

Cr. Rev. No.32/19
CNR No. DLCT11-001760-2019
Arvind Kejriwal v State & Anr.

Matter is taken up today for hearing through Physical Hearing in terms of Office Order No.417/RG/PHC dated 27.8.2020 of the Hon'ble High Court and Circular issued by Ld. Principal District & Sessions Judge-cum-Special Judge (CBI), Rouse Avenue District Court, New Delhi, regarding Modalities in respect of hearing and Duty Roster of the Judicial Officers bearing No.E-10927- 11013/Power/Gaz./RADC/2020 dated 30.8.2020 and Power Gaz./RADC/2020/E-15009-15097 dated 26.9.2020 respectively.

03.10.2020

Present: None.

Vide separate order, the revision petition filed under Section 397 Cr.PC stands dismissed.

TCR alongwith a copy of the order be sent back to the learned Trial Court.

Revision petition be consigned to the record room.



03/10/2020

(AJAY KUMAR KUHAR)
Additional Sessions Judge/
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 03.10.2020 (SR)

**IN THE COURT OF SH. AJAY KUMAR KUCHAR,
ADDITIONAL SESSIONS JUDGE / SPECIAL JUDGE (PC
ACT), CBI-09 (MPs/MLAs Cases), ROUSE AVENUE DISTRICT
COURT, NEW DELHI**

**Cr. Rev. No.32/19
CNR No. DLCT11-001760-2019**

Arvind Kejriwal
S/o Sh. G. R. Kejriwal
R/o 6, Flagstaff Road,
Civil Lines, New Delhi

... Revisionist

versus

1. State

... Respondent No.1

2. Karan Singh Tanwar

S/o Late Sh. Mahender Singh Tanwar
R/o G-1, New Moti Bagh,
Near Veterinary Hospital, New Delhi

... Respondent No.2

Date of Institution	:	04.09.2019
Date of Arguments	:	19.09.2020 26.09.2020
Date of Order	:	03.10.2020

ORDER

1. By this order, I shall dispose off the Criminal Revision Petition under Section 397 Cr.PC whereby, the order dated 23.7.2019 passed by the Sh. Samar Vishal, learned ACMM-I, Rouse Avenue District Court, New Delhi in Criminal Complaint No.08/2019 has been challenged by the revisionist as vide the said order, he has been summoned for an offence under Section 500 Indian Penal Code.

2. Notice of the revision petition was issued to the respondents. The respondent no.2 Karan Singh Tanwar is the complainant who has filed the Criminal Complaint against the revisionist. The respondent no.2 has filed a reply to the revision petition and also written submissions.

3. I have heard the arguments of Sh. B. S. Joon, learned counsel for the revisionist and Sh. Manish Rawat, learned APP for the State/respondent no.1 and Sh. Mahipal Singh Rajput, learned counsel for the respondent no.2 Karan Singh Tanwar. Record perused.

4. The revisionist is assailing the legality, propriety and the regularity of the order dated 23.7.2019 on the grounds mentioned in the petition. The learned counsel for respondent no.2 has questioned the maintainability of the revision petition referring to the judgment in Adalat Prasad vs Roop Lal Jindal's Case (AIR 2004) SC 4674. He argued that the remedy against the impugned summoning order is not under Section 397 Cr.PC. At the very outset, I would refer to the judgment in Urmila Devi vs Yudhvir Singh (2013) 15 SCC 624, which address this argument of the learned counsel for the respondent no.2 and put the argument to rest. The Hon'ble Supreme Court in the said case has held as under:-

“21. Having regard to the said categorical position stated by this court, in innumerable decisions resting with the decision in Rajinder Kumar Sitaram Pandey, as well as the decision in K. K. Patel, it will be in order to stay and declare the legal position as under:-

21.1 The order issued by the Magistrate deciding to summon an accused in exercise of his power under Section 200 to 204 Cr.PC would be an order of intermediary or quasi-final in nature and not interlocutory in nature.

21.2 Since the said position viz. such an order is intermediary or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3 Such an order of Magistrate deciding to issue process or summons to an accused in exercise of his power under Section 200 to 204 Cr.PC, can always be subject matter of challenge under the inherent jurisdiction of High Court under Section 482 Cr.PC.”

5. Now before coming to the grounds on which the impugned order has been challenged it would be appropriate to go through the allegations against the revisionist. The Trial Court has mentioned the relevant facts justifying the summoning of the revisionist, in brief, as under:-

“4. The complainant alleges that on 19.05.2019, the respondents Dilip Pandey, Surender Singh and Amanatullah Khan in collusion and criminal conspiracy with the respondent Sh. Arvind Kejriwal addressed a Press Conference at the office of Aam Aadmi Party in

which these respondents made false and defamatory insinuations against the complainant, falsely alleging that the complainant is involved in the murder of Mr. M.M. Khan, Law Officer of New Delhi Municipal Council, who was murdered on 16.05.2016 and also falsely alleged that the complainant has taken “supari” and bribe for transfer of M.M.Khan and that the complainant is a goonda, land mafia and is involved in land grabbing. This Press Conference was telecast on various news channels like India News, Delhi Aaj Tak, India TV etc. The Press Conference was also published in various national newspapers on 20.05.2016.

5. On 21.05.2016, complainant called a Press Conference and denied all the charges of his involvement in the murder of the NDMC Law Officer M.M. Khan.

6. On 21.05.2016 and despite the denial of the charges by the complainant, the respondent Surender Singh again appeared on TV Channel MH1 on a live telecast and again made false and frivolous allegations that the complainant is involved in the murder of M.M Khan.

7. On 24.05.2016, respondent Dilip Pandey again repeated the same allegations and that the image of the complainant is like a “goon” among the officers. This was again telecast on new channels and published in various newspapers.



8. Respondent Arvind Kejriwal while making similar allegations wrote a letter dated 15.06.2016 Ex.CW/17 to the Lt. Governor of Delhi. He again made similar defamatory statements on twitter Ex.CW/18 on 20.06.2016 implying the involvement of the complainant in the murder of M.M. Khan, seeking the arrest and interrogation of the complainant.”

6. The words/statement imputed to the revisionist in a letter addressed to the Lt. Governor of Delhi and on a Twitter on 15.6.2016 and 20.6.2016 respectively are found defamatory by the complainant which has not only lowered his reputation but he has also suffered severe medical problems on account of malicious allegations. It is alleged in the complaint that in the letter dated 15.6.2016 to the Lt. Governor, the revisionist has stated that:

“... MM Khan ki hatya me bhajpa ke saansad Mahesh Giri or bhajpa ke purva vidhayak Karan Singh Tanwar ka naam pramukhta se aa raha hai. Apne badi khubsurati se apni police se kah kar dono ko bacha liya. Police ko dono se puch-taach tak nahi karne di.”

7. It is alleged in the complaint that the revisionist made the defamatory statement on the social media on Twitter on 20.6.2016 alleging involvement of complainant in the murder of MM Khan. The statement is to the following effect:-

“if del police were wid us, Mahesh Giri n Karan Singh Tanwar wud have been arrested and interrogated by now

in MM Khan murder case.”

8. The complainant has alleged that the statement made by revisionist are false and defamatory per-se. It is stated that the police has already given clean chits to the complainant in the press conference held on 16.6.2016 and 24.6.2016. Not only this, a charge-sheet has already been filed against the accused involved in said case of murder of Sh. M M Khan.

9. The Trial Court having considered the allegations made against the respondent no.2/complainant and considering the statement of witnesses namely Sh. Bhuvan Tanwar, Ms. Vasundra Sharma, Ajay Kumar Tanwar, Pardeep Tomar, Ms. Anaya, Sh. Suraj Singh, Sh. Rakesh Kumar Sharma, Sh. Kishan Kumar, Dr. Puneet Jain and Sh. Alok Bhatnagar found sufficient ground to proceed against the revisionist for the offence under Section 500 IPC and summoned him accordingly alongwith Sh. Dilip Pandey, Surender Singh and Amanatullah Khan who were also arrayed as accused in the complaint.

10. It will be pertinent to mention here that respondent no.2/complainant had filed the Criminal Complaint not only against the revisionist but also against Sh. Dilip Pandey, Surender Singh and Amanatullah Khan. It was alleged that these persons namely Sh. Dilip Pandey, Surender Singh and Amanatullah Khan had held the press conference on 19.5.2016 and made false and defamatory insinuations against the respondent no.2/complainant.

11. The revisionist assailed the summoning order on the grounds, *inter-alia*, that the alleged defamatory statement has, infact, was made

for public good and they were required to be published for public good in as much as it pertained to the actions and antecedents of a member of the New Delhi Municipal Council and thus, was not defamatory. It is also stated that the statement imputed to the revisionist was not intended to harm nor was likely to harm the respondent no.2/complainant in as much as the alleged statement, as understood by reasonable common man, is unlikely to harm the reputation of the respondent no.2/complainant and thus, was not defamatory.

12. It was also stated that the moral and intellectual character of the respondent no.2/complainant is not amenable to be affected by the alleged statement. The statement imputed to the revisionist have been considered as defamatory by the Trial Court and the Trial Court observed that; "The words imputed to the revisionist are, if seen in the entire context of the things and the evidence of the complainant, seems to be defamatory if they do not fall within any of the statutory defences prescribed by law itself as well as other legal requirements."

13. The offence under Section 499 IPC is subject to certain exceptions provided therein like it will not be defamatory to impute anything which is true if it is for the public good. Similarly, it will not be defamatory if someone express in good faith any opinion respecting the conduct of a public servant etc. These amongst others are the defences which are available to an accused in the trial for the offence under Section 500 of IPC. However, these defences are to be taken at the stage of trial. At the stage of summoning of an accused,

only a prima facie case is to be seen. Whether the statement has in fact defamed the complainant or whether the accused has any defence for making the impugned statement are the questions of facts to be decided on the basis of evidence led during the trial. Therefore, the plea taken in the revision by the revisionist are to be taken at the stage of trial.

14. The revisionist has also alleged that the impugned order dated 23.7.2019 is devoid of judicial application of mind. However, this argument cannot sustain itself in view of the detailed discussion held by the Trial Court in the impugned order qua the allegations and the evidence in support thereof.

15. The learned counsel for the revisionist has taken a plea during the course of arguments which however, was not taken in the revision petition. The learned counsel for the revisionist had argued that the press conference was held by Sh. Dilip Pandey, Surender Singh and Amanatullah Khan on 19.5.2019 while the alleged defamatory statement imputed to revisionist are of 15.6.2019 and 20.6.2019.

16. He argued that it is a politically motivated complaint and this is evident from the fact that despite there being no element of conspiracy the revisionist has been arrayed as an accused alongwith Sh. Dilip Pandey, Surender Singh and Amanatullah Khan. Although, the statement imputed to the revisionist is of a different date and therefore, provided a separate cause of action, if any.

17. He argued that the learned Magistrate has not accepted the theory of conspiracy propounded by the complainant in the complaint

and therefore, has summoned all the accused for the offence under Section 500 IPC and not under Section 120-B IPC.

18. The learned counsel for the respondent no.2 has filed written submissions and has relied upon the judgments in Bhagwan Das Jagdish Chandra vs Delhi Administration AIR 1975 SC 1309, Allaudin Shaha vs State of West Bengal (2000) 1 CAL LT 234 HC and Ms. Kochhar vs State ILR 1986 Delhi 142. He has argued that joint trial is possible under Section 223 Cr.PC and there can be a separate trial also, if it is found appropriate by the learned Magistrate.

19. In the present revision petition, the revisionist has challenged the summoning order on the grounds that there was no judicial application of mind and the offence of defamation was not made out. The procedure which is to be followed in the trial, in view of the summoning order is yet to be decided by the Trial Court. Ofcourse, he has not summoned the revisionist for the offence of defamation committed pursuant to a criminal conspiracy; but defamation simpliciter. Meaning thereby, each arrayed accused in the complaint has been summoned for his individual act of defamation. The procedure which Magistrate will follow is in his discretion as per the provisions in the Criminal Procedure Code. It would be premature to make any comment regarding the procedure which might be followed by the learned ACMM. Therefore, this argument of the learned counsel for the revisionist cannot be taken up appropriately at this stage.

20. Having considered the trial court record, the statement of

witnesses, the specific statement made by the revisionist, I have not found any ground to interfere with the order passed by the learned ACMM-I under Section 204 Cr.PC for summoning of the revisionist for the offence under Section 500 IPC.

21. Accordingly, the revision petition is hereby dismissed.
22. TCR alongwith a copy of the order be sent to the Trial court.
23. Revision Petition be consigned to record room.


03/10/2020

**Announced in the open court
on 03.10.2020**

**(AJAY KUMAR KUHAR)
Additional Sessions Judge/
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 03.10.2020 (SR)**