

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12429 of 2023
With
R/SPECIAL CRIMINAL APPLICATION NO. 12430 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

ARVIND GOBINDRAM KEJRIWAL
 Versus
 STATE OF GUJARAT

Appearance:

MS REBECCA JOHN, SR. ADVOCATE with MR AUM M KOTWAL(7320) for the Applicant(s) No. 1

MR PP CHANDARANA(7119) for the Applicant(s) No. 1

MR ND NANAVATY, SR. ADVOCATE with MR AMIT M NAIR(5895) for the Respondent(s) No. 2

MR MITESH AMIN, ADDL. ADVOCATE GENERAL with MR MANAN MEHTA, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 16/02/2024

COMMON CAV JUDGMENT

Since both these petitions arise from an order dated 15.04.2023 passed by the learned Additional Chief

Metropolitan Magistrate, Ahmedabad in Criminal Enquiry No.6081/2023, present both petitions are decided and disposed of vide this common judgment.

- [1.0] RULE. Learned APP Mr. Manan Mehta waives service of notice of Rule on behalf of the respondent No.1 – State of Gujarat and learned advocate Mr. Amit Nair waives service of notice of Rule on behalf of respondent No.2 – original complainant. With the consent of learned Sr. Counsel Ms. Rebecca John assisted by learned advocate Mr. Aum Kotwal for petitioners, learned Senior Counsel Mr. N.D. Nanavaty assisted by learned advocate Mr. Amit Nair for respondent – complainant and learned Additional Advocate General assisted by learned APP Mr. Manan Mehta for the respondent – State, present petitions are taken up for final hearing.
- [2.0] Present both petitions under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") are filed by Arvind Gobindram Kejriwal (petitioner of Special Criminal Application No.12429/2023, hereinafter referred to as "accused No.1") and Sanjay Dinesh Singh (petitioner of Special Criminal Application No.12430/2023, hereinafter referred to as "accused No.2") with prayer to set aside the Order dated 14.09.2023 passed by the Learned Additional Sessions Judge – Court No.6, City Civil &

Sessions Court, Bhadra, Ahmedabad in respective Criminal Revision Applications and further to quash the Summoning Order dated 15.04.2023 passed by the learned Additional Chief Metropolitan Magistrate, Court No.2, Gheekanta, Ahmedabad in the Complaint Case No.29303/2023 and 23930/2023 (Cr.Inq. No.6081/2023) alongwith other consequential proceedings arising therefrom.

- [3.0] The brief facts as culled out from the petition are as follows:
- [3.1] That, the respondent No.2, being the Registrar of Gujarat University, filed a Complaint against the present petitioners under Chapter XV of the CrPC before the learned Metropolitan Magistrate for the alleged offence punishable under Section 500 of the IPC. The learned Magistrate has been pleased to conduct court enquiry in respect of the said complaint and after following due process of law and recording the evidence of witnesses produced by the complainant, the learned Magistrate was pleased to pass the impugned order on 15.4.2023 issuing summons against the petitioners.
- [3.2] Being aggrieved and dissatisfied by summoning order dated 15.04.2023, the petitioners preferred Criminal Revision Application Nos.278/2023 and 279/2023 before the learned City Sessions Judge, Ahmedabad

challenging the impugned order dated 15.04.2023 and also filed stay application, which came to be dismissed. Against the dismissal of stay application, petitioners preferred Special Criminal Application Nos.10351/2023 and 10416/2023 seeking appropriate directions for stay of the proceedings of Criminal Case No.29303/2023.

- [3.3] The coordinate Bench of this Court refused to grant stay of trial and simply issued Notice to the other side. The accused No.1 filed Special Leave Petition before the Hon'ble Supreme Court seeking to quash and set aside the order dated 11.08.2023 passed by the coordinate Bench of this Court in Special Criminal Application which came to be dismissed by the Hon'ble Supreme Court vide order dated 25.08.2023. The coordinate Bench of this Court vide common order dated 29.08.2023 directed the learned Principal Judge, City Sessions Court, Ahmedabad to decide the revision applications within a period of 10 days. The learned City Sessions Judge, Ahmedabad was pleased to dismiss the Criminal Revision Applications vide the impugned order dated 14.09.2023.

Hence, present petition.

During the pendency of these petitions accused No.2 preferred Transfer Petition (Criminal) No.16/2024 seeking transfer of his case from the Court of learned Metropolitan Magistrate before the Hon'ble Apex Court

and the Hon'ble Apex Court has been pleased to dismiss the said petition vide order dated 16.01.2024 and directed this Court to decide the petition filed by accused No.2 for stay of the proceedings before the learned Trial Judge or at least the prayer for interim relief, within a period of four weeks from the date of order i.e. 16.01.2024.

- [4.0] Learned Senior Counsel Ms. Rebecca John assisted by learned advocate Mr. Aum Kotwal for the petitioners has argued that, University is an instrumentality of the State and comes within the purview of State and hence, in terms of section 199(2) of the CrPC, separate procedure is required to be followed.

Herein, in terms of section 199(2) of the CrPC, complaint ought to have been filed by the Public Prosecutor in the Sessions Court as the University itself is an instrumentality of the State.

- [4.1] Further, learned Senior Counsel for the petitioners has submitted that as per the complaint itself it is alleged that petitioners have uploaded the video of speech on Twitter. Learned Counsel has vehemently submitted that the said averment is far from truth. The petitioner - accused No.2 (SCR.A No.12430/2023) has never uploaded any video on Twitter. So far as allegation of uploading of alleged video is concerned, which is uploaded on Twitter and downloaded from Twitter and

produced before the Court in a pen-drive at Mark 1/3. The said video is not primary evidence i.e. secondary evidence and as the petitioner – accused No.2 has never uploaded the video and hence, no case against the petitioner – Sanjay Singh (Accused No.2) is made out.

As far as petitioner – accused No.1 (petitioner of SCR.A No.12429/2023) is concerned, even if it is accepted that, video is uploaded on Twitter (without admitting for the sake of argument) then also the learned Magistrate failed to examine the basic facts under Section 202 of the CrPC prior to taking cognizance and issuance of summons. The said act caused grave prejudice to the petitioners which is nothing but miscarriage of justice.

- [4.2] Further, she has referred to complaint and the statements made in the complaint and it is submitted that, the video was uploaded on Twitter on 01.04.2023, as per the say of complainant but not complete video or transcript of said video is quoted in the complaint and hence, the complaint itself is doubtful. Whatever statements being made which are not *per se* defamatory as in the alleged press conference, whatever statements are made are only raising a doubt about the degree and educational qualification of Hon'ble Prime Minister and not made any statement against the University. Further, the doubts are being amplified due to order passed by

the Court and the public has not got any answer on the issue regarding educational qualification of Hon'ble Prime Minister. Some kind of degree here or there. If we consider the statement entirely as it is, even though nothing except merely raising a doubt about the degree only which is not amounting to defamation. So far as, transcript or said video of said subject matter *qua* petitioner – accused No.2 is concerned, nowhere he is involved in the alleged offence in any manner as he has not uploaded the alleged video or even today, no such video is available on twitter. It is incumbent on the part of the complainant to produce some evidence or to examine somebody from Twitter to confirm the fact that video was infact uploaded on Twitter or it was uploaded but subsequently deleted.

- [4.3] She has further submitted that at threshold for placing restriction on the 'freedom of speech and expression', there should be some material otherwise there should be a presumption in favor of the accused in such cases. It is only when the complainant produces material that support a *prima facie* case for an offence then Magistrate can proceed to take cognizance of the same. The initiation of a criminal trial is a process which carries an implicit degree of coercion as summoning of an accused in criminal case is very serious matter and criminal law cannot be set into motion as a matter of course.

[4.4] Further, she has submitted that, complainant has not produced any witness from Twitter or any witness who attended the conference and there is no evidence or witness from which it can be corroborated as to whether the video was uploaded and if uploaded then it was deleted. Even, the said evidence of Twitter is not on record and downloaded content in pen-drive is in nature of a secondary evidence. Hence, it is very doubtful as to whether the said evidence is in conformity of statement made by the complainant and as to whether any defamatory statement made by the petitioners. Without verifying the aforesaid basic fact, merely, in light of the allegations made by the complainant on oath a defamatory statement being made by the petitioners, the learned Magistrate has taken the cognizance though summoning order of petitioner – Sanjay Singh was quite different though mechanically issued the process and Magistrate has failed to perform his duty encompassed under Section 202 of the CrPC. In this regard, and she has relied on the decision of the Hon'ble Supreme Court in the case of **Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar** reported in **(2017) 7 SCC 760** wherein it has been held that, the Magistrate who has been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize that as to whether allegations made in the complaint meet the basic ingredients of the offence. She has also

relied on the decision in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate** reported in **(1998) 5 SCC 749** and argued that, the Hon'ble Supreme Court has held that, since summoning sets the criminal legal process into motion, summoning orders must demonstrate application of mind.

- [4.5] Further, the learned Magistrate has only recorded and considered the statement of witnesses viz. (1) Mr. Ashish Ratibhai Savaliya (Exh.4), (2) Mr. Rushikesh Ghanshyambhai Patel (Exh.5), (3) Mr. Virendra Chinubhai (Exh.6) and (4) Mr. Dipak Hasmukhbhai (Exh.7). Mr. Savaliya has downloaded the video and other three witnesses have deposed before the learned Magistrate and relying upon depositions of said witnesses, the learned Magistrate has taken the cognizance of the offence. The said witnesses are employee of the Gujarat University and are not independent public witnesses. The complainant ought to have produced independent witnesses from public as all these witnesses are employee of Gujarat University and their status is being merged in the University. Further, she has argued that essential ingredient of section 499 is the imputation made by the accused which should have injured the reputation of the person against whom the imputation is made in the eyes of others.
- [4.6] Further, she has referred to and relied on certain

provisions of the Gujarat University Act, 1949 and argued that, Gujarat University is State within the meaning of Article 12 of the Constitution and well within the control and regulatory authority of the State under the statute. She has referred to and relied on sections 4, 4(2), 4(21), 9(1), 10(1), 10(5), 12, 13, 16(1), 19(1), 20(1), 20(3A), 32, 33(4) & (8), 37, 37(8), 38B(5) & (6), 38E(4), 48(3), 49, 51A, 53AA(1) and 53A(2) of the Gujarat University Act, 1949 and submitted that, from bare perusal of aforesaid provisions itself clearly reveals that, the University is a State instrumentality and it goes well within the purview of the State and further she has also relied on the decision of the Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty vs. International Airport Authority of India** reported in **(1979) 3 SCC 489 (Para 19)** and submitted that there is deep and pervasive control of State on the management and policies of the Gujarat University and it is instrumentality of State. Hence, the aforesaid witnesses including the complainant are in the category of public servant. Hence, even if the alleged statement or defamation falls within the category of *innuendo* against State, then to invoke the provision under Sections 499 and 500 of the IPC, the learned Magistrate ought to have followed the specific procedure prescribed under Section 199(2) of the CrPC as the University is State. In this regard, she has relied on the decision of the Hon'ble

Supreme Court in the case of **(i) Ajay Hasia vs. Khalid Mujib** reported in **(1981) 1 SCC 722**; **(ii) Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology** reported in **(2002) 5 SCC 111** and **(iii) Janet Jeyapaul vs. SRM University** reported in **(2015) 16 SCC 530** and submitted that instrumentality or agency of government falls within the scope of other authorities under Article 12 of the Constitution and vested with the powers by the State and if functions and powers are of public importance, as University is imparting education and under the control of the government. Even, in the case of **Janet Jeyapaul (Supra)** in case of deemed University, the Hon'ble Supreme Court has been pleased to rule that even, a deemed University by the Central Act is established and notified which is regulated by the UGC Act and perform the functions of public importance and there fore, falls within the authority under Article 12 of the Constitution. Thereby, applying said ratio, the present complainant also falls within the category of State and if any complaint is made by the state or through public servant, then to follow procedure under Section 199(2) of the CrPC is mandatory and in this regard she has argued that, the learned Magistrate failed to consider that, the complainant is not filed by aggrieved person under the provision of section 199 of the CrPC. Herein, the complaint is filed by one who is not an aggrieved person, the trial and conviction of an

accused in such a case by the learned Magistrate would be void and illegal. In this regard, she has relied on the decision of the Hon'ble Supreme Court in the case of **G. Narasimhan vs. T.V. Chokkappa** reported in **(1972) 2 SCC 680** and **S. Khushboo vs. Kanniammal** reported in **(2010) 5 SCC 600**.

- [4.7] Further, she has submitted that, even considering explanation 4 of Section 499 of the IPC, no case is made out for issuance of summons. Here in, body of that person is a State hence, the reputation of a person complaining must be lowered in the estimation of others, the complainant have brought five witnesses to fulfill the said requirement and the explanation given in explanation 4 of Section 499 of the IPC is not enough and learned Magistrate has committed an error. The witnesses produced by the complainant are not even qualified to give an evidence as their status is merged into University. in order to substantiate case as their status is merged into university. Hence, the evidence of all the 5 witnesses produced are not fulfilling the test of explanation 4 of section 499 of the IPC. Learned Magistrate has ignored said aspect and complaint does not fall in the category of explanation (2) of section 499 of the IPC.
- [4.8] Further, she has submitted that, *prima facie*, the

allegation of defamation is also not made out. Whatever allegations are leveled are not about forged degree or any such statement which harmed or defamed the University. Nowhere it is stated that the degree is forged and only a doubt is raised about it and imputations are not made directly against the Gujarat University. Whatever statements made by the petitioners before the audience may be true or false but not *per se* defamatory. The petitioners are not getting the copy of degree, in said context questions being asked which does not amount to defamation. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Manoj Kumar Tiwari vs. Manish Sisodia** reported in **2022 SCC OnLine SC 1434** and the case of **R.P. Goenka vs. State of U.P.** reported in **2019 SCC OnLine All 3815** and submitted that, newspaper reporting whether correct or not has not been fortified itself as reporting is in nature of secondary evidence which is inadmissible evidence. Herein, pen-drive is produced which is secondary evidence and no witness is examined to prove the fact as to before whom occurrence took place and in absence of any legal evidence in support of the complainant to prove the allegation made in complaint or charge, the learned Magistrate should refrain itself from taking cognizance, the learned Magistrate failed to exercise power under Section 202 of the CrPC and fulfill

the twin objects of section 202(1) of the CrPC to enable the Magistrate to scrutinize carefully the allegations in the complaint with a view to prevent a person named therein as an accused from being called upon to face unnecessary and frivolous or merit-less complaint and to find out whether there is any material to support the allegations made in the complaint and she has also relied on the decision of the Hon'ble Supreme Court in the case of **Manharbhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel** reported in **(2012) 10 SCC 517**. Hence, she has requested to exercise the power under Section 482 of the CrPC to quash and set aside the summoning order and the orders passed by the Revisional Court.

- [4.9] Further, she has submitted that, there is no bar to exercise the jurisdiction under Section 482 of the CrPC merely because revision is dismissed by the Sessions Court and there is no bar under Section 397(3) of the CrPC to exercise the jurisdiction and in this regard she has relied on the decision of the Hon'ble Supreme Court in the case of **(i) Krishnan vs. Krishnaveni** reported in **(1997) 4 SCC 241**; **(ii) Prabhu Chawla vs. State of Rajasthan** reported in **(2016) 16 SCC 30** and **(iii) Shakuntala Devi vs. Chamru Mahto** reported in **(2009) 3 SCC 310** wherein, it is held by the Honb'le Apex Court that, section 397 of the CrPC does not limit the scope of

inherent power of the High Court under Section 482 of the CrPC. If on the face of documents placed by the accused the accusations against him cannot stand then the High Court should exercise its power under Section 482 of the CrPC to quash the proceedings. In support of her submission, she has relied on the decision of the Hon'ble Supreme Court in the case of **Harshendra Kumar D. vs. Rebatilata Koley** reported in **(2011) 3 SCC 351**. She has further submitted that the doors of the High Court cannot be closed to a citizen who is able to establish *prima facie* that the instrumentality of the State is being weaponized for using the force of criminal law and in support of her said submission, she has relied on the decision of the Hon'ble Supreme Court in the case of **Arnab Manoranjan Goswami vs. State of Maharashtra** reported in **(2021) 2 SCC 427**.

- [4.10] Further, she has submitted that, there is no statement made by the petitioners which by any stretch of imagination can be said to be against the Gujarat University and the transcript of the speech would in fact reveal that no allegation is made that Gujarat University has forged the degree and hence, there is no imputation whatsoever against Gujarat University which could have caused any injury. Further, there is no evidence indicating existence of culpable mental state on the part of the petitioners. In this regard, she has relied on the decision of the Hon'ble Supreme Court in the case of

Subramanian Swamy vs. Union of India reported in **(2016) 7 SCC 221** and submitted that, harm to reputation and *mens rea* are essential ingredients under Section 499, here in, no harm or legal injury suffered by the complainant University.

- [4.11] Lastly, she has submitted that, merely the learned Magistrate has recorded the plea under Section 251 of the CrPC is not a ground to dismiss the present petitions, once it is proved that the cognizance is taken wrongly and once an order of summoning goes then everything goes and nothing remains and there is no bar to exercise the powers even during the pendency of petition under Section 482 of the CrPC and if charge-sheet is filed then the Court may exercise its jurisdiction. In this regard, she has relied on the decision of the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta and Another vs. State (NCT of Delhi), Department of Home and Another** reported in **(2019) 11 SCC 706**. Making the aforesaid submissions, learned Counsel for the petitioners has requested to allow the present petitions.
- [5.0] Learned Senior Counsel Mr. N.D. Nanavaty assisted by learned advocate Mr. Amit Nair for respondent No.2 – original complainant has submitted that present petitions are not maintainable on two grounds viz. (i) no prayer is sought for or any ground raised in petition to

exercise jurisdiction under Article 226 of the Constitution of India and the simple prayer is sought for only to quash the proceedings of summoning order. Even, none of the grounds urged for in the petitions are sufficient to invoke the jurisdiction either under Article 226 or Article 227 of the Constitution though provision is not specifically mentioned in the petition. (ii) Further, he has submitted that once revision application filed before the learned Sessions Court which is dismissed then there is bar of further revision under Section 397(3) of the CrPC. Hence, merely by changing the nomenclature to approach the High Court under Section 482 of the CrPC is not permissible which is nothing but abuse of process of law and only for the purpose to circumvent the bar of further revision as the petitioners have already chosen their route from very beginning.

- [5.1] Further, he has submitted that, for the sake of argument if it is assumed that, prayer to exercise jurisdiction under Article 227 of Constitution is made in the petition then also there is no any sufficient ground or argument canvassed to invoke the jurisdiction and even, neither the learned trial Court nor the learned Revisional Court has committed any error, no whisper uttered or any ground urged for to invoke the jurisdiction in the petitions and even subsequently, plea is also recorded and the said further proceeding is also not subject matter of challenge. Accused themselves pleaded not

guilty and trial is going on. On this ground alone, present petitions are required to be dismissed in *limine*. In support of his submissions, learned Counsel has relied on the decision of Hon'ble Supreme Court in the case of (i) **Jagir Singh vs. Ranbir Singh** reported in **(1979) 1 SCC 560** and (ii) **Radhe Shyam vs. Chhabbi Nath** reported in **(2015) 5 SCC 423**.

- [5.2] Further, learned Counsel has submitted that, complaint is filed by Dr. Piyush Patel, who is a Registrar of The Gujarat University, and he is authorized by valid authorization by the University. The issue as to whether authorization is legal one or not ? it is a question of trial. The learned Magistrate has taken the cognizance, taking note of defamatory statement. *Prima facie*, contents of the statements are defamatory and learned Magistrate was satisfied as to whether said statements are defamatory or admissible or not? these all questions are subject matter of trial including bar under Section 199(2) of the CrPC and so far as arguments *qua* explanation (2) or (4) of section 499 of the IPC is concerned, the said issue is also subject matter of trial which cannot be gone into at this stage.
- [5.3] A specific category or group of person and the association, all fall in the category of Gujarat University and does not fall in the category of section 499(2) of the IPC. The Gujarat University is within the scope of clause

and identifiable class and a statutory body. Merely because Gujarat University is a State instrumentality and hence, to say that University is a State is improper, merely conforming the status of State is not a valid ground for invoking the provision of section 199(2) of the CrPC. Dr. Piyush Patel is an employee and he is authorized by the Gujarat University and has filed the complaint on behalf of the University with valid authorization.

- [5.4] Herein, University is not a State. As defined under Article 12 and Schedule of the Constitution, the University is merely an instrumentality and the authority which falls under Article 12. Hence, provisions of section 199(2) of the CrPC does not apply to all local authorities like Panchayat, Municipality etc. and employee of said local authorities. Herein, no any dignitary or a Member of the Parliament or Legislature is defamed and has filed the complaint and hence, argument made on behalf of the petitioners that complaint ought to have been filed before the Sessions Court or with the permission of State and with the sanction of State by the Public Prosecutor would not be applicable to the case on hand as present complainant is not filed by any high level dignitary and/or constitutional functionary. The provision of section 199(2) of the CrPC is provided only for a different class and high level dignitaries. The complainant is an autonomous body. The statements

made against University which are itself defamatory and complaint is filed and hence, argument as regards application of section 199(2) of the CrPC is not applicable.

- [5.5] Further, learned Senior Counsel has contended that, no any ground pleaded or raised before this Court which falls within the four corners of jurisdiction or supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Merely, on technical ground that the complaint is filed through Authorized Officer of the Gujarat University is a public servant and not aggrieved person, the petitioners cannot be allowed to go scot-free and defame the University having good reputation since last 70 years in the field of education and having more than 300 affiliated colleges, large number of professors, students and alumni. Merely because of those witnesses who are examined are employee of the University is not a ground for not taking the cognizance of the complaint. The statement made by the petitioners is defamatory. The actual translation of complaint is not in it's original form so, tone and tenor of complaint seems slight different. Considering the said video in its entirety, it clearly appears that the statement in the said video is to defame the University and even today it is available on Twitter handle and it is downloaded by large number of people.

- [5.6] Even, the video is uploaded by the petitioner – accused No.2 – Sanjay Singh and even today said video it is available on the Twitter. Hence, the argument that accused No.2 has not uploaded video is not acceptable. Even, whether the said video is uploaded or not is also a subject matter of evidence and to invoke the jurisdiction under Section 482 of the CrPC, there seems some sterling point in favor of the accused persons. As per section 202(b) of the CrPC, the witnesses who were present are examined and if the Magistrate is satisfied then under the scheme of Section 202 of the CrPC, he may issue summons and as to whether any loss is caused to complainant and any disgrace in estimation of others to invoke the jurisdiction or any defence of explanation (4) of section 499 of the IPC as argued on behalf of the petitioners, the said matter is also question of evidence but *prima facie* it appears that, the reputation of University is lowered down in the eyes of others viz. employees working in the University, students, alumni, affiliated colleges and staff and professors of the University like a University they all are involved or indulged in such immoral activity or issuing fake degree bearing in mind said fact, no need to examine the outsiders for the purpose of issuance of summons.
- [5.7] Further, relying on the decision of the Hon'ble Supreme Court in the case of ***Jagir Singh (Supra)*** it is argued that,

the power under Article 227 of the Constitution would only be sparingly exercised well within the limits as the High Court having supervisory jurisdiction and power of superintendence are not meant to circumvent the statutory law and has also relied on the case of Radhe Shyam (Supra), and submitted that, the orders of the subordinate Courts cannot be challenged under Article 227 and not under Article 226 of the Constitution of India. Whatever *omni* grounds stated in petitions or any available defences are raised by the petitioners may be valid defence or available to the petitioners but same cannot be considered at this stage while exercising the powers under Section 482 of the CrPC as all the said issues are also subject matter of trial. Further, the plea of the petitioners is also recorded and trial is going on therefore, he has requested to dismiss the present petitions.

- [6.0] Learned Additional Advocate General Mr. Mitesh Amin assisted by learned APP Mr. Manan Mehta has also opposed the present petitions and has requested to dismiss the present petitions.
- [7.0] The Complaint is filed by Respondent No.2, who is authorized by the University, in the Court of learned Metropolitan Magistrate wherein, stated that, the educational degree of Hon'ble Prime Minister has been made available since long in public domain on official

website of Gujarat University and this Court has also delivered the judgment on the issue in Special Civil Application No.9476/2016 on 31.03.2016 wherein, also stand taken by the University being accepted by this Court. Then, on 01.04.2016, in a press conference, Accused No.1 has made statements and uploaded the video on Twitter Handle and it is further alleged that, accused No.2 has also on next day i.e. 02.04.2016 has made defamatory statement and in this regard complaint is filed under Section 500 of the IPC against present petitioners.

- [7.1] The relevant extract of the complaint containing alleged statement / imputation which has given rise to the present controversy reads as follows:

"12. On the immediate next day after the judgment dated 31.03.2023 was delivered, i.e. on 01.04.2023, the accused No.1 – Shri Arvind Kejriwal made the following statements before the Press (Annexure-3: Two Video Files saved in Pen Drive).

Video uploaded on the Twitter Handle of Accused No.1 (Shri Arvind Kejriwal) on 01.04.2023:

Total duration of the Video : 08 Minutes and 56 seconds

Relevant portion : After 06 Minutes and 18 Seconds

"The doubt that had increased over the educational qualification of the Hon'ble Prime Minister has been further amplified by the order passed by the High Court."

"The public has not got any answer on the issue

regarding qualification of the Hon'ble Prime Minister."

"Some kind of Degree here and there, one day Shri Amit Shah had called a Press Conference some years ago and had showed the Degree".

"If there is a degree and if it is a genuine one, then why the Degree is not being given?"

"Why the Degrees of Gujarat University and the Delhi University are not being given? Why information relating to him is not being share?"

Hence, there are only two answers in the minds of people, why it is not being given?

One of the reasons for not providing the Degree is that there is ego as to whey it should be given? Who are they to ask for my degree ? What right do they have?

But, in a democracy, such types of questions are improper, such type of ego is not proper.

If the people are demanding, then it should be given.

And the other question that is coming in the minds of the people is that the Degree is not being provided because there could be a possibility that the Degree could be a forged one!! It could be that the Degree is duplicate !! After the order that came to be passed yesterday, many questions would come in the minds of the people and an environment of hot rumours is prevailing in the market and several questions are being asked !!! And one is not able to understand that if the Hon'ble Prime Minister has studied at the Delhi University or the Gujarat University, then the Gujarat University has to undertake a celebration that one of its students has become the Prime Minister of the country !! The Delhi University should also celebrate that

they are attempting to hide his degree.

If the statements made in the video uploaded in the aforesaid Twitter handle are examined, it is clear that he has done the act with the intention to damage the credit, talent and name of Gujarat University or there is reason to believe that the reputation of the individual would be tarnished by the making such allegations. With such motive, the allegations have been made or have been published. It has been done knowingly.

In general terms, the direct or indirect allegations made against the University would cause damage to the moral and intellectual identity of the University and would thereby, result into deterioration in the reputation of the University. It is also an attempt to make the University have a feeling of disappointment.

And on 02.04.2023, the accused No.2 – Shri Sanjay Singh had made the following statements while addressing the Press (Annexure-3)

The video uploaded on the Twitter handle of accused No.2 (Shri Sanjay Singh) on 02.04.2023:

*Total duration of the Video:
01 Minute and 41 Seconds*

"Since the issue regarding Degree of the Prime Minister came to the fore efforts are being made to prove the forged Degree of our Prime Minister as a genuine one...."

[7.2] Section 499 of IPC defines offence of Defamation and section 500 of IPC for punishment in respect of the said offence. The said provisions read as follows:-

"Section 499. Defamation.— Whoever, by words either

spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter expected to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

Now, herein, complaint filed by officer of University.

Considering the definition of section 499 as also explanations to section 499 of IPC, it appears that Explanation (2) deals with imputation concerning a company or an association or collection of persons as such. Thus, action for giving defamation of unidentifiable group would not lie in the criminal Court. Explanation (2) of section 499 of IPC defamation is not restricted to an individual alone. It may be committed against company or any association or collection of

person and such collection of persons or association should be definite or identifiable.

Further, 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. In the case of **Sahib Singh Menorah v. State of Uttar Pradesh reported in AIR 1965 SC 1451** The definition of "collection of persons" referred to Explanation 2 to Section 499 of IPC, is discussed 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.

Further in the case of **G. Narasimhan, G. Kasturi and K. Gopalan v. T.V. Chokkappa reported in AIR 1965 SC 1451 : 1965 (2) SCR 823 160**, Hon'ble Apex 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 case of **S. Khushboo v. Kanniamal and another** reported in **(2010) 5 SCC 600**, it has been ruled by Hon'ble Apex court 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. While 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 and if such a class is indefinite, the complaint cannot be entertained. Even, the same view is taken by the Kerala High Court in the case of **Mathrubhoomi Illustrated Weekly, represented by its Editor and Others vs. P. Gopalankutty and Another** reported in **2002 SCC OnLine Ker 137** (Special Leave to Appeal (Cri.) No.2368/2022 challenging the decision of Kerala High Court is dismissed by the Hon'ble Supreme

Court vide order dated 25.03.2022). In the said decision Kerala High Court answered the contention raised by the petitioner that RSS has no *locus standi* to represent the organization of RSS by relying on various judgments of Kerala High Court as well as decision of Hon'ble Supreme Court in the case of ***G. Narasimhan (Supra)*** and decision of Allahabad High Court in the case of Tek Chand Gupta v. R.K. Karanjia reported in 1967 SCC OnLine ALL 282 and also considering Explanation (2) to Section 499 of IPC, came to conclusion that RSS is an Association or collection of person and RSS is a definite and identifiable body and Considering the aforesaid fact, the Gujarat University falls within the identifiable class.

[7.3] Explanation (4) of Section 499 of the IPC, as per said provision:

—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Explanation (4) to Section 499 places a curb on the general description of definition contained in the

section. It makes only such imputations punishable as might lower a person's reputation in respect of some aspects of his personality. Further, it is worth to rely on the Judgment of the Hon'ble Supreme Court of India in the case of **John Thomas Vs Dr. K. Jagadeesan** reported in **(2001) 6 SCC 30**. The Hon'ble Supreme Court has been pleased to rule that even if the imputation is not *per se* defamatory, the complainant can on evidence establish that statement is *per se* defamatory.

Here in, what ever statement made is though in reference to Degree of Hon'ble Prime Minister but whatever statement *qua* genuineness of degree i.e. fake, forged or duplicate degree are made it against The Gujarat University, The University is identifiable body and its' administrators, professors, students, alumni, affiliated colleges all are distinguishable, Hence argument canvassed by learned Counsel for the petitioners is not acceptable.

- [8.0] Alleging that the aforesaid statements made by accused persons are defamatory and have harmed the reputation of the University hence, respondent No.2 has filed the complaint. The Constitutional validity of sections 499 and 500 of IPC, 1860 and section 199 of Code of Criminal Procedure, (Cr PC, 1973) assailed in the case of **Subramanian Swamy v UOI, Ministry of Law**

(Supra) and Hon'ble the Supreme Court upheld the provisions. The Court has further observed, one cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 of the IPC is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest.

- [8.1] The word defamation is derived from the Latin term 'Diffamare'. Semantics or Etymology of the Latin word 'Diffamare' provides that it means 'Spreading evil report about someone'. Thus, defamation is nothing but spreading evil and causing damage to reputation of another.
- [8.2] 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. 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 complainant,

irrespective of whether complainant actually suffered directly or indirectly from the imputation alleged.

- [8.3] What the victim must prove to establish defamation is, if you believe you are or have been "defamed," to prove it, you usually have to show there has been a statement that is all of the following: published, false, injurious and unprivileged. First, the "*statement*" can be spoken, written, pictured, or even gestured. Because written statements last longer than spoken statements, libel more harmful than slander and defamatory statement must be false otherwise it is not considered damaging.
- [8.4] Under the Indian Penal Code, for commission of an offence there must be a making or publication of imputation concerning any person by words either spoken or intended to be read or by sign or by visible representations, intending to harm, or knowing or having reasons to believe that such imputation will harm the reputation of such person. To constitute the offence of defamation, there must, making or publication of such imputation concerning any person and the making or publication must be with the intent to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. Unless there is publication, there can be no offence of defamation committed.

[9.0] Learned Counsel for the petitioners has contended that, complainant – Gujarat University is a “State”. As per section 3(2), 9(1), 10(1)(5), 13, 19(1), 51A, 33(4)(8), 53AA etc. of the Gujarat University Act, 1949, the University shall have perpetual succession and a common seal and shall sue and be sued by the said name. Even, referring to various provisions of the Gujarat University Act, 1949, it is submitted that an employee of the University is public servant and as University is a local authority or other authority defined under Article 12 of the Constitution, hence no any defamation of university as per explanations (2) and (4) of section 499 of IPC and provisions under Section 199(2) of the CrPC are not complied with, as complaint is not filed before the learned Sessions Court and to substantiate the said argument, learned Counsel for the petitioners has also relied on the decisions of the Hon’ble Supreme Court on the cases of Ajay Hasia (Supra), Pradeep Kumar Biswas (Supra) and Janet Jeyapaul (Supra) and mainly argued that in the case of Pradeep Kumar Biswas (Supra), relying on Hon’ble 5 Judges’ bench decision of Hon’ble Supreme Court in the case of Ajay Hasia (Supra) come to conclusion that, the University is a “State” within the meaning of Article 12 of the Constitution of India and as government having control, a true test of government control is pervasive control to some extent. Going through aforesaid pronouncement

and even considering various provisions of The Gujarat University Act, 1949, it reveals that, the University is an instrumentality in performing the public duty of imparting education to public at large, and is also governed by UGC Rules and Central Government has notified the University and even deemed University also perform the functions of public importance like imparting education and which also falls within the purview of "State". There is no dispute about the fact that University is "State" as defined under Article 12 of the Constitution of India.

- [9.1] Further, learned Counsel for the petitioners has stretched the argument further and stated that under Section 51AA of the Gujarat University Act, 1949, employees of the University are public servants and she relied on section 21 explanation 12 of the IPC and further stated that, as service conditions are decided and regulated under the Gujarat University Act, complainant herein can never be considered as "aggrieved person" as its status merged into University and as the complainant is "State" then the provisions of Section 199(2) of the CrPC are also required to be followed.
- [9.2] Now, moot question arise for the consideration is as to whether considering University to be a "State" under Article 12 of the Constitution of India, in present case

learned Magistrate ought to have followed the procedure under Section 199(2) of the CrPC and any status is not a loathsome to state or harm the reputation of the State as provided under explanation (4) of Section 499 of the IPC and action unidentifiable for group would not lie according to explanation (2) of Section 499 of the IPC.

- [9.3] To advert the aforesaid contention, if we consider the provisions of Constitution of India, Article 1 of the Constitution describes the word "India" as "Union of States", the territories that constitute the Union and which are integral part of India. Once again "State" under Article 1 of the Constitution refers to the political and administrative units that form the Federation of India and have their own government and legislature. While, Article 12 of the Constitution defines the term "State" for the purpose of enforcing fundamental rights under Part III of the Constitution. It does not include only the Union and the State Government and their legislature but also includes local authorities, other bodies that exercise governmental or public functions. Thus, Article 12 is wider than term "State" defined under Article 1 and covers any entity that can violate the fundamental right of the citizen. Thus, one "State" is which constitute Union of India and another defines "State" which infringes the fundamental right of citizen.

Thus, the difference between right and status is there but the rights are universal and unalienable. Hence, status is specific and variable.

- [9.4] The protection is given to individual against the authority or unjust action of the State and authorities. Thus, recognition of the authority as State is similar *qua* application and enforcement of fundamental rights against the authority and the State and both are the same but they may not necessarily have same powers or function as of the State Government. Article 12 brings certain non-government authorities under the umbrella of State for the purpose of "State" only for the enforcement of the fundamental rights, in different role, powers and functions vary and they may not possess the same level of authority. Hence, if someone is employed with the government, is a public servant but if someone is appointed by the local authority and they are not directly employed by the government but he may be considered as a government authority considering his class, association with the functions under the State Authority or the instrumentality as such designation may help him to extend the legal obligations and the responsibility to those who are performing the public duty indirectly, for that under the deeming fiction under the law under some enactments, they are made answerable also i.e. under the Prevention of Corruption Act.

[9.5] The powers are delegated by the legislation to the local authority only for the specific purpose to govern and manage local affairs. Those powers are limited to matter within their jurisdiction. While government instrumentality or entity performs the specific functions like education, finance, health etc. These instrumentalities derive their powers from legislation or executive orders and operates with the scope defined by their enabling laws. Considering the aforesaid well settled position of law, though University is recognized as "State" as public instrumentality but it cannot be considered as a "State" defined under Article 1 of the Constitution and having such different status and as University is an autonomous body having independent rules for management, governing body and employee having a status of "public servant" but who cannot be considered employees of State who are appointed on its own with specific service conditions. Hence, merely their status is conferred as a public servant or recognized as a public servant, they cannot be considered as public servant who are appointed by the government. In this regard, it is profitable to quote the speech of Dr. B.R. Ambedkar explaining the scope of Article 12 and reason why this Article was placed in the Chapter on Fundamental Rights so spoke in the Constituent Assembly which is also quoted to in the Judgment of Hon'ble Supreme Court in the case of ***Pradeep Biswas***

(*Supra*) and it is observed in Paragraph 70 as under:

"70. *The object of the fundamental rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority I shall presently explain what the word "authority" means upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluka boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.*

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"97. *It is this basic and essential distinction between an 'instrumentality or agency' of the State and 'other authorities' which has to be borne in mind. An authority must be an authority sui juris to fall within the meaning of the expression 'other authorities' under Article 12. A juridical entity, though an authority, may also satisfy the test of being an instrumentality or agency of the State in which event such authority may be held to be an instrumentality or **agency of the State but not the vice versa.***

Considering the aforesaid proposition of law, employee of University is having the status of deemed public servant or recognized status of public servant only. In this regard, reference is also required to be made to paragraph 12 of the decision of the Hon'ble Apex Court in the case of ***Ajay Hasia (Supra)***. Mere

regulatory power or control of State and as Article 12 has nothing to do with Articles 309, 310 and 311 of the Constitution of India, merely referred employees of State under Article 12 do not *ipso facto* become entitled to protection of Part XIV of The Constitution of India. It is apposite to refer to the decision of Hon'ble Supreme Court in the case of ***Pradeep Kumar Biswas (Supra)*** wherein in paragraph 69, the Hon'ble Supreme Court has observed as under:

"69. This definition is for the purpose of attracting applicability of the provisions contained in Part III of the Constitution dealing with fundamental rights. It is well-settled that the definition of 'the State' in Article 12 has nothing to do with Articles 309, 310 and 311 of the Constitution which find place in Part XIV. Merely because an entity is held to be the State within the meaning of Article 12, its employees do not ipso facto become entitled to protection of Part XIV of the Constitution.

Thus, considering the aforesaid fact, though University falls within the meaning of Article 12 – State Authority but cannot be considered as a State for all purposes under Article 1 or claim any privilege or sovereign powers unlike "State" defined under Article 1 State. The "State" defined under Article 1 is in narrow compass. Then "State" defined under Article 12 the authority is in wider scope for the specific purpose.

- [9.6] Section 199 of the CrPC prescribes the procedure for prosecuting criminal defamation offences. There are six

sub-sections in Section 199 and each of them are itself unique in its application.

(a) Sub-section 1 provides that only an **aggrieved person** can launch prosecution for criminal defamation.

(b) Sub-section 2 provides for a special procedure in cases where the imputation is made against the constitutional functionary/public servant in respect of his conduct in the discharge of his public functions. This special procedure provides for filing of a complaint through a public prosecutor before the sessions court.

(c) Sub-section 3 narrates the facts which are required to be pleaded in a complaint filed for criminal defamation under Section 199(2) of CrPC through a public prosecutor. It states that the complaint shall set forth in the facts which constitutes 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. It is to be noted here that for no other non- cognizable offence in the entire Penal Code, there is a stipulation about the factual requirements that are to be pleaded in a private complaint for Criminal defamation filed under Section 199(2).

(d) Sub-section 4 provides that for filing a complaint by the public prosecutor under subsection 2, sanction of

the State Government or the Central Government as the case may be is mandatory.

(e) Sub-section 5 prescribes six months time limit for launching prosecution through a public prosecutor under subsection 2.

(f) Sub-section 6 is an omnibus provision enabling any aggrieved person including public servant/constitutional functionary to launch prosecution for criminal defamation before the Magistrate dehors the special procedure available under subsection 2 in cases of imputation made against a constitutional functionary/public servant to his conduct in the discharge of his public functions. It must be noted here that the batch punishment provided for criminal defamation under the IPC is same whether the prosecution is launched through the public prosecutor in the court of Sessions under section 199 (2) Cr.P.C. or by the aggrieved personally under section 199(6) Cr.P.C. before the Magistrate.

- [10.0] Learned Counsel for the petitioners has mainly relied on provision of Section 199(2) Cr.P.C. and argued about non-compliance of it but herein, no any public functionary has launched the prosecution for defamation and not filed in the subject of discharging any public function of any dignitaries, even also said

provision does not bar a constitutional functionary/public servant from personally launching prosecution for criminal defamation before the Magistrate under Section 199(6) Cr.P.C. even in cases of defamation in respect of his conduct in the discharge of his public functions.

Thus, there is a difference between sub-section (2) and sub-section (6) of section 199. Sub-section (2) is the procedure for launching prosecution in case of defamation against the State and sub-section (6) is for personal defamation even if it is a case of defamation against a public servant or constitutional functionary in the discharge of his public functions which are personal in nature and where state has not been defamed. In case on hand mere reference of Degree of Hon'ble Prime Minister, no any prosecution launched in this regard any imputation here in, imputation is against the University that the educational degree of Hon'ble Prime Minister is fake, forged or duplicate. Thus, no any allegations are against constitutional dignitaries or no one has made such statement in their official capacity or while discharging public duty. Herein, only incidental reference of Hon'ble Prime Minister the statements are made against University, as if University has forged or issued fake degree to Hon'ble Prime Minister and hence, question does not arise to follow procedure under

section 199(2) of the CrPC.

- [10.1] Further, learned Counsel for the petitioners has also relied on the decision of the Hon'ble Supreme Court in the case of Manoj Kumar Tiwari (Supra), wherein also, referring to earlier pronouncements and legislative history in detail has held as follows:

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"51. 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 subsection (2).

52. 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."

Thus, there is a difference between section 199(2) of CrPC and section 199(6) of the Cr.P.C. Only in

cases where the State has been defamed and a public servant/constitutional functionary has also been defamed while discharging his public functions, section 199(2) gets attracted. In all other cases where the ingredients of defamation has been made out, it will fall only under section 199(6) Cr.P.C. and can be filed only before the Magistrate. In cases where the public servant/Constitutional functionary has been defamed while discharging his public functions but the State has not been defamed, section 199(2) is not attracted. The only recourse available to him is to file a complaint before the Magistrate under section 199(6) Cr.P.C. Here in, as in earlier part discussed, neither public servant nor state / Constitutional functionary is defamed hence bar under sec 199(2) of the CrPC would not get attract and complaint would lie before the Magistrate. Hence, argument canvassed by learned Counsel for the petitioners is not acceptable.

- [11.0] Further, learned Counsel for the petitioners has submitted that, the complaint is not filed by the aggrieved person and would also not stand on its own feet as Gujarat University being a *juristic* person but complaint can be filed by the authorized person. In this regard, as discussed above, there is difference between "State" defined under Article 1 and "State Instrumentality" defined under Article 12 of the

Constitution. So far as reputation of the University is concerned, learned Counsel for the petitioners has submitted that explanation (4) to Section 499 of the IPC defines the word in "estimation of others" which does not include staff of the University as the status of staff is merged with University and they are public servant but as discussed above, the status of the University having its independent reputation and known by its own in the field of higher education and having it's distinct identity and independent existence and University is identifiable and whatever reputation of the University is earns years together is harmed, tarnished or defamed, it will always be assessed in the estimation of others even in this regard evidence may be produced during the trial also. Going through the evidence recorded by the learned Magistrate while issuing process it appears that other people have gone through the tweet and they have re-tweeted and *prima facie* it appears that it is clearly stated that the video being uploaded on Twitter Handle on 01.04.2023 by accused No.1 has been seen by 2,86,000 people and the said tweet has been seen by 7,05,000 people, 5749 persons have commented on it, 3902 persons have re-tweeted and 12,800 persons have liked it and even large number of people have seen the said video on other media platforms and then on subsequent day i.e. on 02.04.2023, accused No.2 also uploaded a video on Tweeter Handle which has been

seen by 7048 persons and the said tweet has been seen by 20,900 persons. Thus, publication itself reveals.

- [11.1] In respect of the offence of defamation, Section 199 Cr.P.C. mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. The person aggrieved means who is hurt or sustained pain on account of such defamatory statement. Herein, statement against University as discussed in earlier part of the judgment, University is identifiable group and determined class. The Registrar is authorized by University and he can file a complaint. Right of the person aggrieved to bring forward a complaint on his own. In the case of **John Thomas (Supra)**, the Hon'ble Supreme Court in paragraph 13 held as follows:

“...even if libelous imputations are not made directly against a person but he has reasons to feel hurt on account of same, he has locus standi to file a complaint and in case of Private limited company, its Director can file a complaint.”

Hence, argument canvassed by learned Senior Advocate for the petitioners is not acceptable.

- [12.0] Learned Senior Counsel has also raised voice *qua*

procedure followed by the learned Metropolitan Magistrate issuing process. The scope and ambit of enquiry under Section 202 of the Code was succinctly laid down by Hon'ble Apex Court in the case of **Chandra Deo Singh vs. Prakash Chandra Bose alias Chabi Bose and another** reported in **AIR 1963 SC 1430**. For determining the question whether any process is to be issued or not? What the learned Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. The object of enquiry under Section 202(1) itself is to ascertain the truth or falsehood of the complaint, but the learned Magistrate making 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 and the statements made before him by persons examined at the instance of the complainant.

- [12.1] Similar view is also expressed by Hon'ble Supreme Court time and again in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate** reported in **(1998)5 SCC 749** and in the case of **National Bank of Oman vs. Barakara Abdul Aziz and Another** reported in **(2013) 2**

SCC 488, the Hon'ble Supreme Court in paragraph 9 held as under:

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint – (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

Further, the Hon'ble Supreme Court in the case of **Shivjee Singh vs. Nagendra Tiwary and Others** reported in **(2010)7 SCC 578** has also ruled in the same line. Thus, it is well settled proposition of law that one of the object, behind the provisions of Section 202 of the CrPC is to enable the learned Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another

object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the learned Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under section 202 can in no sense be characterized as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.

- [12.2] Thus, settled proposition of law is that, the enquiry under Section 202 of the CrPC is not full-fledged trial, but only limited to very the *prima facie* truthfulness in the allegations made in the complaint as to whether there is any sufficient ground to proceed against accused or not. Enquiry does not partake the character of full dress trial. The enquiry under Section 202 of the

Code is to be held 'absentia' of accused and his defence version is not required to be gone into to determine whether sufficient grounds exist to proceed against accused.

- [13.0] Herein, in the case on hand, the complaint is filed by respondent No.2. In support of the complaint, the complainant has examined witnesses. Perusing the complaint, verification and the evidence recorded by the learned Magistrate and the audio clip produced in pen drive, the learned Magistrate has considered the defamatory statements. Considering the statement about fake degree of Hon'ble Prime Minister made by accused No.1 in the press conference and the accused No.2 also uttered words "University is desperately attempting to prove the degree to be genuine". The said statements being considered by the learned Magistrate as *innuendo* due to which the reputation of the Gujarat University is being harmed. Further, learned Magistrate has come to conclusion that dispute qua degree of Hon'ble Prime Minister came to be adjudicated before the competent Authority and subsequently, this Court in the proceedings of Special Criminal Application No.9476/2016 pronounced a verdict and degree is very much available on the website of the complainant – Gujarat University.
- [13.1] Learned Magistrate has taken into consideration the

fact that, the Gujarat University is working in the field of education since last 70 years and having its own reputation in the field of education and large number of colleges are affiliated with it and even has large number of students and alumni also believe that Gujarat University is having good reputation and formed opinion. The statement made by the accused is *prima facie* defamatory and *innuendo* and made with a view to tarnish the image of Gujarat University. The video being uploaded on Twitter Handle on 01.04.2023 by accused No.1 has been seen by number of people and many of them have commented on it and re-tweeted the same and some persons have liked it and even large number of people have seen the said video on other media platforms also and then on subsequent day i.e. on 02.04.2023, accused No.2 also uploaded a video on Tweeter Handle which has been seen by number of people and the said tweet has been seen by many people.

- [13.2] Learned Magistrate prior to issuance of process has considered all relevant aspects and material and come to conclusion that the statements made by the accused persons are *per se* defamatory and *innuendo* and Gujarat University's reputation is tarnished. As provided under Section 499 of the IPC, pre-conditions for defamatory statement & publication and reputation of University is

considered by the learned Magistrate and then evidence produced by the complainant including the evidence of Assistant Professor, staff and one witness who is not alumni of the said University but outsider as he studied at Sardar Patel University and he has also received the same comments which create some doubt or undermine function and reputation of university Considering all these facts, the learned Magistrate has been pleased to issue process. Merely forming any such opinion is tentative in nature and not conclusive as to whether such statements are defamatory, harmful to reputation of complainant, these all issues are subject to trial and all defences are available to the accused persons.

- [13.3] Further, the learned Magistrate has also considered the fact that the statements made by the petitioners are not against public servant or State but against the University and there is clear impression in the mind of the people that Gujarat University is issuing fake degrees and engaged in fraudulent activity. Such allegations have tarnished the image and reputation of the University. Considering the law laid down by the Hon'ble Supreme Court in the case of G. Narasimhan (Supra), learned Magistrate come to conclusion that the Registrar has authority and University is defamed and complaint by group of persons is identifiable class who are defamed and it is maintainable. Further, the learned Magistrate has also taken care of the fact that the

defamatory statement made by the present petitioners – accused are in their personal capacity. They have not made any statements in their official capacity or in connection with the affairs of the State and clearly assigned reason for non-application of section 199(2) of the CrPC and come to conclusion that the permission of the State is not necessary and also considered the complainant is “aggrieved person”.

- [13.4] Keeping in mind the aforesaid fact, and as learned Counsel for the original complainant has relied on English pronouncement in the case of **Quazi vs. Quazi** reported in **1980 AC 744**, wherein Lord Diplock J. said that “others” to be read as “others such like” because (1) it is impossible to imaging all possible class, (2) because the class is so large and diffuse that the attempt would certainly fail as a result of inadvertent omission and (3) because the class is constantly varying one with members joining and departing. Thus, the word “others” is a general expression i.e. it can be anyone, other than you. Herein, the petitioners have published the defamatory comments, spoken by them, through a video on petitioners’ Twitter Handle, which has been in public view and hence, tarnishing the image of Gujarat University in the eyes of public. The reputation of University is considered in view of the “estimation of others” and *prima facie* learned Magistrate has formed opinion and considered the aforesaid fact the status of

employee is merged into university and Ld. Magistrate has committed an error in issuing process said argument canvassed by the learned Counsel for petitioners is not sustainable as discussed and reasons assigned above.

- [14.0] Learned Counsel for the petitioners has submitted that, the evidence of newspaper is a secondary evidence and on the same line as the defamatory statement downloaded and then it is produced in the pen-drive as mark 1/3 before the learned Magistrate and based on such secondary evidence exercise undertaken by the learned Magistrate is not permissible as the said evidence is not in terms of Evidence Act. It is needless to say that while taking cognizance the Court has to consider the material produced by the petitioners. Herein, so far as downloaded video is concerned, defamatory contents are in form of electronic evidence and now law is settled by the Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others** reported in **(2020) 7 SCC 1** wherein the Hon'ble Supreme Court has been pleased to hold that secondary evidence is permissible but requirement is to produce certificate under Section 65-B(4) of the Indian Evidence Act and even it is permissible with dispensation of the concerned Court. Herein, certificate under Section 65-B of the Evidence Act is produced and original contents are downloaded by the witness Mr. Savaliya in his computer and then it is

stored and then he has produced the certificate and as secondary evidence is permissible with compliance of section 65-B(4) of the Indian Evidence Act. Hence, learned Magistrate has considered the aforesaid certificate and pass the order. However, whatever contents *qua* admissibility and if any evidence produced before the Magistrate is not in its original form or contents are doctored or tampered with by the prosecution, such all issues are also subject matter of trial and for that, right to cross-examine the witness is also open. Considering the aforesaid fact, at this stage the argument canvassed by learned Counsel for the petitioners *qua* admissibility of secondary evidence is irrelevant while the learned Magistrate has passed the summoning order and formed only opinion is not conclusive and hence, argument is not acceptable at this juncture.

- [14.1] Learned Counsel for the respondent has argued that, the petitioners have not prayed to exercise jurisdiction under Article 226 of the Constitution of India and the simple prayer is only to quash the proceedings of summoning order. Further, none of the grounds urged for are sufficient to invoke the jurisdiction under Article 226 or even Article 227 of the Constitution. So far as argument canvassed by the learned Counsel for the respondent No.2 that there is bar to exercise power under Section 482 of the CrPC on the ground that the

present petitioners have circumvent the proceedings under Section 397(3) of the CrPC as there is a bar of second revision application is concerned, considering the law laid down by the Hon'ble Supreme Court in the case of (i) **Krishnan (Supra)** (ii) **Prabhu Chawla (Supra)** and (iii) **Shakuntala Devi (Supra)**, said argument is not sustainable as there is no bar to exercise power under Section 482 of the CrPC.

- [15.0] Further, learned Counsel for respondent No.2 – original complainant has submitted that exercise of power under Section 251 of the CrPC is prohibited. The said argument is also not sustainable in view of the law laid down by the Hon'ble Supreme Court in the case of (i) **Anand Kumar Mohatta and Another (Supra)**; (ii) **Abhishek vs. State of Madhya Pradesh** reported in **2023 (3) GLH 27** and (iii) **Mata Shailesh Chandra vs. The State of Uttarakhand** rendered in **SLP (Cri.) No.7273/2019 (Judgment dated 29.01.2024)**.
- [15.1] However, as the University is “State”, the writ jurisdiction is amenable against the University in case of infringement of fundamental rights. Herein, no any relief sought or urged for to invoke the jurisdiction under Article 226 and under Article 227 of the Constitution no any ground is found to interfere either order passed by the learned Metropolitan Magistrate Court or learned Revisional Court both have not

committed any error apparent on the face of the record or nothing emerges from the reasons assigned by the learned Magistrate any palpable, manifest or substantial error in interpretation of law is noticed in the order. Even, the powers under Article 227 of the Constitution are very much limited and as per the law laid down by the Hon'ble Supreme Court in the case of **Radhe Shyam (Supra)**, wherein in paragraphs 18 and 23, it has been observed as under:

"18. Thus, it has been clearly laid down by this Court that an Order of civil court could be challenged under Article 227 and not under Article 226."

"23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."

Considering the aforesaid fact, the order of the learned trial Courts could be challenged under Article 227 but not under Article 226 of the Constitution of India. Herein, the petitioners have sought the prayer to quash and set aside the orders passed by the learned Metropolitan Magistrate Court and Revisional Court, both fall under the supervisory jurisdiction of Article 227 of the Constitution of India. Considering the law laid down by the Hon'ble Supreme Court in the case of **Radhe Shyam (Supra)**, the judicial orders of Courts are

not amenable to writ jurisdiction under Article 226 of the Constitution and jurisdiction under Article 227 is distinct from the jurisdiction under Article 226 of the Constitution. At this stage it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **M/s. Garment Craft vs. Prakash Chand Goel** reported in **(2002) 4 SCC 181**, wherein in paragraph 77 it is held that High Court does not act as a Court of first appeal while exercising jurisdiction under Article 227 and to re-appreciate, re-weight evidence or fact except error apparent face on the record or perversity in findings.

- [16.0] Petitioners have raised grounds in petitions before this Court which all are already dealt with by the learned Magistrate prior to issuance of process and learned Magistrate has applied his mind, discussed about applicability of section 199(2) of the CrPC and explanation (4) of section 499 of IPC prior to taking cognizance and the learned Revisional Court has also assigned the reasons and come to conclusion that the Complainant is authorized by University and University being a statutory body is *juristic* person and identifiable class can file the complaint for defamation.

Whatever grounds urged by the petitioners are disputed questions of fact which may be adjudicated at the full-fledged trial and by recording the evidence as

no mini trial is permissible while exercising jurisdiction under section 482 of the CrPC. The petitioner – Mr. Sanjay Singh raised a dispute that he has never uploaded the video but *prima facie* it is stated in the complaint that the said petitioner has uploaded the video on Tweeter Handle which has been seen by 7048 persons and the said tweeted by 20,900 persons. Learned Senior Counsel for respondent No.2 has vehemently submitted that even today video uploaded by Mr. Sanjay Singh – Accused No.2 is available on twitter and on the other hand, said fact is denied by accused No.2. Hence, said fact itself is a disputed fact and therefore, arguments canvassed by the learned Counsel for the petitioners is not sustainable.

- [16.1] In the case of **Ramveer Upadhyay & Anr. vs. State of U.P. & Anr.** reported in **2022 OnLine SC 484**, the Hon'ble Apex Court observed and held as under:

"Even though, the inherent power of the High Court under Section 482 of the CrPC, to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under Section 482 of the CrPC is not be exercised for the asking."

Further, the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Aryan Singh etc.** reported in **2023 SCC Online SC 379**, held that scope under Section 482 of the CrPC is very limited and

High Court cannot conduct a mini trial. The Hon'ble Apex Court in para 10 held as under:-

"10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not."

Further, in the case of **Rajeev Kourav vs. Baisahab and Others** reported in **(2020)3 SCC 317**, the Hon'ble Supreme Court has observed and held that evidence produced by the accused in his defence cannot be looked into by the Court except in very exceptional circumstances, at the initial stage of criminal proceedings. High Court cannot embark upon the appreciation of evidence while considering the

petitioner filed under Section 482 of CrPC for quashing criminal proceedings, if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding. In the case of **Mohit Singh vs. Reena Bagga & Ors.** rendered in **Criminal Appeal No.843 of 2024**, the Hon'ble Supreme Court has observed and held that extraordinary and inherent powers of the Court do not confer any arbitrary jurisdiction on the Court to act according to its whims and caprice.

- [17.0] In wake of aforesaid discussion, as the petitioners are only summoned, no any ground is found or case is made out to interfere with the impugned orders and as no defence can be looked into at this stage. Hence, present petitions being devoid of any merit are hereby dismissed. Rule is hereby discharged in each of the petitions.
- [18.0] It is made clear that the observations made herein above are tentative in nature and only for the purpose of deciding present petitions and shall not have any bearing on the merits of the pending proceedings.

Sd/-

(HASMUKH D. SUTHAR, J.)

Ajay