*it means that by Section 198B, the right which an aggrieved person has to file a complaint before a Magistrate under Section 198 for the offence of defamation, even if the aggrieved person belongs to the specified classes and the defamation is in respect of his conduct in the discharge of his public functions, is not taken away or impaired. If sub-section (13) be construed as meaning that the provisions of Section 198B are to be read as supplementary to those of Section 198, the non-obstante clause with which sub-section (1) of Section 198B commences is rendered wholly sterile .....*"

43. An argument was advanced in ***P.C. Joshi*** (supra) that sub-sections (6) to (11) of Section 198B of the Code of 1898 provided for the award of compensation in the case of vexatious prosecution and that if the aggrieved person was not the complainant, it was not possible to direct compensation to be paid to the accused who was made to face a vexatious complaint. The said argument was rejected in ***P.C. Joshi*** (supra) on the basis of sub-section (5) of Section 198B

which required the person against whom the offence was committed, to be examined as a witness for prosecution. In paragraph 8 of the Report in ***P.C. Joshi*** (supra), this Court held as follows:

> "8. Reliance was placed on behalf of the appellants upon sub-ss. (6) to (11) of S.198B which provide for the award of compensation to the person accused if the court is satisfied that the accusation is false and either frivolous or vexatious, and it was submitted that the Legislature could not have intended that a person who was not the complainant and who was not directly concerned with the proceedings may still be required if so ordered by the court to pay compensation. But sub-s. (5) which provides that a person against whom the offence is alleged to have been committed shall, unless the court for reasons to be recorded otherwise directs, be examined as a witness for the prosecution, clearly indicates that the question whether the complaint was false and either frivolous or vexatious may fall to be determined only if the person complaining to be defamed actively supports the complaint. It cannot therefore be said that S. 198B provides for compensation being awarded against a person who is not concerned with the complaint."

44. In ***Subramanian Swamy*** (supra), this Court was dealing with a batch of writ petitions under Article 32 of the Constitution challenging the constitutional validity of Sections 499 and 500 IPC and Sections 199(1) to 199(4) of the Code of 1973. The impact of sub-section (6) on other sub-sections of Section 199 of the Code of

1973 was indicated in paragraph 203 of the Report in ***Subramanian Swamy*** as follows:-

> "203. Sub-section (6) gives to a public servant what every citizen has as he cannot be deprived of a right of a citizen. There can be cases where sanction may not be given by the State Government in favour of a public servant to protect his right and, in that event, he can file a case before the Magistrate. The provision relating to engagement of the public prosecutor in defamation cases in respect of the said authorities is seriously criticized on the ground that it allows unnecessary room to the authorities mentioned therein and the public servants to utilize the Public Prosecutor to espouse their cause for vengeance. Once it is held that the public servants constitute a different class in respect of the conduct pertaining to their discharge of duties and functions, the engagement of Public Prosecutor cannot be found fault with. It is ordinarily expected that the Public Prosecutor has a duty to scan the materials on the basis of which a complaint for defamation is to be filed. He has a duty towards the Court. This Court in *Bairam Muralidhar v. State of A.P* while deliberating on Section 321 CrPC has opined that the Public Prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion. It further observed that he cannot remain oblivious to his lawful obligations under the Code and is required to constantly remember his duty to the court as well as his duty to the collective. While filing cases under Sections 499 and 500 IPC, he is expected to maintain that independence and not act as a machine."

45. The above passage is relied upon by the learned senior counsel for the appellants to contend that it is only in cases where the State Government refuses to give sanction for prosecution, that the individual right under sub-section (6) of Section 199 can be

invoked. But we are afraid that such an inference does not flow out of what is observed in paragraph 203 of the decision in ***Subramanian Swamy*** (supra). To say that the provisions of sub-section (6) of Section 199 can be invoked by the individual public servant, only in cases where the State Government does not go to his rescue, could violate the plain language of sub-section (6). Sub-section (6) of Section 199 begins with the words "*nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed*". Sub-section (6) does not contain any conditions subject to which the right thereunder can be exercised.

46. The non-obstante clause in sub-section (2) of Section 199 will also not go to the rescue of the appellants, as the said clause also stands eclipsed by the words "*nothing in this section*" appearing in sub-section (6). The word "*nothing*" appearing in sub-section (6) will include the non-obstante clause in sub-section (1) also.

47. In ***K.K. Mishra*** (supra) this Court was concerned with a challenge to the maintainability of the prosecution instituted under

Section 199(2). After referring to the decisions in ***P.C. Joshi*** and ***Subramanian Swamy*** (supra), this Court held the prosecution to be not maintainable, primarily on two grounds namely ***(i)*** that the alleged defamatory statements cannot be said to have any reasonable connection with the discharge of public duties by the office of the Chief Minister and that therefore the Chief Minister should have resorted only to provisions of sub-section (6) of Section 199; and ***(ii)*** that in any case the Public Prosecutor had failed to apply his mind to the materials placed before him, vitiating the complaint presented by him.

48. We do not know how the decision in ***K.K. Mishra*** (supra) will be of any assistance to the appellants. The question whether the Public Prosecutor applied his mind or not cannot arise in this case, as Respondent No.1 has filed the complaint on his own in terms of Section 199(6). The question whether the alleged defamatory statements relate to the official discharge of duties of Respondent No.1, hinges on facts.

49. Merely because it was stated in ***K.K. Mishra*** (supra) that what is envisaged in sub-sections (2) and (4) of Section 199 is a departure from the normal rule, it does not mean that sub-section (6) stands nullified. In fact more than helping the appellants, the ratio propounded in paragraph 7 of ***K.K. Mishra*** (supra) supports the stand of Respondent No.1. Paragraphs 7 and 8 of ***K.K. Mishra*** (supra) read thus:

> "**7.** Section 199(2) CrPC provides for a special procedure with regard to initiation of a prosecution for the offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the functionary or public servant concerned, as may be. The prosecution under Section 199(2) CrPC is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the competent authority in the State/Central Government under Section 199(4) of the Code. Such a complaint is required to be filed in a Court of Session that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate court. Section 199(2) CrPC read with Section 199(4) CrPC, therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 CrPC by sub-section (6) thereof.
>
> **8.** The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a

> judgment of considerable vintage in *P.C. Joshi* v. *State of U.P.* (AIR pp. 391-92, para 9) The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) CrPC is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure."

50. As seen from the portion of ***K.K. Mishra*** (supra) extracted above, the right of an individual is saved, under sub-section (6), even if he falls under the category of persons mentioned in sub-section (2).

51. The long history of the evolution of the legislation relating to prosecution for the offence of defamation of public servants shows that the special procedure introduced in 1955 and fine-tuned in 1964 and overhauled in 1973 was in addition to and not in derogation of the right that a public servant always had as an individual. He never lost his right merely because he became a public servant and merely because the allegations related to official discharge of his duties. Sub-section (6) of Section 199 which is a reproduction of what was recommended in the 41st Report of the Law Commission to be made sub-section (13) of Section 198B,

cannot be made a dead letter by holding that persons covered by sub-section (2) of Section 199 may have to invariably follow only the procedure prescribed by sub-section (4) of Section 199. Therefore, the common ground raised by both the appellants is liable to be rejected. A person falling under the category of persons mentioned in sub-section (2) of Section 199 can either take the route specified in sub-section (4) or take the route specified in sub-Section (6) of Section 199.

52. An ancillary argument arising out of Section 199(4) is that Section 237 of the Code provides a safety valve against malicious prosecution or prosecution without reasonable cause. Section 237 reads as follows:

> "237. **Procedure in cases instituted under section 199(2)**.—(1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate:
>
> Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.
>
> (2) Every trial under this section shall be held *in camera* if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided."

The contention of the appellants is that the protection available under Section 237 of the Code to the accused, will be lost if the public servant avoids the special procedure and lodges a complaint individually.

53. It is true that under sub-section (3) of Section 237, the Court is empowered to direct the public servant (other than the President, Vice-President or the Governor of a State or the Administrator of a Union Territory) to show cause why he should not pay compensation to a person accused of committing the offence of defamation, in cases where the Court not only discharges or acquits the accused, but is also of the opinion that there was no reasonable cause for making the accusation against him.

54. But Section 237(3) is not a new invention. What was contained in sub-sections (6) to (11) of Section 198B of the old Code of 1898 has taken a new shape in Section 237. Moreover, it is not as though there is no such safety valve against prosecution by an individual without reasonable cause, when he invokes sub-section (6) of Section 199. Whenever a person is prosecuted by a public servant in his individual capacity before a Magistrate by virtue of Section

199(6), the accused can always fall back upon Section 250, for claiming compensation on the ground that the accusation was made without reasonable cause. Section 250 of the Code reads thus:

> "250. **Compensation for accusation without reasonable cause**.—(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.
>
> (2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.
>
> (3) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.
>
> (4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases."

55. Therefore, nothing turns on Section 237 of the Code. Section 237 cannot be used as a crutch to support the argument revolving around Sections 199(2) and 199(4).

56. Since we are rejecting the argument revolving around sub-sections (2) and (4) of Section 199 and also since this is the only argument on which Shri Manoj Kumar Tiwari (A-1) has come up

with the above appeal, his appeal in Criminal Appeal arising out of S.L.P. (Crl.) No.351 of 2021, is liable to be dismissed. Accordingly, it is dismissed.

ADDITIONAL GROUNDS IN THE CASE OF SHRI VIJENDER GUPTA (A-5)

57. In the first portion of this judgment where we have provided the background facts, we have indicated that the learned Additional Chief Metropolitan Magistrate has held Shri Vijender Gupta (A-5) not liable to be prosecuted for the offence under Section 34 of the IPC. We have extracted elsewhere, paragraph 14 of the summoning order dated 28.11.2019 passed by the Additional Chief Metropolitan Magistrate, which became the subject matter of challenge before the High Court in the order impugned in these appeals.

58. In the light of the fact that learned Additional Chief Metropolitan Magistrate has taken cognizance only of the offence under Section 500 IPC against Shri Vijender Gupta, it is enough for us to test whether the tweets attributed to him can be said to be *per se* defamatory. It is a fundamental rule of criminal jurisprudence that if the allegations contained in the complaint,

even if taken to be true, do not constitute the offence complained, the person accused should not be allowed to undergo the ordeal of a trial. Therefore, let us have a look at the tweets attributed to Shri Vijender Gupta (A-5). These tweets are extracted in paragraphs 44 and 45 of the impugned judgment of the High Court of Delhi and they are extracted as follows:

> "44. The alleged culpable tweet of the petitioner of Crl.M.C. 2355/2020 reads as under:-
>
> "Vijender Gupta @ Gupta, vijend...01 Jul
>
> Chief Minister of Delhi @ Arvind Kejriwal and Deputy Chief Minister @mssodia, kindly give answer to 24 questions of mine
>
> I am sure that your answer will disclose your scam in the construction of these rooms but you are avoiding to give answer but I will obtain the reply.
>
> 45. Though the tweet itself is requirement of the complainant to respond to 24 questions of the said alleged Twitter which questions are to the effect:
>
> "1. How many rooms and what total cost was sanctioned under Priority in Directorate of Education?
>
> 2. What is the cost of construction per square meter and what is the cost of construction per room under Priority?
>
> 3. What were AA and ES for same were given by DOE and with what conditions?
>
> 4. What components were included in the cost estimates including horticulture, landscaping, rain water harvesting etc.? List different components as the estimated expenditure?

5. What was the time of completion under Priority?

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

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

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

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

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

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

12. What was the reasons for cost escalation?

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

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

15. Were such approvals of the competent authority taken?

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

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

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

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

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

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

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

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

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

59. Admittedly and obviously the twenty-four questions posed by Shri Vijender Gupta (A-5) to respondent No.1 cannot be said to be defamatory as these questions seek answers to certain facts relating to the construction of some buildings. What is sought to be projected as defamatory, is only one statement namely "*I am sure that your answer will disclose your scam in the construction of these rooms but you are avoiding to give answer but I will obtain the reply*".

60. We do not know how a statement in a tweet that the answers of respondent No.1 to the questions posed by the appellant will disclose his scam, can be said to be defamatory. We are afraid that even if a person belonging to a political party had challenged a

person holding public office by stating "*I will expose your scam*", the same may not amount to defamation. Defamatory statement should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. Therefore, we are of the view that the statement made by Shri Vijender Gupta (A-5) to the effect "*your answer will disclose your scam*" cannot be considered to be an imputation intending to harm or knowing or having reason to believe that it will harm the reputation of respondent No.1.

61. Unfortunately the summoning Order dated 28.11.2019 passed by the Additional Chief Metropolitan Magistrate, did not go into the contents of the tweets made by Shri Vijender Gupta. To that extent, there was no application of mind on the part of the Additional Chief Metropolitan Magistrate.

62. Though the High Court *prima facie* examined the tweets, it upheld the summoning order passed by the Magistrate, after simply extracting Section 499. The claim made by a person involved in politics that the answers provided by his rival in public office to the

questions posed by him, will expose his scam, cannot be *per se* stated to be intended to harm the reputation of the person holding office. The statements such as "*I will expose you*", "*I will expose your corrupt practices*" and "*I will expose the scam in which you are involved, etc.*" are not by themselves defamatory unless there is something more.

63. In view of the above, the appeal filed by Shri Vijender Gupta (A-5) is liable to succeed on the sole ground that the statements contained in his tweets cannot be said to be defamatory within the meaning of Section 499 of the IPC.

64. In light of the above finding, we do not think that we need to go into other argument raised by Shri Vijender Gupta (A-5), on the basis of Section 65B of the Indian Evidence Act.

CONCLUSION

65. In the result, the appeal arising out of S.L.P. (Criminal) No.658 of 2021, is allowed and the order of summoning dated 28.11.2019 passed by the Additional Chief Metropolitan Magistrate-I, Rouse Avenue Court Complex, New Delhi in Ct. Case 51/2019, insofar as

Shri Vijender Gupta (A-5) is concerned, is set aside. However, the complaint may proceed in respect of other accused. The appeal arising out of S.L.P. (Criminal) No.351 of 2021 filed by Shri Manoj Kumar Tiwari shall stand dismissed.

Pending application(s), if any, stands disposed of accordingly.

.....J.
(S. Abdul Nazeer)

.....J.
(V. Ramasubramanian)

New Delhi
October 17, 2022