

**IN THE COURT OF SH. DHARMENDER SINGH:
ACMM-04, ROUSE AVENUE DISTRICT COURTS, NEW DELHI
CT.C. N0.21/2021
CNR No.DLCT12-000080-2021
Tajinder Pal Singh Bagga Vs.
Subramanian Swamy**

ORDER

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

2. As per case of complainant, he is well-known public and political figure and presently acting as “National Secretary for Youth, Bhartiya Janata Party” and “Spokesperson of Delhi State, Bhartiya Janata Party”. It is submitted that he was also BJP’s candidate from Hari Nagar constituency in State Assembly Elections 2020 and has a twitter following of about 7,59,000 people. It is submitted that due to above reasons, he holds and enjoys good reputation in the eyes of general public.

3. It is submitted that respondent is also a well-known public and political figure and presently is Member of Parliament (Rajya Sabha). He also has a large fan following of about 1,00,00,000 followers on twitter and every tweet made by him reaches millions of people.

4. It is alleged that on 28.09.2021, respondent made the following tweet on his Twitter handle @Swamy39:

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“Delhi journalists inform me that before joining BJP, Tajinder Bagga had been jailed many times for petty crimes by the New Delhi Mandir Marg Police Station. True? If so Nadda should know”.

5. It is alleged that said tweet was read by thousands of followers of respondent, which indicates the outreach of said tweet.

6. It is submitted that contents of said tweet were absolutely false and incorrect and were solely made to harm the reputation of complainant and to defame him.

7. It is submitted that no FIR or any written complaint bearing any DD No. was registered/lodged against complainant at PS Mandir Marg. It is submitted that complainant was never arrested for any crime by Mandir Marg Police Station.

8. It is submitted that after publication of said tweet, complainant was summoned by his Party senior, Sh. Parveen Shankar Kapoor (Head, Media Relations, Delhi BJP) and was asked to explain the truth and veracity of said tweet and complainant refuted the contents of said tweet. It is submitted that on the same day complainant received a call from Sh. Shashi Yadav (Vice-President, Delhi BJP), who also made enquiry about the truth of said tweet and complainant explained to him also and told that said tweet was absolutely false. It is submitted that several other persons known to complainant sought explanation from him regarding said tweet.

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9. It is submitted that as said tweet was false and defamatory in nature, complainant sent a legal notice dated 01.10.2021 to respondent, whereby complainant sought the following details from respondent:

- i) All serial numbers of FIRs which are registered against complainant in Mandir Marg Police Station.
- ii) All DD numbers of complaints which are registered or lodged against complainant in Mandir Marg Police Station.
- iii) All dates as to when complainant was arrested and jailed by Mandir Marg Police Station.
- iv) Names of journalists who ever reported in newspapers or news channels about arrest or detention of complainant in Mandir Marg Police Station and also such articles, newspaper cutting or reports regarding arrest of complainant in Mandir Marg Police Station.

10. It is alleged that after receipt of said legal notice, complainant again made a tweet dated 02.10.2021 which states as below:

“I am queried by some what is ‘legal notice’. Such notice is not sent by Court but by a prospective litigant who will agree to a compromise in a dispute. As for me I do not ever entertain it. It goes to the waste paper basket”.

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11. It is submitted that respondent did not give any reply of legal notice dated 01.10.2021 and failed to justify his tweet dated 28.09.2021.

12. It is alleged that tweet dated 28.09.2021 made by respondent is absolutely false and incorrect and has been made to harm the reputation of complainant and to defame him in the eyes of general public and thereby, respondent has committed the offence punishable u/s 500 IPC. By way of present complaint u/s 200 Cr.PC, prayer has been made to prosecute the respondent in respect of said offence.

13. In order to prove his case, complainant has examined four witnesses including himself in pre-summoning evidence.

14. **CW1 Sh. Tajinder Pal Singh Bagga (complainant)**. He has deposed on the lines of facts mentioned in complaint. He has relied upon number of documents i.e. copy of Press Release issued by Bharatiya Janata Party (BJP) which shows that complainant is office bearer in Bharatiya Janata Party Yuva Morcha, same is **Ex.CW1/1**. Copy of Press Release dated 14th March and 01.10.2020 issued by Bharatiya Janata Party (BJP) which shows that complainant was appointed as Spokesperson of Bharatiya Janata Party (BJP), Delhi State, same is **Ex.CW1/2**. The affidavit of complainant regarding joining of BJP is **Ex.CW1/3**. Copy of Press Release dated 21.01.2020 which shows that complainant was nominated as candidate of Bharatiya Janata Party (BJP) for assembly election of Delhi from Hari Nagar Constituency, same is **Ex.CW1/4**. Copy of Nomination form dated

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21.01.2020 is **Ex.CW1/5**, the screenshots of twitter handles in the name of @tajinderbagga and @Tshirtbhaiya are **Ex.CW1/6**, screenshot of twitter page of respondent is **Ex.CW1/7**, screenshot of tweet dated 28.09.2021 is **Ex.CW1/8**, the print out of email dated 01.10.2021 is **Ex.CW1/9**, copy of legal notice dated 01.10.2021 alongwith courier receipt and speed post receipt and also delivery reports are **Ex.CW1/10**, screenshot of tweet dated 02.10.2021 is **Ex.CW1/11** and certificate u/s 65 B of Indian Evidence Act is **Ex.CW1/12**.

15. **CW2 Sh. Praveen Shankar Kapoor (Spokesperson and Head of Media Relations in Bharatiya Janata Party (BJP), Delhi)**. This witness corroborated the version of complainant. He has relied upon documents i.e. **Ex. CW1/8 and Ex.CW2/1** (copy of appointment letter dated 04.12.2020 whereby CW2 was appointed as Head of Media Relations in Bharatiya Janata Party (BJP), Delhi).

16. **CW3 Sh. Shashi Yadav (Vice President, Delhi BJYM)**. This witness also corroborated the version of complainant. He has relied upon documents i.e. **Ex. CW1/8 and Ex.CW3/1** (copy of list issued by BJP whereby CW3 was appointed as Vice President of BJYM, Delhi).

17. **CW4 Sub Inspector Sandeep Kumar, PS Mandir Marg**. He filed the report on behalf of SHO concerned which is exhibited as **Ex.CW4/1**. He deposed that as per the record/report no FIR has been found registered against complainant in PS Mandir Marg, Delhi.

18. After pre-summoning evidence, arguments were advanced on behalf of complainant.

19. 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

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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.”

20. In the present case, respondent made tweet dated 28.09.2021 which was conveyed to public through social media and statement which was made in said tweet clearly shows that it has been alleged that before joining BJP complainant was jailed many times for petty crimes by Mandir Marg Police Station and even the source of information is also mentioned in said tweet however, as per the testimony of CW1 (complainant) made on oath, these allegations are false and have been made to harm the reputation of complainant. Even CW4 (SI Sandeep Kumar, PS Mandir Marg) has also corroborated the version of complainant and in this respect he filed the report Ex.CW4/1. This clearly shows that without verifying the veracity of the statement, respondent made the same and in view of this court, said statement is sufficient to raise the reasonable doubt about the antecedents and character of complainant. CW2 and CW3 made statement before court that tweet dated 28.09.2021 came in their knowledge and they sought explanation or made inquiry regarding the same from complainant.

21. 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 :

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“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."

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22. This court is of the considered view that in the present case there are sufficient grounds for proceedings against respondent. 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 respondent as accused qua offence punishable u/s 500 IPC.

Announced in open court

on 22.03.2022

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