

**ORDER OF Chief Judicial Magistrate, Kamrup(M) in C.R. Case
No. 1843/19**

11.02.2022

The complainant side is represented today. Seen the petition No. 3204 filed by Sri Pradip Doley, Joint Secretary to the Government of Assam, Election Department as well as the Addl. Chief Electoral Officer, Assam who has been authorised to take steps on behalf of the Chief Electoral Officer and Election Commission of India after the passing of the **order dated 10-1-22** and **order dated 24-1-22** by this court.

On 4-2-2022, the complainant side filed the petition No. 3204 which is put up today and the petition has been filed in compliance with the order dated 10-1-2022 of this court directing to take steps in this case by the complainant side i.e, the Election Department.

The complainant side has submitted the following documents and material along with the petition mentioned above:-

1. The copy of the Complaint submitted by the President, Assam Pradesh Congress Committee dated 10.04.2019.
2. The copy of the Complaint dated 10.04.2019 submitted by the General Secretary, Assam Pradesh Congress Committee.
3. The transcript of the interview of Dr. Himanta Biswa Sarma.
4. The copy of the report bearing Letter No. ELE.49/2019/Pt-I dated 11.04.2019 submitted to the Election commission of India by the then Secretary to the Government of Assam, Election Department, Dispur, in connection with the alleged violation of the Model Code of Conduct by Dr. Himanta Biswa Sarma.
5. A copy of the Letter bearing No. 437/AS-HP/2019/NES-II/428 dated 18.04.2019 containing instructions for filing of

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11.02.2022

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complaint before the Hon'ble Court as regards the violation of Model Code of Conduct by Dr. Himanta Biswa Sarma.

6. A pen drive containing the audio- visual recording of the interview of Dr. Himanta Biswa Sarma telecasted in the News Live Channel.

As per the above mentioned documents and complaint petition filed by the complainant being the Secretary, Election Department-cum-Addl. Chief Electoral Officer, Assam who is a Public Servant in discharge of his official duty, the two accused namely Dr. Himanta Biswa Sarma and the News Live Channel owned by M/S Pride Entertainment Pvt. Ltd. Represented by the then Chairman-cum-Managing Director, violated the Model Code of Conduct of Lok Sabha Election by telecasting a Live Interview of the accused No. 1 (Dr. Himanta Biswa Sarma) at 7.55 PM on 10-4-19 i.e, within 48 hours of the 1st Phase of Polls scheduled on 11-4-19. Hence, the allegation or the case of the complainant comes under the purview of the section 126(1)(b) of the Representation of People's Act i.e, as per the complaint petition and the above mentioned documents submitted by the complainant, the two accused prima facie committed the offences u/s 126(1)(b) of the Representation of People's Act.

Although there was prima facie allegation or material against the two accused, u/s 126(1)(b) of the Representation of People's Act, but my learned predecessors instead of issuing summons to the accused directly, directed the complainant to file /submit the complaint submitted by the then President and General Secretary of A.P.C.C.(Assam Pradesh Congress Committee) before the Election Commission of India which directed the complainant of the case to file this complaint and the Electronic Records of the

11.02.2022

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alleged occurrence , but since 15-5-19, the complainant side earlier represented by Sri Vibekananda Phookan had not filed the same before this court till 4-2-22 for which this court was compelled to pass the order dated 10-1-22 and order dated 24-1-22.

Now on perusal of the documents filed by the complainant in compliance with the order dated 10-1-22 in the light of the complaint petition, I have found prima facie material u/s 126(1)(b) of the Representation of People's Act against the two accused to take cognizance of the offence mentioned above.

But before issuing summons to the accused in this case, it appears that one of the accused is now holding the post of Chief Minister of Assam and at the time of the alleged offence of the case also he was holding the post of a Minister. Hence, a question arises whether Sanction is required in this case before taking cognizance of the offence against the accused Dr. Himanta Biswa Sarma holding the post of Chief Minister?

To determine the above point of sanction, I have gone through the entire materials on record and I have found that the alleged offence of the case was not committed by the accused Dr. Himanta Biswa Sarma while discharging his duty as a Minister or Public servant. Though the accused was the Minister or is now the Chief Minister, he was not discharging his official duties during the alleged commission of the offence/ or incident. Thereby, this act of the accused though he was/ is the Minister/ Chief Minister of State of Assam, does not come under his official duty. Hence, sanction is not required before issuing summons to Dr. Himanta Biswa Sarma as an accused in this case, and there is no bar to proceed against the accused.

11.02.2022

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Considering the above discussion, let summons be issued against Dr. Himanta Biswa Sarma and the News Live Channel owned by M/S Pride Entertainment Pvt. Ltd. represented by the Chairman-cum-Managing Director as accused in this case.

The complainant side to take steps immediately.

Fix :- **25-2-2022** for appearance of the accused.

(A.K.Baruah)
C.J.M,Kamrup(M)
Guwahati