

**CNR No.DLCT12-000028-2021
CC NO.05/2021
Delhi Jal Board & Anr. Vs.
Adesh Gupta & Ors.**

18.11.2021

Present: Sh. Prashant Manchanda, Ld. Counsel for complainant no.1.
Sh. Prashant Manchanda, Sh. Mohit Saroha, Ms. Aditi S., Sh.
Shashi Kant, Ms. Sakshi Uppal and Sh. Vaibhav, Ld. Counsels for
complainant no.2.

Vide separate order, respondents have been summoned as
accused qua offence punishable u/s 500 r/w 34 IPC. They be summoned
through permissible mode on filing of PF for next date of hearing i.e. on
27.11.2021.

**(Dharmender Singh)
ACMM-04/RADC/New Delhi
18.11.2021**

**IN THE COURT OF SH. DHARMENDER SINGH:
ACMM-04, ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

**CT.C. N0.05/2021
CNR No.DLCT12-000028-2021
Delhi Jal Board & Anr. Vs.
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ORDER

1. Vide this order, I shall decide the issue whether in the present complaint, sufficient grounds exist or not to summon the respondents as accused in respect of offence as alleged by complainants.

2. As per case of complainants, complainant no.1 (Delhi Jal Board) is a state institution (being represented in this matter by authorized representative Sh. Dalbir Singh, SE, (Civil), Delhi Jal Board) which provides potable water in the National Capital Territory of Delhi. It is submitted that complainant no.2 (Sh. Raghav Chadha) is the Vice-Chairman of complainant no.1 and also member of Legislative Assembly (MLA) of NCT of Delhi and also holding various other positions of public nature however, present complaint has been filed by him in his capacity of Vice-Chairperson of complainant no.1.

3. It is submitted that complainant no.1 as an institution is functioning diligently and sincerely and providing services in the area of NCT of Delhi and enjoy good reputation. It is submitted that complainant no.2 has always worked for public welfare and due to his honesty, sincerity and competency has gained good name in the society and enjoy good reputation.

4. It is submitted that all respondents are members of same political party i.e. Bharatiya Janata Party (BJP). Respondent no.1 (Sh. Adesh Gupta) is President of BJP, Delhi Unit and respondent no.2 (Sh. Ramvir Singh Bidhuri) is MLA from Badarpur constituency and leader of opposition in Delhi Legislative Assembly. Respondent no.3 (Sh. Vijender Gupta) is MLA from Rohini Constituency and respondent no.4 (Sh. Harish Khurana) is spokesperson and Incharge of BJP, Delhi Media Relations. It is alleged that all respondents in furtherance of their common intention indulged in malicious campaign to tarnish the image/reputation of both complainants.

5. It is alleged that on 21.01.2021, one Press Conference (hereinafter referred as Press Conference I) was held by respondent no.1, 2 and 4 wherein allegations were leveled that complainants have committed the scam of Rs.26,000/- crore. They referred the complainant no.1 as “*Dalali Jal Board*”. It is alleged that respondent no.1 referred the word “*Dalali Jal Board*” several times. It is alleged that following statements were made:-

- i) ***“isse to yehi lagta hai ke Delhi Jal Board nahi, Dalali Jal Board ban gaya hai”.***
- ii) ***“jisko hum Delhi Jal Board kehte hain vah aaj Arvind Kejriwal ki kartooton se Dalai Jal Board ban gaya hai”***
- iii) ***“Arvind Kejriwal Delhi Jal Board ke Chairman rehte hue aur unke khasam khaas Sh. Satyender Jain and Sh. Raghav Chadha ki madad se 26,000 crore dakar lia hai”***

iv) ***“jo Dalali Jal Board ki report hai is tarah se yahan aapke saamne hai aur jo 26,000 crore rupye ka ghotala hai aur janta ka paisa uda rahe hain”***

6. It is alleged that Press release of said Press Conference was also issued and respondents also made defamatory statements on social media including facebook, twitter and in print media. It is alleged that link of said Press Conference was widely shared by the official page of BJP, Delhi on twitter and Press Conference was also live telecasted on the official facebook page of BJP, Delhi.

7. It is alleged that respondent no.2 in furtherance of common intention of all the respondents maliciously supported the derogatory content spoken by respondent no.1 by asserting that these allegations have not been made in thin air and have substance on record.

8. It is alleged that in furtherance of their common intention another Press Conference (Press Conference No.2) was held on 23.01.2021 by respondent nos. 2 and 3, in which defamatory statements were again made against complainants.

9. It is alleged that respondent no.3 made statement in Press Conference no.2 that ***“Delhi Jal Board ki stithi bad se badtar hona aur uske sath sath bhari bhrashtachar Aam Aadmi Party ke shasankal mei jal board mei hai. Aaj poora Delhi Jal Board kangaal ho chuka hai. Delhi Jal Board poori tarah se thapp pada hai”***.

10. It is alleged that respondent no.2 made statement in said Press Conference that **“Sh. Arvind Kejriwal ke chalte Delhi Jal Board kangaal ho gaya hai. Yah jo Delhi Jal Board mei 26,000 crore ka ghotala hua hai vah gambhir hai. Adesh Gupta ne jo aarop Delhi ki sarkar par lagaya hai aur usmei bhi humne hi maang ki thi ki Sh. Vijender Gupta ji se ki Delhi ke mukhayamantri is 26,000 crore ki ghotale ka Delhi Vidhansabha ka special session bulaein”**.

11. It is alleged that respondents who participated in Press Conference no.2 were also holding posters which read as :

“Kejriwal sarkar ka ab tak ka sabse bada ghotala”.

“Jal Board ke 26,000 crore ka hisaab do”.

12. It is alleged that respondents also made defamatory statements on social media including facebook, twitter and link of said Press Conference was also shared on the BJP verified twitter handle and Press Conference was also live telecasted on the official facebook page of BJP, Delhi.

13. It is alleged that defamatory content spoken and disseminated by respondents also found prominent place in numerous Hindi Newspapers.

14. It is alleged that respondent no.3 posted defamatory statements from his official twitter handle on 23.01.2021, which reads as **“BJP karayalaya me samvaddata sammelan me kaha ke DJB**

dwara tyar peene योग्या पाणी का मात्र 50% पाणी ही ग़ारो तक पहुंचता है, बाकी बर्हासतार की बर्हात चारू हाै".

15. It is alleged that respondent no.4 in his tweet published on 21.01.2021 reiterated the defamatory phrase Delhi Jal Board as **"Dalali Jal Board"** from his official twitter handle. His tweet reads as **"Delhi Jal Board ab Dalali Jal Board ho गया है"**.

"26,000 crore का हिसाब दो. इतिहास में पहली बार 26,000 crore का लोन दिल्ली सरकार ने Dalali Jal Board को दिया लेकिन board के खाते में कोई जिक्र नहीं है. कहा गया पैसा???" @raghav_chadha.

16. It is alleged that wrong and false assertions made by respondents in Press Conferences have been mounted in numerous part of Delhi in the form of huge hoardings to defame the complainants.

17. It is alleged that respondents have deliberately made defamatory statements despite knowledge that same are false and will tarnish the image of complainants.

18. It is alleged that after publication of said defamatory and derogatory statements, several people have approached complainant no.2 and sought clarifications regarding said allegations.

19. It is alleged that by making false, baseless and malicious allegations against complainants, respondents have committed the offence punishable u/s 500 r/w Sec. 34 IPC. By way of present complaint u/s 200 Cr.PC, prayer has been made to prosecute the

respondents in respect of said offence.

20. In order to prove their case, complainants have examined four witnesses in pre-summoning evidence.

21. **CW1 Dalbir Singh, Authorized Representative of complainant no.1.** He has deposed on the lines of facts mentioned in complaint. He has relied upon number of documents/material i.e. the transcript of live press conference dated 21.01.2021 on facebook page of Bharatiya Janata Party (BJP), Delhi is **Ex.CW1/1** (colly. five pages). The transcript of live press conference dated 23.01.2021 on facebook page of Bharatiya Janata Party (BJP), Delhi is **Ex.CW1/2** (colly. Six pages). Copy of Rashtriya Sahara newspaper 5th page dated 22.01.2021 containing the defamatory contents of the above press conference dated 21.01.2021 is **Ex.CW1/3**. Copy of Punjab Kesari newspaper 4th page dated 22.01.2021 containing the defamatory contents of the above press conference dated 21.01.2021 is **Ex.CW1/4**. Copy of Amar Ujala newspaper 4th page dated 22.01.2021 containing the defamatory contents of the above press conference dated 21.01.2021 is **Ex.CW1/5**. Copy of Navodaya Times newspaper 6th page dated 22.01.2021 containing the defamatory contents of the above press conference dated 21.01.2021 is **Ex.CW1/6**. Copy of tweet on his verified twitter handle by accused no.1 Adesh Gupta dated 21.01.2021 is **Ex.CW1/7**. Copy of tweet on his verified twitter handle by accused no.3 Vijender Gupta dated 23.01.2021 is **Ex.CW1/8**. Copy of tweet on his verified twitter handle made by accused no.4 Harish Khurana dated 21.01.2021 is **Ex.CW1/9**. The copy of tweet/retweets by the verified twitter handle of Bharatiya Janata Party (BJP), Delhi is **Ex.CW1/10**

(colly. 9 pages). Copy of the pictures of hoardings affixed across Delhi is **Ex.CW1/11** (colly.9 pages). True copy of Board Resolution no.1127 via item no.Admn. 526 undertaken during 156 Board Meeting dated 5.3.2021 is **Ex.CW1/12 (OSR)** (colly. four pages). Copy of the office order no.5 dated 12.03.2021 issued by Addl. CEO, Delhi Jal Board vide reference no.DJB/LO/board Reso./2021/304 alongwith the affidavit of complainant no.1 mentioning about the board resolution as well as the copy of office order no.5 issued to Sh. Dalbir Singh vide reference no. DJB/LO/board Reso./2021/304 is **Ex.CW1/13** (colly. 3 pages). The present complaint is **Ex.CW1/14** (colly. 26 pages). The pendrive and memory card are **Ex.P.1 and Ex.P.2**.

22. **CW2 Sh. Vikram Singh, Legal Intern in the office of Delhi Jal Board.** This witness downloaded both the Press Conferences from the verified BJP, Delhi facebook by using his computer and also prepared the transcript of both the Press Conferences. This witness also saved the defamatory tweets and print out of the same were taken out by using his computer and printer. He also captured the photographs of defamatory posters/banners mounted across Delhi by using his camera and same were saved and print out of the same were taken out by using his computer and printer. He issued the certificate u/s 65 B of Indian Evidence Act in reference to all the electronic evidences and print outs as mentioned above. Said certificate is Ex.CW2/1 (collectively three pages). He also relied upon the documents/material i.e. Ex.CW1/1, Ex.CW1/2, Ex.CW1/7, Ex.CW1/8, Ex.CW1/9, Ex.CW1/10, Ex.CW1/11, Ex.P.1 and Ex.P.2.

23. **CW3 Sh. Raghav Chadha (complainant no.2).** He also deposed on the lines of facts mentioned in the complaint. He further stated that he has been informed by the office of consultant law, Delhi Jal Board, Head Quarters vide correspondence Ex.CW3/2 that as per the records available in the law office, no notice/summons from the Court of Law or notice/inquiry/requisition from any of the Investigating Agency has been made to the law office of the board with respect to the allegations made by respondents. He has also relied upon documents/material i.e. Ex.CW1/1 to Ex.CW1/11 and Ex.CW1/14, Ex.P.1 and Ex.P.2, Ex.CW3/1 and Ex.CW3/2.

24. **CW4 Sh. Manoj Tanwar.** He deposed that he is a social worker and member of Aam Aadmi Party (AAP). He deposed that complainant no.2 is known to him for several years and in his view he is an honest and upright person. He deposed that he came to know about the allegations as mentioned in present complaint and after coming to know about the same he became disappointed and in order to seek clarifications regarding the same he approached complainant no.2 and made inquiries about the allegations and complainant no.2 explained the same and informed that all the allegations are false, baseless and concocted. He deposed that due to said allegations, other persons also raised doubts in the credibility and efficiency of complainant no.1 and about the integrity and honesty of complainant no.2. He also has relied upon documents/material i.e. Ex.CW1/1, Ex.CW1/2, Ex.CW1/7 to Ex.CW1/11, Ex.P.1 and Ex.P.2.

25. After pre-summoning evidence, arguments were advanced on behalf of complainants.

26. In this matter, complainant no.1 is not a natural person so question arises whether a juridical person can file a complaint for defamation. This court is of the considered view that in this respect **Explanation 2 of Section 499 and Section 11 of Indian Penal Code** are relevant. In this respect, law has been discussed by Hon'ble Supreme Court of India in case titled **Subramanian Swamy Vs. Union of India, AIR 2016, SC 2728**. In said matter, Hon'ble Supreme Court of India has stated that :

“Explanation 2 deals with imputation concerning a company or an association or collection of persons as such. Explanation 3 says that an imputation in the form of an alternative or expressed ironically may amount to defamation. Section 11 of IPC defines “person” to mean a company or an association or collection of persons as such or body of persons, whether incorporated or not. The inclusive nature of the definition indicates that juridical persons can come within its ambit. The submission advanced on behalf of the petitioners is that collection of persons or, for that matter, association, is absolutely vague. More than five decades back, the Court, in Sahib Singh Mehra v. State of Uttar Pradesh while being called upon to decide whether public prosecutor would constitute a class or come within the definition of “collection of persons” referred to Explanation 2 to Section 499 of IPC, and held that collection of persons must be identifiable in the sense that one could, with certainty, say that this group of particular people has been defamed, as distinguished from the rest of the community. The Court, in the facts of the case, held that the prosecuting staff of Aligarh or, as a matter of fact, the prosecuting staff in the State of Uttar Pradesh, was certainly such an identifiable group or collection of persons, and there was

nothing indefinite about it. Thus, in the said authority, emphasis is laid on the concept of identifiability and definitiveness as regards collection of persons

171. In G. Narasimhan, G. Kasturi and K. Gopalan v. T.V. Chokkappa, the Court dealt with the applicability of the said Explanation as regards “association” or “collection of persons” and ruled that a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation 2 is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing weighs against mankind in general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. Thus, the accentuation is on ‘particulars’. In S. Khushboo (supra), it has been ruled that though the Explanation is wide yet in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community, stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. It has been further opined that in case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained and furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed.”

In view of Section 11 and Explanation 2 of Section 499 IPC and law as discussed in abovestated case by Hon'ble Supreme Court of India, it is clear that complaint for defamation can be filed by a juridical person and it is not necessary that he must be a natural person. In view of this court, complainant no.1 Delhi Jal Board is an identifiable body and in view of above discussion, it is clear that it can file complaint for defamation.

27. The law regarding criminal defamation has been discussed by Hon'ble High Court of Delhi in case titled ***Arundhati Sapru vs. Yash Mehra 2013, SCC online, Delhi 4521***. In said case, Hon'ble High Court of Delhi has held that :

“10. The criminal law on defamation has been codified and is contained in [section 499](#) to [502](#) of the Indian Penal Code. For an offence of defamation as defined under [section 499](#) IPC, three essential ingredients are required, to be fulfilled as laid down in the case of [Standard Chartered Bank v. Vinay Kumar Sood, 2010 CriL.J 1277](#):-

- i. Making or publishing any imputation concerning any person;**
- ii. Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations.**
- iii. The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned”.**

11. Thus, it is clear that the mens rea to cause harm is the most essential sine qua non for an offence under [section 499](#) IPC. To constitute "defamation" under [Section 499](#) of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged. An offence punishable under [section 500](#) IPC requires blameworthy mind and is not a statutory offence requiring no mens rea."

In the present case, respondents held two Press Conferences, made tweets which were conveyed to public through social media, print media and visible representation and words/statements which were spoken/made in said Press Conferences and later published in print and social media and represented by way of large boards mounted across the Delhi clearly show that allegations of corruption have been levelled against complainants and as per testimony of CW1 and CW3 made on oath, these allegations are false and concocted and have been made only to defame the complainants and to gain political mileage. It is relevant to mention here that in his testimony CW3 (complainant no.2) has stated that he has been informed by the Office of Consultant Law, Delhi Jal Board, Head Quarters vide correspondence Ex.CW3/2 that as per the records available in the Law Office, no notice/summons from the Court of Law or notice/inquiry/ requisition from any of the Investigating Agency has

been made to the law office of the board with respect to the allegations made by respondents. It shows that instead of approaching the investigating agency competent to investigate the corruption cases, respondents have only levelled the allegations publicly.

28. In complaint it has been alleged that offence has been committed in furtherance of common intention of all the respondents. The law regarding common intention (Section 34 IPC) has been discussed by Hon'ble Supreme Court of India in case titled **Gopinath @ Jhallar Vs. State of UP (2001) 6 SCC 620**. In said case, it has been held by Hon'ble Supreme Court of India that :

“Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action be it that it was not overt or was only covert act or merely an omission constituting an illegal omission. The Section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in

furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case.”

In the present case, the first Press Conference dated 21.01.2021 was held by respondent nos.1, 2 and 4 in which allegation of corruption were levelled by respondent no.1 and respondent no.2 also supported the same by his statement that said allegations have not been made in the air and have substance in the same. Although respondent no.4 did not make any statement in said Press Conference however, he was also sharing the dais alongwith respondent nos. 1 and 2 and later in his tweet on the same day he also levelled the similar allegations against complainants. It is relevant to mention here that all the respondents belong to same political party.

The Second Press Conference dated 23.01.2021 was held by respondent nos.2 and 3 in which similar allegations were levelled by respondent nos. 2 and 3. In this way, it is clear that all the respondents acted in furtherance of their common intention.

29. Now this court has to see that what are the parameters for summoning a person as accused on complaint u/s 200 Cr.PC. The law in this regard has been discussed by Hon'ble Supreme Court of India in case titled as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi, AIR 1976 Supreme Court 1947***. In said case it has been held that :

“It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

In Chandra Deo Singh v. Prokash Chandra Bose(1) this Court had after fully considering the matter observed as follows:

"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under s. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-s. (1) of s. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant (1) (1964)1 S. C. R. 639, 648 and the statements made before him by persons examined at the instance of the complainant."

This court is of the considered view that in the present case there are sufficient grounds for proceedings against respondents. In

view of allegations made in complaint, testimonies of CW1 to CW4 and material brought on record by them this court is prima facie satisfied that there are sufficient grounds for summoning of all respondents as accused qua offence punishable u/s 500 r/w Sec.34 IPC.

**Announced in open court
on 18.11.2021**

**(Dharmender Singh)
ACMM-04/RADC/New Delhi**