

despite cognizable offences being made out. The Ld. ACMM, by way of his order dated 26.08.2020 passed in Ct. Case. No. 04/2020, has failed to consider the Petitioners' Application on merits and has instead held that, since no prior sanction under Section 196 CrPC has been obtained by the Complainants (Petitioners herein), the complaint / application deserves to be dismissed as not tenable in the eyes of law. A true copy of the Impugned Order of the Ld. ACMM-01, Rouse Avenue Courts, New Delhi dated 26.08.2020 is annexed herewith and marked as **Annexure P-1.**

2. The Petitioner No.1 is a public personality and a political figure who is a member of the Polit Bureau of the Communist Party of India (Marxist) (hereinafter "**CPI(M)**"). The Petitioner No.1 was a Member of Parliament in the Rajya Sabha from 2005 to 2011. She has dedicated her life to social causes, and is a public figure of eminence.
3. The Petitioner No.2 is also a political figure of repute and is a member of the Central Committee of the CPI(M). He also holds the post of the Secretary of the Delhi State Committee of CPI(M).
4. That the Respondent No.1 is the State, and the Respondent No.2 is the Commissioner of Police, Delhi Police / prosecuting agency.
5. The Petitioners had made Police Complaint dated 29.01.2020 and representation dated 31.01.2020 (in terms of Ss.154(1) and (3) CrPC) against Mr. Anurag Thakur, Minister of State for Finance, Government of India (hereinafter "**Accused No.1**") and Mr. Parvesh Verma, Member of Parliament (**MP**) (hereinafter "**Accused No.2**") alleging that they had made communal and incendiary statements amounting to hate speech. Thereafter, on 02.02.2020, the Petitioners once again addressed a letter to the SHO, PS Parliament Street, forwarding the above-

mentioned complaints and reiterating the request that FIRs be immediately filed against the accused persons. The representations of the Petitioners highlighted the urgency in taking immediate action in this regard in view of the incident of violence on 30.01.2020, where an armed man shot at students of Jamia Milia Islamia University (JMI), an incident which can be directly attributed to the statements / calls for violence given by the accused persons. True Copy of Police Complaint dated 29.01.2020 is annexed herewith as **Annexure P-2** and true copies of Representations dated 31.01.2020 and 02.02.2020 made by the Petitioners are annexed herewith as **Annexure P-3 (Colly)**.

6. In brief, the complaint against Accused No. 1 pertains to the widely televised and publicized speech given by Accused No.1 on 27.01.2020 at a rally at Rithala, Delhi where he led a chant of “*desh ke gaddaron ko, goli maaron saalon ko*” (shoot the traitors). With this speech, Accused No.1 exhorted the large crowd present at the rally to shoot the traitors, referring to persons who participated in peaceful protests against the Citizenship (Amendment) Act, 2019 (hereinafter “CAA”) and the National Registry of Citizens (hereinafter “NRC”). The complaint against Accused No.2 is in reference to his widely publicized statements on 27.01.2020 and 28.01.2020, wherein the Accused No. 2 made incendiary statements inter-alia openly threatening use of force on the protestors at Shaheen Bagh, many of whom belong to the Muslim community, and in an entirely offensive manner portraying them as invaders who would invade houses and rape women and kill them. The accused persons made the aforesaid statements with the full knowledge and intention that such statements would have the propensity of promoting enmity and hatred towards persons of certain communities and would also directly instigate violence. These speeches, have, in fact, directly contributed to multiple incidents

of violence and also a full-scale riot which has resulted in the death of about 53 persons and large-scale destruction of property. Detailed facts and circumstances surrounding the commission of the offence are given in paragraph 14 of the present Petition (below).

7. The Police Complaint was made by the Petitioners as responsible and also aggrieved persons. It is settled law that anyone can set criminal law into motion and there is no concept of locus standi in criminal law at the stage of providing information in relation to cognizable offences. Further, the Police Complaint being one alleging widely publicized hate speech by Members of Parliament, the Petitioners are privy to the utterances and to the complete facts of the case.
8. When the investigating agency failed to act on the Police Complaint, the Petitioners filed an Application under Section 156(3) CrPC seeking registration of FIR before the competent Court, which was registered as Ct. Case No.04/2020. The Application sought, *inter alia*, registration of FIR against the accused persons for offences under Sections 153A/153B/295A/298/504/505/506 of the Indian Penal Code, 1860 (hereinafter “IPC”). A copy of the 156(3) Application (along with Annexures) preferred by the Petitioners before the Ld. ACMM on 4.2.2020 is annexed herewith and marked as **Annexure P-4**.
9. The Application under Section 156(3) was listed for hearing on 05.02.2020, and thereafter on 11.02.2020. On the said date, it was intimated to the Court that the complaint had been forwarded to the Special Commissioner, Crime Branch to investigate into the Complaint of the Petitioners and a short status report was also filed by the Police. True copies of Orders dated 05.02.2020 and 11.02.2020 are annexed herewith and marked **Annexure P-5 (Colly)**. True copy of the Delhi Police

Status Report dated 11.02.2020 is annexed herewith and marked **Annexure P-6.**

10. Thereafter, on 26.02.2020, The police filed a detailed status report, opining that no cognizable offence was made out on the contents of the alleged speeches. It is pertinent to note that the objection of the Police was limited to this fact, and there was no objection that the Petitioners was required to obtain a prior sanction for registration of FIR. True copy of the Status Report dated 26.02.2020 is annexed herewith and marked **Annexure P-7.** The Ld. ACMM heard arguments at length on 26.02.2020 on the Application of the Petitioners and reserved the same for orders on 02.03.2020. True copy of Order dated 26.02.2020 is annexed herewith and marked **Annexure P-8.**
11. It came to the knowledge of the Petitioners subsequent to such hearing, on the same day, i.e., 26.02.2020, that some persons being aggrieved by the said speeches (subject matter of the Complaint of the Petitioner), along with certain other objectionable and incendiary utterances and acts by other prominent persons, approached this Hon'ble Court by way of Writ Petition (Criminal) No. 565 of 2020. This Petition, which came to be heard upon an urgent mentioning before the concerned Court was seeking, *inter alia*, registration of FIR against three Bhartiya Janata Party (**BJP**) leaders, Kapil Mishra and the proposed accused persons in the Complaint of the Petitioners herein. When the matter was taken up by this Hon'ble Court on 26.02.2020, this Hon'ble Court directed the Special Commissioner of Police (present in court at such hearing) to take immediate action on the inflammatory speeches made by the accused persons, amongst others; and accordingly place such decision before the Court. The matter was listed the very next day on 27.02.2020, given the urgent and grievous concerns brought out by the said Petition. Thereafter, on 27.02.2020, this Hon'ble Court issued notice to the

Respondents, and granted time to the Union of India to file a detailed counter affidavit and adjourned the matter to 13.04.2020. True copies of Orders dated 26.02.2020 and 27.02.2020 passed by this Hon'ble Court in WP(C) No.565/2020 titled *Harsh Mander v. State* are annexed herewith and marked as **Annexure P-9 (Colly)**.

12. On 02.03.2020, when the matter was listed for orders, the Ld. ACMM, in view of the pendency of the writ petition seeking similar reliefs against the accused persons before this Hon'ble Court, deemed it appropriate not to direct registration of an FIR till the outcome of the said writ petition, and adjourned the matter to 23.04.2020. Thereafter, the matter was adjourned from time to time on account of the lockdown. True Copy of Order dated 02.03.2020 is annexed herewith and marked **Annexure P-10**.
13. Aggrieved by the Order dated 02.03.2020 passed by the Ld. ACMM, Complainants preferred WP (CrI) No.670/2020 before this Hon'ble Court, seeking directions / liberty to the Ld. ACMM to pass Orders on the Petitioners' Application under S.156(3) CrPC. This Hon'ble Court, vide Order dated 05.08.2020, was pleased to direct the Ld. ACMM to dispose the Petitioners' Application under Section 156(3) CrPC. True copy of Order dated 05.08.2020 passed by this Hon'ble Court in WP (CrI) No. 670/2020 is annexed herewith and marked **Annexure P-11**.
14. Brief facts giving rise to the Police Complaint of the Petitioners are as follows:
 - a. On 27.01.2020, Accused No.1 gave a speech during a rally in Rithala, Delhi where he repeatedly led a chant of "*desh ke gaddaron ko, goli maaron saalon ko*". The video of this speech and the statements of Accused No.1 were widely publicized on several news outlets and shows Accused

No.1 inciting and instigating the large crowd present at the rally which included his supporters and BJP members to attack and shoot people who are protesting against the CAA and NRC, by referring to the protestors as ‘*gaddars*’ or traitors. The exhortation to violence is evident in the fact that Accused No.1 repeatedly chanted the slogan, “*desh ke gaddaaron ko*”, getting progressively louder and more animated and was given an enthusiastic response “*goli maaro saalon ko*” each time from the assembled crowd. Accused No.1 is also seen calling upon BJP supporters to shout the slogan so that it is more audible to the other office bearers present at the rally, including Union Minister, Mr. Giriraj Singh among others. Notably, it cannot be anyone’s case that such speeches were given in the course of performance of official acts. The news reports on Times of India and NDTV on the speech given by Accused No.1 are already annexed to the 156(3) Application. A copy of the video showing Accused No.1’s speech published by India Today is annexed herewith and marked as **Annexure P-12**.

- b. Accused No.1 is a young and influential member of the BJP, and has a considerable following on all his social media. As an elected representative holding a powerful position, Accused No.1 exerts considerable influence over the masses and hence his statement is a direct instigation to mobilise the masses to commit violence.
- c. On 27.01.2020 while giving a campaign speech at Vikaspuri, Accused No.2, an influential BJP MP from the West Delhi Lok Sabha Constituency, having won a second term in office with the highest recorded victory margin for that constituency, openly threatened the protestors at Shaheen Bagh. Accused No.2 claimed that if the BJP is elected in Delhi, Shaheen Bagh would be cleared within

one hour, a statement that is clearly a threat to use force against peaceful protestors at Shaheen Bagh, majority of whom belong to the Muslim community. He also threatened to demolish mosques making the statement that if BJP is elected in Delhi, all existing mosques built on government land will be demolished. These speeches were made as part of a campaign speech by an elected representative, and are evidently communal and intended to incite enmity, hatred and violence against the Muslim community and towards all those exercising their legitimate right to protest against government policies.

- d. Thereafter, on 28.02.2020, Accused No.2 gave an interview to ANI which can be found on the official Twitter handle of ANI as well as in several news reports. A copy of the video of the interview of Accused No.2 available on the official ANI Twitter handle is annexed herewith and marked as **Annexure P-13**. During this interview, referring to the protestors at Shaheen Bagh, Accused No.2 has made the following statement:

“laakhon log ikkhatte hote hai [Shaheen Bagh]...Yeh log aapke gharon mein ghusenge, aap ki behen betiyon ko uthaienge, unko rape karenge, unko marenge. Isiliye aaj samay hai. Kal Modi ji nahin aayenge bachane, kal Amit Shah ji nahin aayenge bachane...”

- e. The Shaheen Bagh protests were attended by a large number of women, majority of whom belong to the Muslim community. The Shaheen Bagh protest was widely accepted as a peaceful protest, where the protestors uphold the values of the Constitution of India primarily the ideals of secularism and democracy which are core tenets of the Indian nation. None of the protestors are alleged to have called for any violence or issued any threats, and in fact, have preached non-violence and adherence to the law while exercising their constitutional right to protest. The

aforesaid statement of Accused No.2, is hence provocative and deliberately intended to incite hatred and enmity against members of a particular community by portraying them as dangerous invaders. The intention of Accused No.2 to promote ill-will and communal tension in the minds of Hindus against Muslims is evident in the deliberately false and incendiary statements of Accused No.2. By making these statements, Accused No.2 has directly endangered the lives of the Shaheen Bagh protestors. Copies of the news reports on the hate speeches of Accused No.2 are already annexed with the Application under Section 156(3) CrPC.

- f. Subsequently, the Election Commission of India (ECI) passed an order on 29.01.2020 taking cognizance of the seriousness and gravity of the hate speeches of Accused Nos. 1 and 2, and made a preliminary finding that the speeches were a violation of various provisions of the Model Code of Conduct for Political Parties and Candidate. The ECI in its order dated 29.01.2020 passed an order that the accused persons would no longer be treated as 'leaders' (star campaigners) for the purposes of Explanation (1)(a) to sub-section (1) of Section 77 of the Representation of the People Act, 1951. True copy of the ECI Order dated 29.01.2020 is annexed with the Application under Section 156(3) CrPC.
- g. As a direct consequence of these speeches by the accused persons, an outfit calling itself Hindu Sena issued a press release on 29.01.2020 threatening the protestors at Shaheen Bagh making allegations that "*the people assembled at Shaheen Bagh are speaking the language of Pakistan*" and issued a call to violence asking organisations and general public to use force to remove the protestors from Shaheen Bagh on 02.02.2020. True copy of the IndiaToday news

report dated 29.01.2020 which replicated the Hindu Sena press release is already annexed to the Application under Section 156(3) CrPC.

- h. On 29.01.2020, the Petitioners addressed a complaint to the Commissioner of Police against Accused Nos.1 and 2, seeking immediate registration of FIR for the hate speeches made by the accused persons. The Petitioners also addressed a follow-up representation to the Commissioner of Police in view of an incident of violence at JMI on 31.01.2020 reiterating their request for an immediate registration of FIRs against Accused Nos. 1 and 2 for the cognizable offences committed by them under Sections 153A/53B/295A/298/504/505/506 of the IPC, amongst others. True copy of the letters dated 29.01.2020 and 31.01.2020 are already annexed to the 156(3) Application.
- i. On 30.01.2020, the ECI issued separate orders against Accused Nos. 1 and 2, barring them from campaigning for the Delhi elections for a period of 72 hours and 96 hours, respectively. The ECI, in its order noted that the statements had the “potential to aggravate existing differences and create mutual hatred between different religious communities” in violation of the provisions of the Model Code of Conduct and the Representation of the People Act, 1951, particularly Section 123(3A) and Section 125 which provides that a person who in connection with an election promotes or attempts to promote on grounds of religion shall be punishable with imprisonment for a term which may extend to three years, or with fine, or both. Copies of the ECI orders dated 30.01.2020 are already annexed to the 156(3) Application as Annexure P-9 and P-8, respectively. It is pertinent to note that neither of the accused persons has challenged the decision of the ECI or denied that they had committed the offences as specified herein. The orders of

the ECI are *prima facie* recognition of the commission of hate speeches by the accused persons.

- j. On 30.01.2020, a man who identified himself as “Rambhakt Gopal”, shot directly at students protesting outside JMI and injured one student, allegedly in full view of the Delhi Police who stood by as mute spectators. The shooter posted updates on Facebook moments prior to the attack including statements like “*Shaheen Bagh...khel khatam*”. This attack is directly attributable to the instigation of both the accused persons, especially Accused No.1 who openly exhorted his supporters to shoot the protestors. True copy of the news reports on Scroll.in and the Week dated 30.01.2020 on the attacker who shot at protestors outside JMI are already annexed to the 156(3) Application.
- k. On 31.01.2020, BJP posted a video on its official Instagram handle wherein pictures of protestors and protest sites including Shaheen Bagh were featured, with slogans like “*samay aa gaya chalo nikalein dilli se dharne waalon ko* (Time has come to remove protestors from Delhi)” and “*toh jawab do unko dilli, tang karte Shaheen Bagh se* (the Delhi people should give a strong answer to protestors at Shaheen Bagh). The video is evidently inflammatory and constitutes a threat towards the Shaheen Bagh protestors. A true copy of the video is already annexed to the 156(3) Application.
- l. In yet another incident of shooting, on 01.02.2020 just days after the speeches by these persons, a man fired shots at Shaheen Bagh close to a large crowd of unarmed protestors and was heard saying “*Humare desh mein sirf Hinduon ki chalegi aur kisi ki nahi* (in our country only Hindus will prevail)”. True copy of the news report on NDTV on the shooter who opened fire at Shaheen Bagh dated 01.02.2020 is already annexed to the 156(3) Application.

- m. On 02.02.2020, the Chief Minister of Uttar Pradesh, Ajay Bisht / Yogi Adityanath, while campaigning for BJP in Delhi, made incendiary innuendos/ statements that the Delhi Chief Minister, Arvind Kejriwal “*supplies biryani*” to protesters at Shaheen Bagh and that they instead ought to be fed bullets instead of biryani. It is evident that this statement is deliberately targeted at the Muslim community, since the innuendo of biryani was aimed at the Muslim community, and this statement is hence a brazen and open threat to commit violence against them.
- n. On 02.02.2020, the Petitioners addressed a letter to the SHO, Parliament Street Police Station enclosing the letters dated 29.01.2020 and 31.01.2020, disclosing that yet another incident of violence, namely the shooting at Shaheen Bagh, took place since the filing of their complaint and requested that FIRs immediately be filed against the accused persons.
- o. On the night of Sunday, 02.02.2020, two unidentified gunmen fired shots near Jamia Milia Islamia where a large number of protestors were gathered.
- p. On 04.02.2020, a mob of people chanting “*desh ke gaddaron ko, goli maaron saalon ko*” aggressively and threateningly approached protestors at Jamia Milia Islamia.
- q. Accused No.2 made “vitriolic aspersions” against the Delhi CM, Arvind Kejriwal, accusing him of being a “terrorist” for standing in support of the Shaheen Bagh protestors. The ECI issued an order dated 05.02.2020 against Accused No.2 strongly condemning him for the aforesaid statements and barring him from campaigning for BJP for 24 hours, for violating the provisions of the Moral Code of Conduct.
- r. The Application under S.156(3) CrPC was heard on 05.02.2020, and the Ld. ACMM called for the ATR from

the DCP, District New Delhi/DCP concerned returnable on 11.02.2020.

- s. The Deputy Commissioner of Police, New Delhi filed a status report on 11.02.2020 pursuant to the order of the Ld. ACMM of 05.02.2020, stating that the Complaint is being dealt with by the Special Investigation Unit of the Crime branch in the Rohini District and that the complaints of the Petitioners along with the order dated 05.02.2020 have been forwarded there for further compliance. On the same day, the SI, Crime Branch filed a status report that two separate FIRs had been registered in relation to the incidents of shooting at JMI and Shaheen Bagh and the perpetrators had been arrested, and sought for 8 weeks' time to conclude the enquiry and submit a report on the present complaint. Taking note of the fact that the such statements are being made on a regular basis and contributing to the already volatile situation, Ld. Magistrate declined to grant 8 weeks for filing status report, and granted the ISC, Crime branch 15 days to file the same.
- t. On 11.02.2020, BJP MP, Ramesh Bidhuri said there is nothing wrong with saying that traitors should be shot. Identifying protestors as 'traitors', Mr. Bidhuri said "*what is wrong with saying that traitors should be shot. After all, are such people not hanged after being tried*". On 13.02.2020, Mr. Amit Shah made a statement at the Times Now Summit 2020 denouncing the hate speech of Accused No.1 and stated that statements like "*goli maaro*" and "*Indo-Pak match*" should not have been made by BJP leaders while campaigning for Delhi elections. Similarly, Delhi BJP President, Manoj Tiwari admitted in an interview that the BJP made hate speeches including statements like "*goli maaro*" and that those who make such speeches should be permanently removed.

- u. On 23.02.2020, Kapil Mishra threatened to take the streets and gave a three-day ultimatum to the Delhi Police to clear the streets. He issued a call through Twitter urging people to prevent another Shaheen Bagh protest from taking place near the Jaffrabad metro station, where a number of protestors, many of whom are women, had peacefully gathered to protest against CAA and NRC. Minutes after this speech, the worst communal violence broke out in North-East Delhi, including in Chandbagh, Bhajanpura, Gokulpuri, Karawal Nagar, Jaffrabad and Maujpur, where Muslims were systematically targeted. Videos circulated of the violence show large number of rioters mercilessly killing, beating up Muslim persons, while chanting “*Jai Shri Ram*” and “*Hinduon ka Hindustan*”. Houses and shops belonging to Muslim persons were specifically targeted, and the mob looted, vandalized and set fire to these establishments. Several mosques and masjid were also demolished. The violence has continued for over 3 days, and over 40 people have died and over 300 people have been injured.
- v. On 25.02.2020, while the violence against Muslim persons was ongoing, BJP MLA, Abhay Verma led a march in Lakshmi Nagar with the slogan “*goli maaro saalo ko*” and “*Jo Hindu hit ki baat karega, wohi desh pe raj karega*”. Evidently such incidents of violence are a direct result of the incendiary and communal statements as well as the threats of violence and criminal intimidation made by the accused persons, which has put the lives of innocent civilians in great danger.
- w. On 29.02.2020, a mob of people was aggressively chanting “*desh ke gaddaron ko, goli maaro saalon ko*” during rush hour at New Delhi’s busiest metro station, Rajiv Chowk metro station, following which six people were detained.

On 02.03.2020, BJP supporters marching in procession to Union Home Minister, Amit Shah's rally in Kolkata were heard shouting the "*goli maaro*" slogan. It is evident that following the speeches made by the accused persons and the lack of repercussions for such blatantly communal and incendiary hate speeches by the accused persons, more and more people, including political leaders as well as general public have been emboldened to issue brazen threats to commit violence against people, specifically Muslim persons and protestors.

15. It is submitted that the acts of the accused persons, originating from the two speeches/ utterances complained of, have found vitriolic repetition from members of the ruling dispensation, and have found implicit and explicit sanction from the Centre as well as from the Delhi Police. It is due to a failure of Governmental and Investigative authorities to act against such directly communal and incendiary speeches, that the same have been repeated across the board and may even have precipitated the violence in North-east Delhi. If properly investigated, the police would even find it appropriate to include charges of abetment to murder, grievous hurt and rioting against the Accused persons. Instead, ignoring the directly communal speeches and incitement to violence, the Police have held various students and activists culpable for the violence in North-East Delhi and have wrongly described speeches and calls for peaceful protest as being incendiary.
16. In such circumstances, where the State and the Police have pointedly excused the speeches of the Accused and other persons, the Petitioners submit that the only recourse available to them is judicial. The Petitioners' judicial recourse has been barred by the Ld. ACMM without considering that the very State that is supportive of the Accused persons (who are sitting Members of Parliament) would function as the Sanctioning

Authority. Public policy and the interest of justice demand that this Hon'ble Court form a view on the **content** of the speeches given by the Accused on the basis of settled law and opine whether cognizable offence is made out thereupon. Petitioners are therefore approaching this Hon'ble Court seeking exercise of inherent powers to set aside the Impugned Order and further to direct registration of an FIR on the Complaint of the Petitioners forthwith.

17. In any case, and without prejudice to the rights and contentions of the Petitioners in the present Petition, Petitioners are also applying to the appropriate authority for Sanction under S.196 CrPC, such that they may then exercise the option of preferring a Complaint under Section 200 read with Section 156(3) CrPC before the Ld.ACMM-01. It is submitted, however, that the present Petition involves substantial questions of law and public policy, and this Court may proceed to decide the same expeditiously.
18. The Petitioners are moving the present Petition on inter-alia the following grounds, which are without prejudice to one another.

GROUND

- A. FOR THAT the Impugned Order passed by the Ld. ACMM is perverse and against the tenets of law. It places reliance on two judgments of the Hon'ble Supreme Court, being *Anil Kumar* and *L. Narayana Swamy*, which are not applicable in the present case and further contrary to judgments of co-ordinate benches, and larger benches of the Hon'ble Supreme Court as to the fact that no cognizance is taken at the stage of passing directions under Section 156(3) CrPC, and accordingly, that no sanction is required at such stage.
- B. FOR THAT the Ld. ACMM, as also this Hon'ble Court, are both empowered under law to rely upon judgments of larger bench strength/ coordinate bench strengths of the Hon'ble Supreme

Court, and there is no compulsion to follow findings of the Hon'ble Supreme Court, without appreciating the correctness of such findings when seen in light of such larger bench/ coordinate bench decisions. It is settled law that a Hon'ble High Court, when confronted with contrary decisions of the Supreme Court emanating from Benches of coequal strength, is not necessarily bound to follow the decision later in point of time, but must follow the one which in its view is better in point of law.

- C. FOR THAT the Impugned Order erroneously dismisses the Petitioners' application under Section 156(3) CrPC on the ground that a prior sanction is required whereas as per Section 196 CrPC, the requirement of obtaining a prior sanction is only at the stage of cognizance and not at the stage of registration of FIR.
- D. FOR THAT a plain reading of Section 196 CrPC demonstrates that the sanction to be taken thereunder is a sanction for *taking cognisance*. It is settled law that no sanction is required under either Section 195 or 196 CrPC for the registration of an FIR and/or for investigation.
- E. FOR THAT if the requirement of prior sanction while filing an Application under Section 156(3) CrPC would be given judicial imprimatur by this Hon'ble Court, then it would lead to an undesirable circumstance where such sanction would be on the basis of materials that are *de hors*:
 - a. Evidence/ documents gathered during investigation by an investigating agency competent so to do;
 - b. Statements recorded under Section 161 CrPC by an investigating agency competent so to do;
 - c. Statements recorded under Section 164 CrPC at the instance of an investigating agency competent so to do;

d. A draft charge-sheet prepared by an investigating agency competent so to do;

Moreover, it is evident that there cannot be two sanctions under law, one prior to the FIR, and the second after completion of investigation.

- F. FOR THAT the Ld. ACMM has failed to account for the language of Section 196 CrPC and the contrasting provision under Section 132 CrPC. The latter provision clearly specifies that there can be no prosecution against a person for offences under Sections 129, 130 or 131 except with prior sanction of the Central Government. However, the bar under Section 196 is not applicable to initiation of prosecution but only to taking cognizance. The Supreme Court in *Ram Kumar v. State of Haryana* reported in 1987 SCR (1) 991 has clearly held that the sanction under Section 132 CrPC acts as a bar for registration of a complaint by the Complainant whereas, the sanction under Section 197 CrPC acts as a bar for taking cognizance and trying the accused. Any other interpretation of Section 196 and 197 CrPC would render the words of the provision meaningless.
- G. FOR THAT the Ld. ACMM failed to take into account the decision of the Hon'ble Supreme Court in the case of *State of Karnataka and Anr. v. Pastor P. Raju* reported in (2006) 6 SCC 728, where it was categorically held that there is no bar against registration of an FIR under Section 196 CrPC. The said case categorically held sanction is required to be obtained only prior to taking cognizance of an offence and not prior to registration of an FIR.
- H. FOR THAT the Ld. ACMM has failed to account for the catena of decisions of the Hon'ble Supreme Court where it has been conclusively decided that proceedings under Section 156(3) CrPC would not amount to taking cognizance of an offence.

- I. FOR THAT a 3 Judge Bench of the Hon'ble Supreme Court in the case of *Gopal Das Sindhi v. State of Assam* reported in AIR 1961 SC 986 has held that the bar under Section 190 CrPC would come into play only if a Magistrate is taking cognizance of an offence, and not when a complaint is sent under Section 156(3) for investigation by the police.
- J. FOR THAT it is settled law that an order of a Magistrate directing registration of a case under Section 156(3) CrPC is in the nature of a peremptory reminder or intimation to the police to conduct an investigation, and is a follow up to non-registration of an FIR despite intimation under Section 154(1) or Section 154(3). and does not amount to taking cognizance of an offence. (*Samaj Parivartan v. State of Karnataka* reported in 2012 7 SCC 407 and *Anju Chaudhry v. State of Uttar Pradesh and Anr.* reported in 2013 6 SCC 384).
- K. FOR THAT such requirement of prior sanction at the stage of Section 156(3) would impose a fetter on the powers of a Ld. MM/ Special Judge, and would lead to a peculiar circumstance where an investigating agency may register an FIR without sanction under Section 154(1) or 154(3) CrPC, but a Ld. Judicial Officer would not have powers to so direct registration of an FIR.
- L. FOR THAT the Ld. ACMM, while passing the Impugned Judgment, failed to note that both *Anil Kumar* and *L. Narayana Swamy*, were judgments emanating out of the Prevention of Corruption Act, 1988, and the peculiarities associated with such Acts were even noted by the Ld. ASG (as he then was) in *Manju Surana*.
- M. FOR THAT the Ld. ACMM has erroneously relied on the case of *Anil Kumar v. MK Aiyappa*, reported in (2013) 10 SCC 705

to hold that, in the absence of prior sanction, the Petitioners' Application under Section 156(3) CrPC is not maintainable. The decision in *Anil Kumar* is not applicable to the facts of the present case since the finding therein deals with the requirement of a sanction under Section 19 of the PC Act. The Ld. ACMM has erred in that the judgement and the finding therein concerns sanction under Section 19 of the Prevention of Corruption Act, 1988 and not under the CrPC. The finding of the Court is therefore distinguishable on facts, since offences under the Prevention of Corruption Act are technical in nature and deal with allegations against a public servant and would hence require a higher evaluation standard. The decision in *Anil Kumar* followed by the decision in *L. Narayana Swamy v. State of Karnataka* reported in 2016 9 SCC 598, are therefore specific to the allegations under Section 19 of the Prevention of Corruption Act and are not applicable to the facts of the present case.

- N. Furthermore, without prejudice to the preceding grounds, if the aforementioned finding in *Anil Kumar* is held applicable to cases other than under the PC Act, the said ratio would be *per incurium* in view of settled law. As demonstrated above in a catena of decisions, it is settled that proceedings under Section 156(3) CrPC directing registration of FIR would not amount to taking cognizance of an offence and the requirement of obtaining a sanction under Section 196 CrPC is only applicable at the time of taking cognizance and not at the time of registration of an FIR.
- O. FOR THAT applying the rule laid down in the *Anil Kumar* (supra) case to proceedings under the CrPC and not just under the Prevention of Corruption Act, would result in gross and manifest injustice, where a person aggrieved by police inaction would first have to seek sanction from the State, and only then approach the Court under Section 156(3) CrPC. This is

particularly true in the instant case, which sought registration of an FIR for offences relating to hate speech uttered by two Members of Parliament. In this case, the content of the inflammatory speeches and the fact of whether they were made has not been disputed by the accused persons. However, despite the filing of a complaint on 29.01.2020, and prompt filing of an application under Section 156(3) CrPC, no action has been taken by the police and no decision on merits has been passed till date, despite there being detailed arguments on merits, delaying the registration of an FIR by several months. This is contrary to the maintenance of public order and policy and further severely hinders access to justice. It also places an unjustified fetter on the powers of the Magistrate under Section 156(3) CrPC, which is contrary to the intent of the legislature as elucidated in a catena of judgments.

- P. FOR THAT the Supreme Court in *Manju Surana v. Sunil Arora and Ors*, reported in (2018) 5 SCC 557 further clarifies the position in respect of the requirement for Sanction and impliedly limits the application of the finding in *Anil Kumar* (supra) to cases under the Prevention of Corruption Act only. The bench in *Manju Surana*, after extensive discussion, referred the “conundrum arising in respect of the interplay of the PC Act offences read with CrPC”, that is, whether sanction under S.19 PC Act is a prerequisite to maintain an Application under S.156(3) CrPC, to a larger bench. It is submitted in view of the differentiation in the requirement of obtaining a sanction under the Prevention of Corruption Act and under the CrPC, the Ld. ACMM erred in holding that the finding in *Anil Kumar* (supra) would be applicable to the present case, where the Petitioners had merely sought the registration of an FIR against the accused persons.

- Q. FOR THAT the Court of Sh. Vishal Pahuja, Ld. ACMM-01, Rouse Avenue Court is a Designated Special Court to deal with cases against elected MPs/MLAs. It is the competent Court to deal with applications under Section 156(3) CrPC in respect of Complaints against elected MPs. There is no fetter to this power on the administrative side or, as demonstrated above, on the judicial side. To read such a fetter into the operation of Section 156(3) CrPC would render this Special Court otiose in respect of a number of cases seeking registration of an FIR against MPs / MLAs.
- R. FOR THAT if the rationale behind the Impugned Order is permitted to stand, then no Application under Section 156(3) CrPC would be maintainable before any Court within the territorial jurisdiction of this Hon'ble Court, in respect of offences for which sanction is required to be taken prior to cognizance.
- S. FOR THAT it is settled law that this Hon'ble Court has the power of superintendence and control over subordinate courts within its territorial jurisdiction, under Section 483 CrPC/ Article 227 of the Constitution of India. It is submitted that technical objections to maintaining an Application under Section 156(3) CrPC ought to be decided at the threshold to avoid wastage of precious judicial time and so that the Complainant is not unduly delayed in accessing justice. Furthermore, without prejudice to the Petitioners' contention on the position of law, this Court may elucidate the essential requirements for maintaining an application under Section 156(3) CrPC for the sake of certainty.
- T. FOR THAT the absence of any practice directions or any judgement of the Hon'ble Supreme Court that carves out an exception or adds to the law as laid down in *Priyanka Srivastava*

v. State of UP or the Constitution Bench decision in *Lalita Kumari v. State of UP*, there is evidently no requirement for sanction as stated in the Impugned Order.

- U. FOR THAT without prejudice to the Petitioners' primary contention that Complainants are not required to obtain sanction to obtain directions under S.156(3) CrPC from the concerned Court, it is submitted that the directions ought to be issued under Article 226 of the Constitution to the Respondent No.1/ State to publicize the manner in which such prior sanction can be obtained by a complainant/ applicant, to ensure expeditious disposal of any such proposed applications. The said directions are warranted since, although sanction is not required for registration of FIR / to entertain an Application under S.156(3) CrPC, sanction may be required in case a complainant wishes to press a private complaint under Section 200 CrPC before the concerned Court as an alternative remedy.
- V. FOR THAT the Ld. ACMM ought to have directed registration of FIR in terms of statutory mandate, as also under *Lalita Kumari v. State of UP* reported in (2014) 2 SCC 1, where it was held that the registration of FIR is mandatory under Section 154 CrPC if the information discloses the commission of a cognizable offence and no preliminary investigation is permissible. The Ld. ACMM is only required to satisfy that the Petitioners have met the requirements set out in *Sakiri Vasu v. State of Uttar Pradesh and Ors.* reported in (2008) 2 SCC 409, which have admittedly been met in the present case.
- W. The Petitioners / Complainants in the present case, already aggrieved at the failure of the Police to register an FIR for the commission of cognizable offences amounting to hate speech, have now been relegated to attempting to seek sanction from the State / Centre, a sanction which is a statutory requirement

for taking cognisance, not investigation. The Complainant is effectively being asked to step into the shoes of the investigating agency and make a case for prosecution before the Sanctioning Agency. Furthermore, any Application for Sanction by the complainant would be without the benefit of materials and evidence obtained during investigation. As the Sanctioning Authority is obligated to apply its mind to the materials and evidence before it, the Complainant is in a catch-22, where there can be no investigation without sanction, and no sanction without adequate evidence.

- X. FOR THAT the Ld. ACMM failed to take into account the decision of the Hon'ble Supreme Court in *Pravasi Bhalai Sangathan v. Union of India* reported in (2014) 11 SCC 477 where it was categorically that hate speech is determined by the likely effect of the speech on an audience and that the intention to incite hatred is irrelevant. The Supreme Court further noted that hate speech is an effort to marginalize individuals and expose them to hatred on the basis of their membership in a group, which lays the groundwork for later broader attacks from ostracism to outright violence and genocide.
- Y. FOR THAT there can be no doubt that accused persons made the aforesaid hate speeches in a huge public gathering while campaigning for the Delhi elections on behalf of BJP and that the ECI immediately took cognizance of the hate speeches and banned them for the same. The incendiary nature of the hate speeches is apparent from the prompt action and penalisation of the accused persons by the ECI.
- Z. FOR THAT the Report of Delhi Minorities Commission Fact Finding Committee on the North-East Delhi Riots of February 2020 published in July 2020 ("**DMC Report**"), while specifically noting the role of the accused persons herein, found

that the violence that broke out in North-East Delhi in February 2020 was clearly preceded and incited by BJP leaders. The DMC Report also noted that the sloganeering by Accused No.1 amounted to '*asking an entire election rally to fire bullets at the country's "traitors" within the oblique but not unmasked reference to a particular minority community*'.

- AA. FOR THAT it is not in dispute that multiple incidents of violence took place and threats were issues specifically targeting persons of the Muslim community and protestors, including multiple incidents of shooting near Shaheen Bagh and near Jamia Millia Islamia University. Further, there were widespread and frequent repetitions of the incendiary and threatening slogans, including by BJP politicians, so much so that other BJP members such as Amit Shah, Minister of Home Affairs, Gautam Gambhir and Manoj Tiwari acknowledged the inflammatory nature of such speeches and said that statements such as '*goli maaro*' should not have been uttered.
- BB. FOR THAT the Ld. ACMM failed to take into account the decision of this Hon'ble Court in *Sandeep Kumar v. GNCTD*, reported in 2016 SCC OnLine Del 2536, where this Court held that '*goli maro*' is an exhortation to shoot and upheld the conviction of an accused on whose exhortation a co-accused had shot a victim. The multiple incidents of violence including and up to the riots in February are directly attributable to the exhortation of Accused No.1, who an elected representative who exercises a significant amount of influence over his voters.
- CC. FOR THAT the Ld. ACMM failed to consider the decision of the Hon'ble Supreme Court in *Babu Rao Patel v. State (Delhi Administration)*, reported in (1980) 2 SCC 402, where it was held that the portrayal of the minority Muslim community as a community with a tradition of rape, loot, violence and murder is

hate speech and promotes feelings of enmity, hatred and ill-will against the Muslim community. The statements of Accused No.2 fall squarely within this description and clearly constitute hate speech under the provisions of the IPC. Moreover, even this Hon'ble Court is empowered to direct registration of FIR if the allegations are such that cognizable offences are *ex facie* made out, and if it is observed that the investigating agency is displaying unjustified unwillingness to proceed in terms of law.

- DD. FOR THAT the widespread chant of the accused persons' incendiary slogans culminated in the brutal violence that broke out on 23.02.2020 in North-East Delhi minutes after yet another provocative and incendiary speech by BJP leader Kapil Mishra who openly threatened to forcefully remove protestors from Jaffrabad metro station. During this violence which continued for several days, Muslim persons were specifically targeted, mercilessly beaten, killed and their homes, places of worship and livelihood were looted and razed by a large mob chanting incendiary slogans, including that of the Accused persons.
- EE. FOR THAT it is evident that the likely effect of the incendiary statements of the accused persons was to stoke communal tensions and exhort people to take up arms against persons of a certain community.
- FF. FOR THAT the status report filed by the Investigating Agency before the Ld. ACMM would itself indicate the nature and extent to which the Investigating Agency is shielding the accused persons. The subsequent stand of the investigating agency before this Hon'ble Court as recorded in judicial orders also begs the question as to the present stand of the investigating agency as to the speeches in question. As such, this Hon'ble Court ought to direct the Investigating Agency, during the pendency of the present Application, to place on record its stand in respect of the

wholly incendiary speeches complained of in the subject Application, as also those delineated hereinabove.

GG. FOR THAT the Investigating Agency has failed to take into account its bounden duty of prevention of crime. By failing to act to stop the repetitive utterances of the incendiary speeches of the accused persons, the investigating agency has failed to prevent occurrences of the same kind of crime within the State of Delhi, NCT.

HH. FOR THAT it is settled law that a writ of certiorari would lie if a Ld. Judicial Authority passes an Order wholly without jurisdiction/ fails to act in terms of jurisdiction expressly vested in such Authority.

II. FOR THAT the failure of the investigating agency in curtailing the commission of such hate speeches, has invariably led to normalization of such provocative chants and slogans and emboldened many people to openly threaten and take up arms against persons of a certain community. This has invariably led to several incidents of violence and marginalization, culminating in the brutal violence that broke out on 23 February 2020 targeting persons of the Muslim community and protestors which caused large-scale destruction of life and property.

19. The Petitioners state that the present Petition is maintainable under Article 226/227 and S.482/483 as Petitioner is seeking firstly the quashing of the Impugned Order and the issuance of directions as well as mandamus under Article 226 to the State, in exercise of this Hon'ble Court's extraordinary as well as supervisory jurisdiction. No other Petition has been preferred by the Petitioners, and as such, no other Petition is pending before any other Court of law, assailing the Impugned Order herein. The present Petition is *bona fide* and in the interest of justice.

20.

PRAYER

In the facts and circumstances described hereinabove, it is most respectfully prayed that this Hon'ble Court be pleased to:

- i. Pass a Writ of Certiorari setting aside/ quashing Order dated 26.08.2020 passed in *Brinda Karat & Anr. v. State*, Ct. Cas. No. 04/2020, by the Ld. Additional Chief Metropolitan Magistrate (I), Rouse Avenue Courts, Delhi; and
- ii. Without prejudice to Prayer (i), exercise jurisdiction under Article 227 read with S.483 CrPC directing expeditious disposal of Applications under Section 156(3) CrPC and direct that technical objections and maintainability be decided at the threshold to avoid prejudice to the Complainant and wastage of judicial time; and
- iii. Issue directions in the nature of a writ of mandamus under Article 226 of the Constitution to the Respondent State to widely publicize the manner in which such prior sanction can be obtained by a complainant / applicant preferring a Complaint under Section 200 CrPC, for the offences mentioned in Ss. 195 and 196 CrPC, to facilitate access to justice; and
- iv. Pass such other Order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case.

PETITIONERS**THROUGH:**

**TARA NARULA, ADIT PUJARI, APARAJITA SINHA,
TUSHARIKA MATTOO, CHAITANYA SUNDRIYAL**
ADVOCATES FOR THE PETITIONERS
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(m) +91 9810037337 tara@narulaandassociates.com

NEW DELHI, 03.10.2020

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY CRIMINAL JURISDICTION
WP (CRL.) NO. OF 2020

IN THE MATTER OF:

BRINDA KARAT AND ANR. ...PETITIONERS

Versus

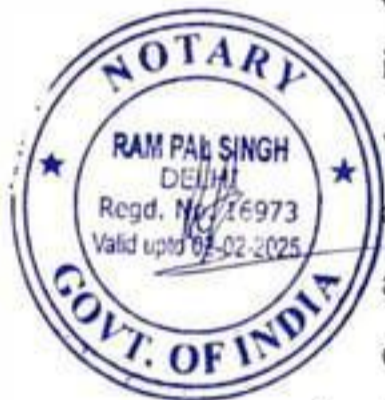
STATE OF NCT OF DELHI

AND ANR. ...RESPONDENTS

AFFIDAVIT

1. Brinda Karat, aged about 72 years, wife of Prakash Karathaving my office at 27-29, Bhai Vir Singh Marg, New Delhi, do hereby solemnly affirm and declare as under:

1. That I am Petitioner No.1 in the above noted case and am well conversant with the facts and circumstances of the present case. As such I am competent to swear the present affidavit.
2. That the accompanying Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been drafted under my instructions and the same has been read over to me in vernacular and understood by me and I say that the averments made therein are true on the basis of the records and the contents of the same are true and correct to the best of my knowledge and belief.
3. That the contents of the list of dates are drafted by my counsel which are true to the best of my knowledge and are derived from the records maintained by me.
4. That the contents of para 1 to 19 of the accompanying writ petition are true to my personal knowledge and para A to Y are the grounds and legal submissions which are based on the legal advice by my counsel, which I believe to be true and para 20 is the prayer clause. Nothing material has been concealed therefrom and no part of it is false.



Brinda Karat

- 5. That the accompanying annexures are true/typed copies of their originals.
- 6. That the Deponent has not preferred any similar or other petition in the above-mentioned matter.

Prindabarl
DEPONENT

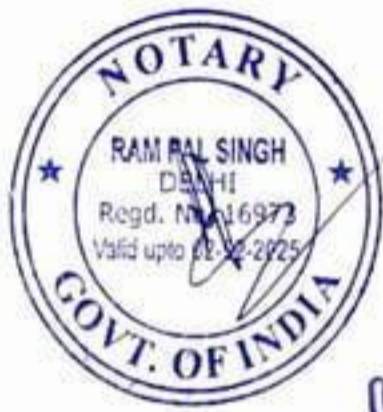
03 OCT 2020

Mitika
I Identify the Deponent who has Signed in my Presence

VERIFICATION:

Verified at New Delhi on this the day of October 2020 that the contents of the above affidavit are true and correct to my knowledge no part of it is false and nothing material has been concealed therefrom.

Prindabarl
DEPONENT



03 OCT 2020

CERTIFIED THAT THE DEPONENT
 Shri/Smt./Km. *Prindabarl Karat*
 S/o, W/o, D/o. *Prakash Karat*
 R/o.....
 Identified by Shri/Smt. *Mitika Aggarwal*,
 has solemnly affirmed that the contents of the affidavit which have been read and explained to him are true and correct to his knowledge.
Advs
 Notary Public, Delhi (INDIA)