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

\+ CRL. M. C. NO. 2570/2017 and Crl. M. A. No.10690/2017 (Stay)

RAGHAV CHADHA .....Petitioner

Through: Mr. Anand Grover, Senior Advocate with Mr. Sherbir Panag, Ms. Tripti Tandon, Mr. Vijayant Singh, Ms. Srinidhi Rao, Mr. Mohd. Irshad, Mr. Sushant Pandey, Mr. Shahab Ahmad and Ms. Ajita Sharma, Advocates.

Versus

STATE & ANR. ....Respondents

Through: Mr. Siddharth Luthra, Senior Advocate with Mr. Manik Dogra, Mr. Manoj Taneja, Mr. Anupam N. Prasad, Ms. Shradha Karol, Ms. Mehak Jaggi, Advocates for the respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R

% 25.09.2017

1. The present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as **"Cr.P.C."**) was filed assailing the summoning order dated 09.03.2017, notice under Section 251 Cr.P.C. dated 25.03.2017 and order dated 30.01.2017 passed by the Chief Metropolitan Magistrate, Patiala House Court, New Delhi in the complaint case No. 210/01/2015 titled *"Arun Jaitley Vs. Arvind Kejriwal & Ors."*, which was listed on 11.07.2017 and was fixed for hearing on 30.10.2017.

2. On 15.09.2017, the Hon'ble Supreme Court issued following directions :

> " *Having heard learned counsel for the parties, we are only inclined to request the learned Single Judge of the High Court to pre-pone the date of hearing and finalise the petition filed under Section 482 Cr.P.C. on or before 25.09.2017.*
>
> *The parties shall appear before the High Court on 18.09.2017 with a copy of this order and thereafter the matter shall be argued on 19.09.2017.*
>
> *Needless to emphasis that the learned Single Judge shall deal with the matter within the parameters of Section 482 Cr.P.C.."*

3. The brief facts and material emanating from the complaint, which need a necessary mention for the limited purpose of deciding the core controversy, are that the complainant/respondent No.2 is a senior leader of Bhartiya Janta Party, the Minister of Finance, Corporate Affairs and Information & Broadcasting in the Government of India; that the complainant/respondent No. 2 alleged that from 15.12.2015 onwards, the accused persons (A-1 to A-6) individually and collectively undertook a false, malicious and defamatory campaign against him and his family members from an unrelated act of a search conducted during an investigation by Central Bureau of Investigation (hereinafter referred to as **"CBI"**) of a bureaucrat in the Secretariat of the Government of NCT reaching out to the public at large worldwide

through print and electronic media with ulterior motive which was calculated, engineered and designed for gaining political mileage and other unwarranted benefit at the cost of causing irreversible damage to his reputation; that the statements made by the accused persons orally and through their twitter handles from 15.12.2015 to 20.12.2015, were reported widely in a section of electronic media; that the derogatory statements and defamatory imputations made by the respondents in print and electronic media are summarized by the Trial Court as under:

a. On 15.12.2015, respondent/A-1 had alleged that the CBI had raided the office of a bureaucrat working with the Govt. of NCT Delhi, had come looking for complainant's tax scam files. He also stated that *"CBI raided his office to locate files related to corruption in DDCA. The files name Finance Minister Arun Jaitley…""which file was CBI looking for in my office? DDCA files in which Arun Jaitley in dock, I was about to order a commission of enquiry…."*
On 16.12.2015, respondent/A-1 had stated on his twitter handle (@kejriwal_arvind) – *"Why Jaitley Ji so scared of DDCA probe? What is his role in the DDCA Scam"*.

b. On 17.12.2015, the respondent/A-3, 4 and 5 had held a press conference and again made allegations – *"Arun Jaitley had shielded the Delhi and District Cricket Association (DDCA) for over 15 years. There's corruption worth several hundred crores*

that has taken place under the very nose of the Finance Minister…"

c. Again on 18.12.2015, all the respondents/ A-1 to A-6 had stated – *"reconstruction of Ferozshah Kotla Stadium was carried out from 2002 and 2007 for which initial budget was Rs.24 crores and ended up costing Rs.114 crores as per reply furnished on 1st December, 2012 by DDCA to the SFIO. Bungling happened with the direct and indirect consent of Arun Jaitley during his tenure as DDCA President.*" Respondent/A-4 also wanted to know whether the Prime Minister would continue to retain Sh. Jaitley even after knowing the details of the corruption charges against him.

d. On 17.12.2015, respondent /A-5 has claimed – *"Jaitely stated in Parliament that EPIL got only 57 Crores where has remaining amount been spent?"*

e. On 18.12.2015, respondent/A-2 and A-3 again in a press conference alleged that a company named 21st Century Media Pvt. Ltd. of which one Lokesh Sharma is Director got financial benefit of over Rs.5 Crores for the deal and members of the complainant's family have been associated with the said company. Furthermore, balance of Rs.57 Crores of the total expenditure of Rs.114 Crores was distributed amongst nine companies.

f. Again false allegations/innuendos were made on 18.12.2015 that a company close to the complainant and his family members i.e. 21st Century Media Pvt. Ltd. was asked to

sublease corporate boxes for Rs.36 Crores. Further, the respondents added – *"whose company is 21st Century Media Pvt. Ltd. What is Lokesh Sharma's relation with Jaitley?"*

g. On 18.12.2015, respondent/A-1 had tweeted on his twitter handle (@kejriwal_arvind) – *"the allegations against Sh. Jaitley are very very serious. He should either resign or be removed to enable independent enquiry.*" He further stated *"if Jaitley was let off without investigation, on the same basis 2G accused should also be let off. Can Jaitley's denial in press be taken as gospel truth? These are very serious allegations against him. Why is he running from investigation?"*

h. On 20.12.2015, respondent/A-2 and A-3 had in a press conference stated – *"Jaitley is the Suresh Kalmadi of BJP". Similarly respondent/A-4 had stated "(Bhaktokanayanaara) apna Arun Kamaoonikla, Kalmadika tau nikla"*. On 20.02.2015, respondent/A-3 Sanjay had stated – *"Cricket Commonwealth Ke Aaropi Arun Jaitley Ji aap BJP ke Kalmadihai chorar seena jori nahi chalegi, bhrashtachari ko bhrastachari hi kahoonga suna aapne".*

The complainant/respondent No. 2 alleged that by virtue of these statements, accused A-1 to A-6 had created an impression that infact only Rs.24 Crores were to be spent in the construction of Ferozshah Kotla Stadium; that Rs.57 Crores were paid to Engineering Projects

India Ltd.; that an amount of Rs.57 Crores out of Rs.114 Crores remained unexplained; that Rs.57 Crores were siphoned off; that A-1 to A-6 intended to create an impression that the marketing company which got the DDCA sponsorship for signage, sale and sublease of corporate boxes, is owned by some relative of the complainant/respondent No. 2; that the complainant/respondent No. 2 himself or through his family received some pecuniary benefits arising out of the same; that the allegations leveled by the accused persons were false, untrue, malicious, defamatory and deliberately made to gain political mileage whilst causing irreversible damage to his reputation in the eyes of his family members, friends, relatives, millions of citizens of India, in his professional as well as in public life;

4. Assailing the impugned orders, Mr. Anand Grover, learned Senior Counsel appearing for the petitioner contended that all the communications allegedly made by the petitioner with defamatory imputations are in electronic form, which are solely covered by the Information and Technology Act, 2000 (hereinafter referred to as **"IT Act"**) and not by Section 499 of the Indian Penal Code, 1860 (hereinafter referred to as **"IPC"**); that 'retweeet' does not amount to publication for the purpose of Section 499 IPC and there can be no defamatory; that summoning order dated 09.03.2017 is bad in law and the same has been delivered without application of mind and; that the

petitioner has been wrongly summoned under Section 34 IPC as he had only retweeted from his twitter handle.

5. On the other hand, Mr. Siddharth Luthra, learned Senior Counsel appearing for the complainant/respondent No. 2 argued that retweeting falls within the ambit of Section 499 IPC by virtue of it being a fresh representation and publication of the original defamatory comment by repeating and endorsing it publically; that striking down of Section 66A of the IT Act does not affect the right of an aggrieved person who has been defamed and can avail the remedy provided under the provisions of Section 499/500 IPC; that the case of the complainant/respondent No. 2 and the summoning order against the present petitioner is not restricted to 'retweets' only and the two 'retweets' the petitioner has referred to, are not the only defamatory imputations made by the petitioner; that para 26 of the summoning order clearly records that defamatory statements were made by petitioner/accused persons in print media as well as in electronic media in their individual and collective capacity as members of Aam Aadmi Party (AAP); that the Trial Court after applying the judicial mind and considering the complaint, defamatory statements and the law on the subject, summoned A-1 to A-6.

6. Having heard the learned counsel for the parties and scrutinized/analysed the material available on record, it would be pertinent to reflect upon the scope and ambit of the powers of this

Court to quash criminal proceedings when its jurisdiction under Section 482 Cr.P.C. is invoked.

7. It is well-nigh settled that the inherent powers being extraordinary in character, the very plenitude of the powers demands great caution which ought to be exercised sparingly to achieve the underlying object of Section 482Cr.P.C. The High Court, therefore performs a tripartite function whilst invoking inherent powers under Section 482 Cr.P.C. which includes:-***firstly***, giving effect to the orders passed under the Code; ***secondly*** preventing the abuse of the process of the Court and ***thirdly*** securing the ends of justice.

8. The Court cannot embark upon weighing the evidence and arriving at any conclusion to hold, whether or not the allegations made in the complaint shall constitute an offence under Section 499 IPC punishable under Section 500 of IPC. It is a settled legal principle that the complaint has to be read as a whole in order to determine whether the allegations contrived therein are *prima facie* sufficient to constitute an offence under Section 499 IPC, triable by a Magistrate. Therefore, at this juncture only *prima facie* case is to be seen in the light of the law laid down by Supreme Court. It is permissible to look into the materials to assess what the complainant/respondent No. 2 has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. According to the counsel for the petitioner, all the electronic communications with defamatory imputations fall within the ambit of

IT Act and the material definitions of the IT Act are found in Section 2(1) which defines the terms 'access', 'addressee' 'communication device', 'computer', 'data', 'electronic form', 'electronic record', 'information', 'intermediary' and 'originator'; that Section 66A of the IT Act deals with punishment for sending offensive messages through communication resource or a communication device; that information in the present case was sent through computer resource or a communication device i.e. electronically; that the alleged defamatory imputation attributed to the petitioner falls within the definition of 'information', as provided under Section 2(1)(v) of the IT Act and covered within the purview of Section 66A of the IT Act instead of Section 499/500 IPC; that as per Section 81 of the IT Act, it has an overriding effect over IPC; that Section 81 of the IT Act is not in respect of Copy Right Act, 2012 and Patent Act, 1995 only but in respect of all other statues including IPC; that Section 5 and 41 of the IPC further fortifies that Section 81 of the IT Act has overriding effect and it needs to be mentioned and reads as follows:-

> *"**5. Certain laws not to be affected by this Act**-Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of Government of India or the provisions of any special or local law*."
> *xxxxxx*
> ***41. Special law**-A "special law" is a law applicable to a particular subject*."

In the above context, ***Sharat Babu Digumarti vs. Government of NCT of Delhi*** reported in ***2017 (2) SCC 18***, was also relied upon. Para 32 of which reads as under:-

> *"Section 81 of the Act also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 of the IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply".*

It has been further argued that the case of the petitioner falls within the purview of protected speech as held in ***Shreya Singhal Vs Union of India*** reported in ***2015 (5) SCC 1***. The relevant para reads as under:

> "*102 Each of the penal provisions contained in sub-sections (a), (b) and (c) of Section 66-A seek to*

> *target the take into consideration different nature of offences an depending upon the technology and techniques used, the legislature has used phrases accordingly. These provisions, however, can never be construed as scuttling the freedom of speech and expression of any citizen*."

It was argued that assuming Section 66A of the IT Act does not apply, in view of finding in ***Shreya Singhal (Supra)*** case, the IT Act still provides a self-contained remedy in the Information Technology (Intermediaries Guidelines) Rules, 2011; that **'*Rule 3(2) (b) and Rule 3 (4) of The Information Technology (Intermediaries Guidelines Rules, 2011*'** are applicable and grievance of the complainant/respondent No.2 can be addressed by the intermediary within 36 hours; that while analysing Section 66A of the IT Act, the aspect of injury and the false nature of the information in Section 66(A)(b) of the IT Act have been overlooked and an error has crept in ***Shreya Singhal (Supra)***; that there is no doubt that when the Intermediaries Guidelines Rules, 2011 are read with the IT Act, remedy for 'defamation' has been provided by the legislature under the **'*The Information Technology (Intermediaries Guidelines' Rules), 2011*'**.

Learned Counsel contended that in Rule 3 (2) (b) of the Information Technology (Intermediaries Guidelines Rules), 2011 the words,*'defamatory', 'obscene'* are mentioned and under Rule 3 (4) of the Information Technology (Intermediaries Guidelines Rules), 2011,

it is specified that the intermediary, on whose computer system the information is stored or hosted or published, upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2) above, shall act within *thirty six hours* and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2). *Further the intermediary shall preserve such information and associated records for at least ninety days for investigation purposes* and as such the procedure laid down under *Rule 3 (2) (b)* and *Rule 3 (4)* of '*The Information Technology (Intermediaries Guidelines' Rules), 2011* can be followed in cases of defamation.

10. Challenging the arguments raised by the learned counsel for the petitioner, learned counsel for complainant/respondent No. 2 argued that the striking down of Section 66A of the IT Act grants him immunity on his tweets/retweets from offences under the IPC under the garb of freedom of speech and expression cannot pass muster, as such freedom cannot exclude defamatory remarks made against other persons which would lead to an absurd situation where under the garb of free speech and expression, anyone can make a defamatory remark against a person vide a tweet and the seek to claim immunity.

Learned counsel argued that the fact that Section 66A of the IT Act has been struck down does not affect the right of an aggrieved person

who has been defamed and he will continue to have access to the provision of Sections 499/500 IPC, and the law laid down in the case of ***Sharat Babu Digumarti (Supra)*** will have no application. Learned counsel has placed reliance upon ***Shreya Singhal (Supra)***, wherein the Hon'ble Supreme Court has held that :

> "*46. It will be noticed that for something to be defamatory, injury to reputation is a basic ingredient. Section 66A does not concern itself with injury to reputation. Something may be grossly offensive and may annoy or be inconvenient to somebody without at all affecting his reputation. It is clear therefore that the Section is not aimed at defamatory statements at all."*

The argument of learned counsel for the respondent No.2 that ***Sharat Babu Digumarti (Supra)*** judgment is distinguishable and has no relevance to the present case as the same deals with Section 81 of the IT Act and with Section 292 of the IPC and not Section 499 of the IPC, finds force and needs to be accepted.

11. To conclude, the '*Intermediary*' has been defined under the IT Act as a '*person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, web-hostings service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes*'.

On a reading of the '*The Information Technology (Intermediaries Guidelines' Rules), 2011*' in conjunction with Section 79 of the IT Act, the outcome is that the aforesaid Guidelines are binding on the service providers and do not provide a remedy for criminal defamation, therefore, it can be construed that the remedy lies under Section 499/500 of the IPC. Paragraph 122 of the ***Shreya Singhal (Supra)*** case further lends support to the above observation which reads as under:-

> *"**122** Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material**. This is for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary** is then to judge as to which of such requests are legitimate and which are not. We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject-matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b)".*

12. The next argument raised on behalf of the petitioner is that the petitioner has only retweeted the contents of the tweet of the other co-accused and mere sharing of a tweet does not amount to *'Publication'* and publication is an essential ingredient of criminal defamation; that the petitioner cannot be charged under Section 34 of the IPC as he retweeted much after the original tweet of accused No. 1 and that too not in furtherance of the original tweet; that a retweet does not amount to republication as a person who tweets, creates the original content and thereafter a person can retweet it, like it, reply to original tweet(s) or he can make a fresh tweet quoting the previous tweet; that unlike linking or adding unrelated content or making changes it does not add any substantive material related to the alleged defamatory material, to an already published piece of information and relied on the case of ***Philadelphia Newspapers LLC, 599 F.3d 298;*** that reliance was also placed on ***Martin Vs Daily News L.P., 100053/08 N. Y. Sup. Ct. 2012***, wherein it was held that *it is also not publication or republication because the audience already has a capacity to share a news item over the internet by email or by print or by distribution. The function of re-tweeting is to merely use a technical enhancement to forward the original tweet."*

Placing reliance on the case of ***Wayne Crookes, and West Coast Title Search Ltd. versus Jon Newton, 2011 (3) RCS,*** the learned counsel reiterated that the retweet is mere sharing of the original tweet which does not amount to publication. He also relied on the judgment of

Chambers Versus Director of Public Prosecutor, (2012) EWHC 2157 wherein it was held as under:-

> "*10. Those who use ''twitter" can be followed by other users and twitters users often enters into conversion and dialogue to the other twitter user depending on how the user pose his tweets they can become available for others to read. A public timeline of a user shows the most recent tweets. Unless are addressed as a direct message to another tweeter user or users, in which case the message will only be seen by the users posting the tweet, and the specific user or user to whom it is addressed the follower of the twitter user are able to access his or her messages. Accordingly most tweets remain visible to twitter user and his /her followers for a short while, until there are replaced by more recently posted tweets. As every twitter user appreciates or should appreciate, it is possible for non-follower to access these public timelines and they too can then read the messages. It is also possible for non users to use the twitter search facility to find tweets of possible interest to them.*"

13. On the other hand, learned counsel for the complainant/respondent No. 2 relying on ***Re Howard judgment dated back 25 August, 1887, The Indian Law Reporters, Vol-XII Page 168,*** argued that retweeting amounted to republication. The relevant part of the aforesaid judgment reads as under:-

> "*The Indian Penal Code makes no exception in favour of the second or third publication as compared with the first; and such an exception*

> *would obviously be made a means of defeating the principle provision of the law of defamation. In England it is not allowed to a defendant to prove that a statement, similar to the one for which he is indicated, has been previously published by persons who have not been prosecuted; and the repetition of a common rumour, however prevalent is not received as an excuse for its further promulgation*."

He further relied upon ***Ray v. Citizen-News Co, (1936) 14 Cal. App 2d 6***, wherein it was held that repetition of a false statement is also libelous and also relied on ***Waite v San Fernando Pub. Co. (1918) 178 Cal 303,*** a decision of the Supreme Court of California, which reads as under:

> "*... a defamatory article which would be libellous per se, if its matter was directly stated, does not lose its quality in this regard because it is couched in the form of an interview with another person, or because it seeks to avoid its otherwise obvious character as a libel per se by the statement that it is reported or asserted or believed to be true*"

Further, reliance was placed on ***Khawar Butt Vs Asif Nazir Mir*** reported in ***2013 (139) DRJ 157***, where in the context of civil proceedings qua defamation, it was observed that republication of libel amounts to new libel. The relevant part of the judgment reads as under:

> "*38. ...ofcourse, if there is republication resorted to by the defendant with a view to reach the*

> *different or larger section of the public in respect of the defamatory article or material it would give rise to fresh cause of action*"

He also added that a similar aspect has been dealt with in ***Harbhajan Singh Vs. State of Punjab*** reported in ***1961 Cri.LJ 710***, wherein the Apex Court held that :-

> "*49. .... every republication of libel is a new libel, and each publisher is answerable for his act to the same extent as if the calumny originated with him. 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...*"

14. While dealing with the aforesaid arguments, the meaning of *'Twitter'*, *'Tweet'* and *'Retweet'*, needs to be analysed. Twitter is an online global message broadcasting platform wherein people create, discover and distribute content. This content is in the form of an alphanumeric message comprising of maximum 140 characters in length and is known as "Tweet". Anyone with a valid e-mail id can sign-up on this platform (hereinafter referred to as **'User'**) and indulge himself/herself into engaging in conversation with others on the platform via the medium of "Tweets". These "Tweets" are visible to anyone who visits the profile of the creator of that "Tweet". Further a user who wants to see the "Tweets" of a particular person in his "Twitter Timeline", which is a personalised ongoing stream of "Tweets", can follow that particular person. In this way the "Tweets"

of that particular person can be seen without making an effort of opening the profile of the particular person to see his/her "Tweets". Further, the platform offers a feature known as "Retweet", which the platform claims, user can use for re-posting of a "Tweet" to share that "Tweet" with their followers quickly. A retweet in essence brings the contents of the original tweet into the immediate attention of the followers of the user who retweets.

15. To deal with the controversy whether retweeting by the petitioner in the present case amounts to defamation, the complaint and the summoning order needs to be looked into. The specific case against the petitioner/accused No.5 in the complaint filed by complainant/respondent No. 2 is not restricted to retweeting. In para 7 of the complaint, the petitioner has clearly elucidated the defamatory statements made by the petitioner/accused No. 5 individually, jointly with other persons. The Trial Court at the stage of summoning had to consider whether a *prima facie* case was made out from the allegations stated in the complaint and whether there were sufficient grounds to proceed against the petitioner/accused. The complainant/respondent No. 2 had arrayed 8 witnesses before the trial court including himself. He entered witness box as **CW-1** and deposed that '*I have seen the electronic records filed alongwith the complaint from 15 to 217'*. He specifically alleged imputation of defamatory statements against the accused persons individually and collectively and exhibited the downloads of newspaper articles/print

outs as *Ex.CW1/D (colly)*. The complainant/respondent No. 2 proved the print out of downloads from the twitter account of petitioner as *CW1/CI , CW1/C2 and CW1/F* in his statement. He further deposed that '*eminent journalists like Rajat Sharma and Swapan Dasguta, Lawyers like Sh. Bakshi Shri Rang Singh, Sh. Ved Prakash Sharma and family members and relative like Sanjeev Narula Advocate and Sh. Yatin Sharma, business Executive amongst others*' have read/watched these news items containing defamatory imputations as set out in the complaint. **CW-2, Rajat Sharma,** a journalist affirmed the publication of defamatory statements and deposed that '*I have seen in the print, social media and electronic media the false allegations against him which are also reflected in the news report shown to me today as an Ex. CW1/D (Colly.) made by the accused persons.*' **CW-3, Ved Prakash Sharma,** an Advocate deposed that '*I also noticed statements by S/Sh. Sanjay Singh, Raghav Chadha and Kumar Viswas saying that there was corruption worth hundreds of crores rupees in DDCA under the nose of Mr. Arun Jaitley*' the witness further deposed against the petitioner that '*I have also seen the twitter print-outs of **Sh. Raghav Chadha which is Ex. CW-1/F**, Sh. Deepak Bajpai which is Ex. CW1/G, Sh. Arvind Kejriwal which is Ex. CW1/H, Sh. Kumar Viswas which is Ex. CW1/J and Sh. Sanjay Singh which is Ex. CW1/H..... which I had personally seen and which in my opinion contained defamatory and false allegations made against the complainant Mr. Arun Jaitley*'.

CW-5, Mr. Rajneesh Kumar Singh, Deputy Registrar of Companies produced the documents pertaining to the company 'Twenty First Century Media Pvt. Ltd.' and deposed that '*I say that neither Mr.Arun Jaitley nor any of his family member i.e. Mrs. Sangeeta Jaitley, Ms.Sonali Jaitley and Mr. Rohan Jaitley are reflected anywhere as either shareholders or Directors of the company M/s Twenty First Century Media Pvt.Ltd.*' The Trial Court took note of the print outs of the retweets ***(Ex. CW1/F)*** made by petitioner and held that '*the inference of common intention of the respondents/A1 to A6, the defamatory allegations as levelled on the facebook-post and print media were intended to be read/shared by the maximum number of persons*'. Trial Court further took note of the statements of CW-2 and CW-3 and observed that the publication had been carried-out in the print, electronic and social media.

16. The perusal of the complaint, statements of the witnesses examined by the complainant/respondent No. 2 depict that the petitioner along with other accused persons participated in press conference, issued derogatory statements orally, used twitter handles, retweeted, disseminated, defamatory imputations targeting the complainant/respondent No. 2 through platform of press and media from 15.12.2015 onwards and continued till 20.12.2015 after the sleuths of CBI went to Delhi Secretariat for conducting a search. The said acts, aimed/targeted at the complainant/respondent No. 2 and his family members and, attracted adverse attention of public. The

individual and collective role of the petitioner and other accused persons is spelled out in the assailed order. The aspect of applicability of Section 34 of the IPC can be gathered from the totality of circumstances to analyze the underlying common intention in commission of alleged offence. The findings of the Trial Court that due to the defamatory imputations made by the petitioner and other accused persons, *prima facie* the reputation of the complainant/respondent No. 2, who continues to be a public figure since a considerable number of years, has been lowered indiscriminately in the eyes of the public at large including his family and friends are of significant importance in facts and circumstances of the case. There is sufficient material on record to show that the petitioner is a spokesperson of the political party of which other accused are office bearers and functionaries and belongs to a closed knit group and followed A-1 to carry out the entire campaign using the press conference, post on facebook, tweet and retweet as a platform to reach a large number of people. 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. It is not for this Court, while exercising inherent powers under section 482 of Cr.P.C., to go into the merits of the case. Undoubtedly, the Trial Court in its order dated 09.03.2017 adduced the complaint,

documents, evidence and all other relevant material and after careful scrutiny, summoned the petitioner on a well reasoned order holding that a *prima facie* case was made out against the petitioner and there were sufficient grounds for summoning him and to face trial under Sections 499/500 IPC. Finding no infirmity in the impugned orders, the present petition being devoid of merit, is dismissed.

17. Before parting with the order, I deem it appropriate to mention that nothing observed herein above would reflect, in any manner on merit during the trial of the main case as the same has been so recorded for the purpose of deciding the present petition in the relevant context.

Crl. M. A. No. 10690/2017 (Stay)

In view of the order passed in the writ petition, the present application is rendered infructous.

Application stands disposed of.

Copy of this order be given dasti to both the parties under the signature of Court Master.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 25, 2017
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