2026:AHC-LKO:55548

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPLICATION U/S 482 No. - 10838 of 2023

Gautam Kumar Alias Gautam Kumar Bose

.....Applicant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko. and 2 others

.....Opposite Party(s)

Along with :

1. **Application U/s 482 No. 2241 of 2024:**
   Vinod Kumar Singh
   Versus
   State of U.P. Thru. Secy. Deptt. Home Civil Secrt. Lko. and 2 others

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Counsel for Applicant(s)	:	Aishwarya Saxena, Mohit Sharma, Mukul Kumar Sharma, Pooja Mishra, Pranjal Jain, Rohit Kanaujiya, Vikas Vikram Singh
Counsel for Opposite Party(s)	:	G.A., Mohammad Alam

AFR Reserved on 31.07.2026
Pronounced on 11.08.2026
Uploaded on 11.08.2026

Court No. - 15

HON'BLE BRIJ RAJ SINGH, J.

1. Case was called out in revised list. No one put appearance on behalf of opposite party no. 2 to oppose the present application despite name of Shri Mohammad Alam, Advocate has been printed from the side of opposite party. However, Sri Purnendu Chakravarty, learned Senior Advocate, assisted by Ms. Aishwarya Saxena, appearing for the applicant in Application U/s 482 Cr.P.C. No.10838 of 2023, Sri Vikas Vikram Singh, learned counsel for the applicant in the connected Application U/s 482 No.2241 of 2024, and learned AGA for the State in both the applications were present. Considering the pendency of the present application since 2023, this Court proceeded to hear the application on the basis of the material available on record and the submissions advanced by the counsels present. After conclusion of argument, the judgment was reserved on 31.07.2026.

2. Since the common question of facts and law are involved in both the applications, therefore, with the consent of the parties, they are being heard and decided by a common judgement.

3. The applicant, Gautam Kumar @ Gautam Kumar Bose in Application U/s 482 No. 10838 of 2023, and the applicant, Vinod Kumar Singh in Application U/s 482 No. 2241 of 2024, have sought quashing of the proceedings of Complaint Case No. 19897 of 2022 (Akhileshwar Singh and Another vs. Vinod Kumar Singh and Another), under Section 500 IPC, Police Station Manak Nagar, District Lucknow, pending before the Chief Judicial Magistrate, Lucknow (for short, "Magistrate"), including the summoning and cognizance order dated 14.10.2022.

4. Facts of the case, as culled out from both the applications and as narrated by learned counsel for the applicants, are as follows.

i. On 18.09.2000, the applicant/Gautam Kumar lodged an FIR, based upon an enquiry report of applicant/Vinod Kumar Singh, against opposite party Nos. 2 and 3 at Police Station Manak Nagar, District Lucknow, registered as Case Crime No. 22 of 2000 under Section 409 IPC.

ii. The applicant/Gautam Kumar was then posted as District Public Development Officer, and an inquiry was conducted by co-accused Vinod Kumar Singh, Additional District Development Officer, who found that in Navyug Vikas Vidyalaya, Mehndi Kheda, Manak Nagar, Lucknow, the scholarship amount of Rs. 27,300/- for primary students belonging to SC/ST of Classes I to V, sanctioned by the Government for the year 1999-2000 for distribution among the students, was not properly distributed. Only four students, i.e., two students of Class IV and two students of Class III, received the scholarship, and the scholarship amount was embezzled by opposite party Nos. 2 and 3, who were then the Principal and Manager of the school. After registration of the FIR, the police commenced investigation and, during investigation, found that opposite party Nos. 2 and 3 had also committed offences under Sections 420, 467, 468 and 471 IPC and Section 3(2)(6) of the Scheduled Castes and

the Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Section 409 IPC, and submitted a charge-sheet under the aforesaid sections against opposite party Nos. 2 and 3.

iii. Thereafter, Criminal Case No. 1190 of 2013 (State vs. Akhileshwar Singh and another) proceeded before the Additional Chief Judicial Magistrate, Court No.30, Lucknow (for short, "Trial Court"), and the Trial Court, vide judgment and order dated 06.03.2014, convicted opposite party Nos. 2 and 3 under Sections 409, 420, 467, 468 and 471 IPC and sentenced them to simple imprisonment for seven years with a fine of Rs. 2,000/- under Section 409 IPC, simple imprisonment for five years with a fine of Rs. 5,000/- under Section 420 IPC, simple imprisonment for seven years with a fine of Rs. 10,000/- under Section 467 IPC, and simple imprisonment for seven years with a fine of Rs. 10,000/- under Section 471 IPC.

iv. Applicant/Vinod Kumar Singh, during the trial, deposed as PW-2, wherein the learned Trial Court, in judgment dated 06.03.2014, made certain observations in respect of the improper inquiry conducted by PW-2/applicant. Opposite party Nos. 2 and 3 filed Criminal Appeal No. 70 of 2014 against the judgment and order of conviction dated 06.03.2014 before the Special Judge, P.C. Act-6/Additional Sessions Judge, Lucknow (for short, "Appellate Court"), wherein the Appellate Court, vide judgment and order dated 16.11.2021, allowed the appeal and acquitted and discharged opposite party Nos. 2 and 3 from the aforesaid offences. It has further been submitted that while reversing the order of conviction, the Appellate Court quoted the findings of the Trial Courtin respect of the improper inquiry conducted by PW-2/Vinod Kumar Singh.

v. On the basis of the findings given in the judgments and orders dated 06.03.2014 and 16.11.2021, the complainant preferred the present complaint for prosecuting the applicant under Section 500 IPC, in which the applicants have been summoned. Hence, instant applications have been filed.

5. Sri Purnendu Chakravarty, learned Senior Advocate, assisted by Ms. Aishwarya Saxena, appearing for the applicant in Application U/s

482 Cr.P.C. No.10838 of 2023 and Sri Vikas Vikram Singh, learned counsel for the applicant in the connected Application U/s 482 No.2241 of 2024 have submitted that the applicants have challenged the impugned cognizance and summoning order as well as the entire proceedings of the complaint case on the ground that, from the reading of the complaint, no case is made out against the applicant, even if the contents of the complaint are taken to be true on the face of it.

6. It has been further submitted that the proceedings are being challenged on the ground that the basic ingredients for invoking the offence under Section 500 IPC are missing, which is evident from the bare reading of the complaint and the statements recorded under Sections 200 CrPC and 202 CrPC.

7. It has been further submitted that the Magistrate, in the cognizance and summoning order, has not mentioned as to what defamatory sentence or word, either in writing or spoken, has been made by the applicants, which is the basic ingredient for invoking the provisions of Section 500 IPC. There is no *prima facie* finding in the cognizance order as to how the offence is made out.

8. It has been further submitted that *mens rea* and intention are the *sine qua non*, and in the absence of pleadings to that effect, the complaint itself is not maintainable. From a perusal of the impugned cognizance and summoning order along with the complaint and the statements recorded under Sections 200 CrPC and 202 CrPC, it is evident that *mens rea* is missing. As such, the complaint deserves to be quashed.

9. It has been further submitted that the law of defamation seeks to protect individual reputation. Defamation is of two kinds, namely, libel and slander. It has been submitted that from the perusal of the impugned cognizance and summoning order, there is neither any evidence, discussion, nor even the slightest hint about libel or slander.

10. It has been further submitted that in order to constitute defamation under Section 499 IPC, there must be an imputation, and such imputation must have been made with the 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 has been submitted that mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with such intention, knowledge, or belief.

11. It has been further submitted that in the present case, from a perusal of the complaint, it is evident that no alleged defamatory statement, either in writing or spoken, has been uttered or mentioned. Therefore, the present applications deserve to be allowed and the proceedings are liable to be quashed.

12. It has been further submitted that the applicant/Vinod Kumar Singh, in the official discharge of his duties, conducted the inquiry and thereafter submitted the report to the concerned officer/Gautam Kumar, upon which he registered the FIR against the complainants, and thereafter the Magistrate convicted the complainant vide judgment and order dated 06.03.2014.

13. In addition to above submissions, Shri Chakraborty, learned Senior Advocate, assisted by Ms. Saxena, learned counsel for the applicant has submitted that the allegations made in the complaint do not constitute the offence of defamation in view of the statutory provisions contained in Section 499 IPC, particularly the Fifth and Tenth Exceptions thereto. He has submitted that it is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent.

14. For the sake of convenience, Section 499 IPC is quoted herein-below:-

> ***"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 cases hereinafter excepted, 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.*

Illustration (a).— *A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.*

Illustration (b).— *A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.*

Illustration (c).— *A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*

First Exception.— Imputation of truth which public good requires to be made or published.— *It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

Second Exception.— Public conduct of public servants.— *It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

Third Exception.— Conduct of any person touching any public question.— *It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.*

Illustration.— *It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.*

Fourth Exception.— Publication of reports of proceedings of

Courts.— *It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.*

Explanation.— *A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.*

Fifth Exception.— Merits of case decided in Court or conduct of witnesses and others concerned.— *It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, so far as his character appears in that conduct, and no further.*

Illustration (a).— *A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.*

Illustration (b).— *But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.*

Sixth Exception.— Merits of public performance.— *It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.*

Explanation.— *A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.*

Illustration (a).— *A person who publishes a book, submits that book to the judgment of the public.*

Illustration (b).— *A person who makes a speech in public, submits that speech to the judgment of the public.*

Illustration (c).— *An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.*

Illustration (d).— *A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.*

Illustration (e).— *But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not*

within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.— Censure passed in good faith by person having lawful authority over another.— *It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

Illustration.— *A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.*

Eighth Exception.— Accusation preferred in good faith to authorised person.— *It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

Illustration.— *If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.*

Ninth Exception.— Imputation made in good faith by person for protection of his or other's interests.— *It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

Illustration (a).— *A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.*

Illustration (b).— *A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.*

Tenth Exception.— Caution intended for good of person to whom conveyed or for public good.— *It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*"

15. He has invited the attention of the Court towards Section 199(2)

CrPC and submitted that it provides that, notwithstanding anything contained in the Code, where an offence is alleged to have been committed by a constitutional functionary or a public servant in respect of his conduct in the discharge of his public functions, cognizance can be taken only by the Court of Session upon a written complaint made by the Public Prosecutor.

16. He has submitted that, in the present case, the complaint has not been filed by the Public Prosecutor but by respondent nos. 2 and 3, who are private persons. Therefore, the bar contained in Section 199(2) CrPC applies in the present case, and the present complaint is not maintainable.

17. For the sake of convenience, Section 199 CrPC is quoted herein-below:-

> "***Section 199 – Prosecution for Defamation***
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> ***(1)*** *No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:*
>
> *Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.*
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> *(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory, or a Minister of the Union or of a State, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.*
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> ***(3)*** *Every complaint referred to in sub-section (2) shall set forth the facts which constitute 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.*

> ***(4)*** *No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—*
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> ***(a)*** *of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;*
>
> ***(b)*** *of the State Government, in the case of any other public servant employed in connection with the affairs of the State;*
>
> ***(c)*** *of the Central Government, in any other case.*
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> ***(5)*** *No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*
>
> ***(6)*** *Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."*

18. It is further submitted that the applicants have been falsely implicated and, in view of sub-section (2) of Section 199 CrPC, the complaint could not have been presented by the answering-respondents. The same could have been presented only by the Public Prosecutor.

19. He has further submitted that the applicants, being government employees, cannot be proceeded against on the complaint merely because they reported that there was bungling in the distribution of scholarships committed by the answering respondents.

20. It has been submitted that the FIR was lodged by one applicant on the basis of enquiry conducted by another applicant. Thereafter, a charge-sheet was filed against the answering respondents. The Trial Court, after adducing the evidence on record, convicted the answering respondents.

21. It has been submitted that the Appellate Court reversed the findings of the Trial Court only on the technical ground that the inquiry was not conducted properly. Otherwise, the Trial Court had considered the evidence of the witnesses, including the guardians of the children, who had deposed that the scholarship amount had not been paid to them, thereby proving the allegations of misappropriation.

22. Sri Vikas Vikram Singh, learned counsel for the applicant has submitted that the Trial Court proceeded in Case No. 1190 of 2013 and passed a detailed judgment on 06.03.2014, whereby the answering respondent nos. 2 and 3 were convicted for the offence under Sections 409, 420, 467, 471 IPC.

23. The relevant portion of the judgment of the Trial Court is quoted herein-below.

> "यह तथ्य विवादित नहीं है कि नवयुग विकास विद्यालय मेंहदी खेड़ा मानक नगर, लखनऊ के प्रधानाध्यापक व प्रबंधक द्वारा वर्ष *1999-2000* में प्राइमरी कक्षाओं के कक्षा *1* से *5* तक पढ़ने वाले अनुसूचित जाति के छात्र/छात्राओं के छात्रवृत्ति की धनराशि *27,300/-रू0* की माँग की गयी थी। उक्त छात्रों की कथित धनराशि उपरोक्त विद्यालय के बैंक खाता पंजाब नेशनल बैंक शाखा आलमबाग, लखनउ में अंतरित की गयी थी, जिसे अभियुक्त गण के हस्ताक्षर से निकाला गया था। संबंधित विद्यालय द्वारा प्रेषित मांग पत्र व छात्र छात्राओं की सूची शामिल पत्रावली है तथा बैंक की पास बुक भी पत्रावली पर दाखिल है, जिसके परिशीलन से यह स्पष्ट है कि उक्त धनराशि *27300/-*रू० शासन द्वारा उक्त विद्यालय को छात्रवृति के रूप में प्रदान की गयी थी और जिसे अभियुक्तगण द्वारा निकाला गया था।
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> अभियोजन पक्ष द्वारा यह कथन किया गया है कि उक्त धनराशि *27300/-रू0* जो उपरोक्त विद्यालय में कक्षा *1* से कक्षा *5* तक पढ़ने वाले छात्र छात्राओं के छात्रवृत्ति की धनराशि थी, उसे कुल *4* विद्यार्थियों में वितरित किया गया था, शेष धनराशि विद्यालय के प्रबंधक व प्रधानाध्यापक द्वारा गबन कर ली गयी थी। अभियोजन पक्ष द्वारा अपने कथनों के समर्थन में *13* गवाहों को परीक्षित कराया गया है तथा प्रलेखीय साक्ष्य के रूप में छात्रवृत्ति पंजिका की प्रमाणित प्रतिलिपि मय विद्यालय द्वारा प्रेषित छात्रवृत्ति की धनराशि वितरित किए जाने की आख्या दाखिल की गयी है।
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> अभियोजन की ओर से परीक्षित साक्षी पी डब्लू *1* विश्वनाथ पुत्र गिरधारी उक्त विद्यालय के कक्षा प्रथम के छात्र रोहित वर्मा का पिता है, जिसने अपनी मुख्य पृच्छा में छात्रवृत्ति पंजिका के पृष्ठ *10/15* के कमांक को देखकर कहा है कि उक्त पंजिका पर उसके हस्ताक्षर नहीं हैं, क्योंकि वह अंगूठा लगाता है। इस गवाह ने अपनी प्रतिपृच्छा में यह कथन किया है कि उसे या उसकी पत्नी को रूपया नहीं दिया गया था। रजिस्टर पर उसका नाम उसकी जानकारी के बिना लिख दिया गया। छात्रवृत्ति पंजिका के पृष्ठ *10/15* के कमांक *3* पर रोहित वर्मा पुत्र विश्वनाथ का नाम दर्ज है, जिसे *300/-*रू० दिया जाना अंकित है तथा अंतिम पंक्ति में विश्वनाथ के हस्ताक्षर हैं। उक्त गवाह द्वारा अपने हस्ताक्षर से इंकार किया गया है तथा इस गवाह द्वारा अपने बयान के पृष्ठ *3* पर भी अपना अंगूठा निशान लगाया गया है। उक्त गवाह द्वारा अपना कोई हस्ताक्षर नहीं किया गया है। अभियुक्त गण द्वारा प्रति पृच्छा में इस गवाह के शिक्षित होने की बावत तथा उसके द्वारा हस्ताक्षर करने के संबंध में कोई प्रश्न नहीं पूछा गया है, न ही इस बात से इंकार किया गया है कि उक्त गवाह शिक्षित नहीं है तथा वह हस्ताक्षर करता नहीं करता है।
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> पी डब्लू *2* के रूप में साक्षी विनोद कुमार सिंह पुत्र श्री रण विजय प्रताप सिंह, अपर जिला समाज कल्याण अधिकारी, सीतापुर को परीक्षित कराया गया है, जिन्होंने अपने बयान में यह स्पष्ट कथन किया है कि मैंने निदेशक समाज कल्याण के आदेश के अनुपालन में उक्त घटना की जाँच की थी। गवाह ने यह भी बताया है कि जिला समाज कल्याण अधिकारी, लखनउ द्वारा *27300/-*रू० की

धनराशि उक्त विद्यालय को कक्षा *1* से *5* तक के अनुसूचित जाति के छात्रों के लिए छात्रवृत्ति हेतु उपलब्ध करायी गयी थी, किंतु जांच में कक्षा *4* के *2* व कक्षा *3* के *2*, कुल *4* बच्चों को *1200/-रू0* की छात्रवृत्ति वितरित की गयी थी। शेष *87* छात्रों की छात्रवृत्ति की धनराशि *26100/-*रू० विद्यालय के प्रबंधक व प्रधानाध्यापक द्वारा गबन कर लिया गया था। गवाह द्वारा यह भी बताया गया है कि अभियुक्त गण द्वारा कोई भी अभिलेख छात्रवृत्ति वितरण से संबंधित दिखाने से मना कर दिया गया था। इस गवाह ने अपनी प्रति पृच्छा में यह स्पष्ट कहा है कि व्यक्तिगत रूप से दि० *13.9.2000* व *16.9.2000* के बीच उक्त विद्यालय दिन के *11.15* बजे जांच हेतु पहुंचे थे उस समय स्कूल का परीक्षण किया था। स्कूल में विद्यार्थी कम थे और शिक्षक भी नहीं थे। जांच करने उनके साथ सहायक विकास अधिकारी समाज कल्याण भी गए थे। वह एक बार जांच करने के बाद बाद पुनः उक्त विद्यालय जांच करने नहीं गए थे। गवाह सं० *2* लोक सेवक है, जिन्होंने अपने दायित्वों का निर्वहन करते हुए उक्त विद्यालय की जांच की थी, जिसमें त्रुटियां पायी गयी थी। छात्रवृत्ति से संबंधित अभिलेख मांगे जाने पर अभियुक्तगण द्वारा उन्हें प्रस्तुत नहीं किया गया था। उक्त गवाह द्वारा यह स्पष्ट नहीं किया गया है कि उन्हें इस बात का ज्ञान कैसे हुआ कि केवल *4* छात्रों को छात्रवृत्ति की धनराशि बांटी गयी थी, शेष धनराशि गबन कर ली गयी थी, जबकि उन्होंने कोई छात्रवृत्ति से संबंधित अभिलेख नहीं देखे थे। इस गवाह के उक्त बयान से यह प्रतीत होता है कि इस गवाह द्वारा उक्त जांच केवल खानापूर्ति हेतु की गयी थी, गम्भीरता से जांच नहीं की गयी थी तथा उन्होंने अपनी आख्या सम्भावनाओं के आधार पर दे दी थी।

पी डबलू *3* गौतम कुमार पुत्र स्व० सुधीर कुमार, जिला समाज कल्याण अधिकारी को परीक्षित किया गया है, जिन्होंने यह स्पष्ट किया है कि विद्यालय के प्रबंधक व प्रधानाध्यापक के द्वारा *91* छात्रों की छात्रवृत्ति *27300/-रू0* की मांग की गयी थी, जो उन्हें विद्यालय के संयुक्त खाता सं*0 36298* पंजाब नेशनल बैंक आलमबाग, लखनउ में हस्तांतरित कर उपलब्ध करायी गयी थी। विद्यालय के प्रबंधक व प्रधानाध्यापक ने *91* छात्रों की सूची दी थी, जिसकी प्रमाणित प्रतिलिपि शामिल पत्रावली प्रदर्श क*2* के रूप में है। उक्त गवाह ने अपनी प्रति पृच्छा में आगे यह स्पष्ट किया है कि अभियुक्त गण द्वारा केवल *4* छात्रों को *1200/-रू0* बतौर छात्रवृत्ति वितरित की गयी थी, शेष धनराशि *26100/-रू0* प्रबंधक व प्रधानाध्यापक द्वारा अपने हित में प्रयोग कर ली गयी थी। इस प्रकरण की जांच अपर जिला विकास कल्याण अधिकारी समाज कल्याण, लखनउ द्वारा दि० *16.9.2000* को की गयी। जांच आख्या की पुष्टि करते हुए उक्त आख्या पर प्रदर्श क*1* गवाह के निशानदेही पर अंकित किया गया। प्रति पृच्छा में उक्त गवाह ने अपनी मुख्य पृच्छा के अनुरूप कथन करते हुए यह भी बताया है कि जांच आख्या दि० *16.9.2000* के आधार पर चिक एफ आई आर दि० *18.9.2000* को दर्ज करायी गयी थी। तहरीर टाइप कराकर उन्होंने ही संबंधित थाने पर प्रेषित की थी, जिसके आधार पर दि० *27.9.2000* को चिक प्रथम सूचना रिपोर्ट दर्ज होकर विवेचना की गयी। पी डब्लू *3* ने अपनी मृख्य पृच्छा में अभियोजन कथनों का पूर्ण रूप से समर्थन किया है तथा प्रति पृच्छा में कोई विरोधाभास नहीं हैं।

पी डब्लू *4* के रूप में नवीन चंद्र चंदोला पुत्र हीरा वल्लभ चंदोला को पेश किया गया है, जिन्होंने अपनी मुख्य पृच्छा में यह कथन किया है कि वह सी *90/9* मानक नगर, लखनउ में पिछले *16-17* साल से रह रहे हैं। उक्त मकान सरकारी आवास है। गवाह ने यह बताया है कि सी *90/9* में जगन्नाथ नाम का व्यक्ति तथा उनकी लड़की गीता इस मकान में कभी भी नहीं रहा है तथा उनका कोई भी पुत्र नवयुग विकास विद्यालय में नहीं पढ़ता है। प्रति पृच्छा में गवाह ने यह बताया है कि सी *90* ब्लाक में *16* क्वार्टर हैं, जो सरकारी आवास हैं, जिसमें किराए पर भी लोग रहते हैं आर डी एस ओ द्वारा चेकिंग कभी कभी होती है। गवाह का बयान पत्रावली पर दाखिल छात्रवृत्ति पंजिका से मिलान करने पर यह स्पष्ट होता है कि कक्षा तृतीय *1999-2000* में सूची *7* पर छात्र गीता कुमारी पुत्री जगन्नाथ नि० सी *90/9* मानक नगर, लखनउ का नाम दर्ज है, जबकि उक्त पते पर गीता कुमारी पुत्री जगन्नाथ कभी निवास नहीं करती रही है। सी *90* ब्लाक में गवाह के कथनानुसार *16* क्वार्टर हैं, किंतु प्रति पृच्छा में

सी *90/9* के बावत कोई स्पष्ट सवाल नहीं किया गया है, जिससे यह परिलक्षित होता है कि अभियुक्तगण को इस बात की जानकारी थी कि सी *90/9* में गीता कुमारी पुत्री जगन्नाथ निवास नहीं करते थे, उक्त पता विद्यालय के छात्रवृत्ति पंजिका में फर्जी तरीके से दर्ज किया गया है, जिससे गीता कुमारी पुत्री जगन्नाथ का नाम छात्र पंजिका में दर्ज किया जाना संदेह के घेरे में आता है, जिससे अभियोजन कथनों को समर्थन मिलता है।

पी डब्लू *5* के रूप में विजय वर्मा पुत्र श्रीपाल को परीक्षित कराया गया है, जिसने अपनी मुख्य पृच्छा में कथन किया है कि मेरे लड़के मनोज व विनोद, नवयुग विद्यालय के कक्षा *4* व कक्षा *1* में पढ़ते हैं। मेरे लड़कों को हरिजन की छात्रवृत्ति नहीं मिली थी। प्रति पृच्छा में भी इस गवाह ने अपनी मुख्य पृच्छा के कथनों का समर्थन किया है तथा कोई स्पष्ट विरोधभास प्रतीत नहीं होता हैं। छात्रवृत्ति पंजिका के परिशीलन से यह स्पष्ट है कि कक्षा *1* में छात्र विनोद कुमार वर्मा का नाम कमांक *13* पर दर्ज है, जिसे विजयकुमार वर्मा का पुत्र दिखाया गया है, किंतु विनोद कुमार वर्मा के नाम के आगे विजय कुमार वर्मा का हस्ताक्षर, साक्षी विजय कुमार के साक्ष्य के नीचे हस्ताक्षर से स्पष्टतः भिन्न है, जिससे यह परिलक्षित होता है कि विनोद कुमार के पिता विजय कुमार का हस्ताक्षर कूट रचित रूप से बनाया गया है।

पी डब्लू *6* के रूप में राज किशोर पुत्र कामता प्रसाद को परीक्षित कराया गया है, जिन्होंने अपनी मुख्य पृच्छा में यह कथन किया है कि उसका लड़का सूरज, नव युग विकास विद्यालय मेंहदीखेड़ा मानक नगर में कक्षा *3* में पढ़ता था, उसे हरिजन समाज कल्याण की छात्रवृत्ति नहीं मिली थी, उसके लडके का नाम गौतम कुमार नहीं है तथा उसके मोहल्ले व उसके गांव में उसके नाम का कोई व्यक्ति नहीं रहता है। प्रति पृच्छा में उक्त गवाह ने यह बताया है कि विजय वर्मा उसके पड़ोस में रहते हैं, उसके लड़के का एडमीशन मेरे लड़के के एडमीशन के *2* दिन के अंतर में हुआ था। उक्त गवाह के बयान तथा छात्रवृत्ति पंजिका के मिलान से यह स्पष्ट है कि राज किशोर के पुत्र का नाम गौतम दर्ज है, जबकि राज किशोर के पुत्र का नाम वास्तविक रूप में सूरज है। इस गवाह द्वारा यह स्पष्ट किया गया है कि उसके नाम का अन्य कोई व्यक्ति उसके गांव में नहीं रहता है, जिसका खण्डन नहीं किया गया है। गवाह के बयान से यह परिलक्षित होता है कि छात्रवृत्ति पंजिका नियमों का उल्लंघन करते हुए मनगढंत रूप से तैयार की गयी है, जिसका वास्तविकता से कोई सरोकार नहीं है।"

24. Shri Vikas Vikram Singh has further submitted that a bare perusal of the statements of P.W.2/Vinod Kumar Singh, P.W.3/Gautam Kumar, P.W.4/Naveen Chandra, P.W.5/Vijay Verma and P.W.6/Raj Kishore indicates that the prosecution case was established before the Trial Court beyond reasonable doubt. The statements of P.W.4/Naveen Chandra, P.W.5/Vijay Verma, P.W.6/Raj Kishore, who are the guardians/fathers of the children whose scholarship under the SC/ST Welfare Scheme was not disbursed and they also deposed that no scholarship amount was received by them. It is a case of clear embezzlement wherein the Trial Court recorded its findings and convicted the answering respondents.

25. He has further submitted that the judgment dated 16.11.2021

passed by the Appellate Court in Criminal Appeal No. 70 of 2014 indicates that the judgment of the Trial Court was reversed only on the ground that the inquiry was faulty. As per the settled principle of law, a person cannot be convicted if there is reasonable doubt. It appears that the Appellate Court extended the benefit of doubt to the answering respondents. Otherwise, the judgment of conviction passed by the Trial Court is based on sound reasoning and the evidence available on record.

26. Heard learned counsel for the parties and perused the record.

27. A bare perusal of sub-section (2) of Section 199 CrPC clearly indicates that no Court shall take cognizance of an offence under Chapter XXI of the IPC (Referable to Defamation Case), including an offence of defamation, alleged to have been committed against a constitutional functionary or a public servant in respect of acts done in the discharge of his official duties, except upon a written complaint made by the Public Prosecutor before the Court of Session. Admittedly, in the present case, the complaint has not been instituted by the Public Prosecutor but by answering respondent nos. 2 and 3, who are private persons. Thus, the statutory bar contained in Section 199(2) CrPC is clearly attracted.

28. The record further reveals that both the applicants were holding responsible posts under the State. One of the applicants had lodged the FIR, while the other had conducted the enquiry in his official capacity. In such circumstances, the answering respondents could not have filed the present complaint in respect of acts performed by the applicants in discharge of their official duties and in good faith.

29. Similarly, the case of the applicants is supported by the Fifth Exception to Section 499 IPC, which provides that it is not defamation to express, in good faith, any opinion respecting the merits of any civil or criminal case decided by a Court of justice or respecting the conduct of any person as a party, witness or agent in such proceedings.

30. After going through the entire record and considering the submissions advanced by learned counsel for the parties, this Court finds that the applicants were discharging their official duties as public servants. One of the applicants conducted the inquiry, while the other

lodged the FIR regarding the alleged embezzlement of scholarship funds for distribution to the guardians of SC/ST students. The acts complained of were performed in the discharge of their official duties and in good faith.

31. Though, in the appeal filed by the answering-respondents, the judgment of the Trial Court was reversed on the technical ground that the inquiry was not conducted in accordance with law. The applicants had performed their duties in good faith under the law and they cannot be proceeded against on the complaint filed by the answering respondents merely because the Appellate Court had acquitted the answering respondents.

32. In view of the aforesaid discussion, the applications deserve to be allowed and are accordingly **allowed**.

33. The proceedings of Complaint Case No. 19897 of 2022 pending before the Magistrate including the summoning and cognizance order dated 14.10.2022 are hereby quashed and set-aside qua the applicants, namely, Gautam Kumar @ Gautam Kumar Bose and Vinod Kumar Singh.

(Brij Raj Singh,J.)

August 11, 2026
Mohit Singh/-

Digitally signed by :-
MOHIT SINGH
High Court of Judicature at Allahabad,
Lucknow Bench