



**IN THE COURT OF SH. RAGHAV SHARMA, METROPOLITAN MAGISTRATE-06,  
SOUTH EAST DISTRICT, SAKET COURTS, NEW DELHI**

<b>S. NO.</b>	<b>TOPIC</b>	<b>PAGE NUMBERS</b>
1.	FACTS OF COMPLAINT IN BRIEF	3-4
2.	DATES & PROCEEDINGS BEFORE THE COURT	4-5
3.	FACTS IN ISSUE	5
4.	EVIDENCE OF COMPLAINANT/CW1	6-12
5.	EVIDENCE OF CW2	12-16
6.	EVIDENCE OF CW3	16-20
7.	EVIDENCE OF CW4	20-21
8.	ARGUMENTS OF LD. COUNSEL FOR COMPLAINANT	21-23
9.	ARGUMENTS OF LD. COUNSEL FOR ACCUSED	23-25
10.	FINDINGS ON FACT IN ISSUE NO. 1	25-44
11.	FINDINGS ON FACT IN ISSUE NO. 2	44-46
12.	FINDINGS ON FACT IN ISSUE NO. 3	46-54
13.	CONCLUSION	54-55
14.	JUDGMENT	55

## **FACTS OF THE COMPLAINT IN BRIEF**

1. Complainant was the President of an organization namely National Council of Civil Liberties, which at the relevant time was involved in issues pertaining to public interest, exposing unfair trade practices are adopted by all companies and also bringing to 4 large scale, evasion of sales tax in interstate transactions and other allied public interest matters. Complainant's organization was resolute in ensuring that the Sardar Sarovar Project, which was envisaged since long time for distribution of water in rural areas of Gujarat, gets timely completed. While the complainant was involved in activities, ensuring timely completion of Sardar Sarovar Project for larger public interest and benefit, the accused issued a press note in English dated 25 November 2000 titled "*true face of patriot*" in which she published "*V K Saxena, one who is pained by the Hawala transactions himself came to Malegaon, praised NBA and give a cheque of ₹40,000. Lok Samiti naively and promptly sent the receipt and the letter, which shows honesty and good record keeping then anything else. But the cheque could not be encashed and got bounced. On enquiry, the bank reported the account does not exist.*". The cheque, press note, came from Lalbhai Group. What is the connection between Lalbhai Group and V K Saxena? who among them is more patriot?

2. The complainant in his complaint alleges that the contents of the above

stated allegations contained innuendos, allegations, and imputations that are per-se false, non-existent, such that the words are intended to be read, made and published concerning complainant with an intention to harm and knowing and having reason to believe that such imputation will harm the reputation of the complainant. Complainant alleged that the ironical expressions and imputations made by the accused directly upon him were having tendency and intention to lower his moral and intellectual character in estimation of others. He alleged that the allegations of the accused lowered his credit amongst general public of being in state, generally considered as disgraceful. The complainant alleges that the statements noted above made by accused defamed him in public at large and injured his character.

### **DATES & PROCEEDINGS BEFORE THE COURT**

3. Pursuant to the filing of complaint on 18.01.2001, enquiry was initiated under section 200 Cr.P.C. of which report came to be filed on 08/03/2001. After taking into consideration, the police report and the facts alleged in the complaint, the court of learned MM Ahmedabad took cognizance of offence under section 500 IPC and issued process under section 204 Cr.P.C against the accused vide order dated 10/04/2001. On 03/02/2003 present complaint was received by Ld. CMM, Delhi pursuant to the orders of Hon'ble Supreme Court.

4. Notice under section 251 Cr.P.C was framed on the accused on 01/11/2011 in which she pleaded not guilty and claimed trial however, Nothing was said by the accused in her defence at the time of framing of notice.

### **FACTS IN ISSUE**

5. From the allegations of the complainant following facts emerge as facts in issue:-

1. The accused had issued the press note contained in EX CW1/A and CW3/A (colly).
2. The accused by issuing above press note published imputation that complainant had visited Malegao, praised Narmada Bachao Andolan, had issued a cheque of Rs. 40,000/- which came from Lal Bhai Group and that he was a coward and not a patriot.
3. The accused by publishing above imputation intended to harm or knew or had reason to believe that such imputation will harm complainant's reputation.

6. In complainant evidence, to prove his allegations, complainant examined himself as CW1, Mr. Dilip Gohil as CW2, Mr. Nilesh Sachdeva as CW3 and Mr. Rajesh Kumar Judicial assistant as CW4 who brought the record of CrI MC NO 6026/2018 titled Medha Patkar vs State on record. Thereafter, complainant

closed his evidence, pursuant to which statement of accused was recorded under section 313 Cr.P.C. In her statements, she stated that since year 2000 the complainant has been running a campaign of spreading false and defamatory statement and advertisement. She added that he has even physically assaulted her in year 2002 and an FIR regarding the same was at the stage of evidence in the Magistrate Court, Ahemdabad, Gujarat. She added that Hon'ble Supreme Court in writ petition civil no. 69/2000 filed by him, stated that the petition was a private interest litigation and also added that the same seems to have been filed by him out of grudge. She added that complainant represented corporate interest who were unhappy with the demand of justice of people affected by Sardar Sarovar Dam Project. She stated in her statement that she wish to lead defence evidence. However, on 28.08.2023 her counsel stated that defence evidence may be closed. Therefore, the matter was then scheduled for final arguments and arguments of both the parties were heard at length.

### **EVIDENCE OF COMPLAINANT/CW1**

7. Complainant/CW1 in his examination in chief stated that he was the founder President of National Council for Civil Liberties, Ahemdabad engaged in social activities like consumer protection, environment, protection, water conservation, and helping poor people to build their houses and for exposing activities of individual working against the national interest. He stated that

accused was the founder of Narmada Bachao Andolan, an unregistered organization, which was engaged in opposing the project of national importance with foreign support and further stated that he had published an advertisement in Indian Express on 10.11.2000 with caption "*true face of Medha Patkar and her Narmada Bachao Andolan*". He added that in the above advertisement, he had published an email sent by Ms. Chitrarupa Palit popularly known as Sylvie to the foreign nationals, sending confidential risk analysis report prepared by Narmada Bachao Andolan against Maheshwar project, which was funded by German companies. In the said email recent meeting regarding financial support to Maheshwar Project of German Government was mentioned. Along with this, a receipt and a letter of Lok Samiti, an NGO belonging to support group of Narmada Bachao Andolan based at Malegaon, Maharashtra was also published. In the said receipt, a receipt of ₹40,000 was shown from Lalbhai group of companies for Narmada Bachao Andolan. The receipt was issued by Lok Samiti, Malegaon, and the cheque was issued by one Shri Sunil Agarwal.

8. In his examination in chief complainant, further stated that after this incident, accused issued a press note dated 24.11.2000. This press note was forwarded to him by Mr Dilip Gohil on 25.11.2000, who was a correspondent of rediff.com, news portal. Complainant tendered computerized copy of email as exhibit CW1/A. Complainant further stated that on the basis of this press note

issued by the accused, news was published in various newspaper, including web portal, rediff.com on 24.11.2000. He tendered copy of same as exhibit CW1/B.

9. In his examination in chief, complainant further stated that rediff.com is a widely red news portal and in the said press note on the basis of which news was published by it, it was claimed that he visited Malegaon and praised Narmada Bachao Andolan and paid ₹40,000 to Lok Samiti for Narmada Bachao Andolan through a cheque . He stated that he never visited Malegaon and never praised Narmada Bachao Andolan, which is working against the project of national importance. He Further stated that he did not issue any cheque whatsoever to Lok Samiti as claimed by accused Medha Patkar in her press note. He stated that this was done by her, with ulterior motive to defame him in the eyes of Gujarati people where her Andolan was known for opposing Sardar Sarovar Project, which is the lifeline of Gujarat. Complainant further stated that by claiming that he visited Malegaon and donated ₹40,000 to Narmada Bachao Andolan through Lok Samiti, accused has defamed him. He stated that the language in the press note was defamatory and objectionable as accused called him coward, an agent of Gujarat government. He added that he did not have any connection with the Lalbhai group. He stated that letter published by him in the advertisement itself shows the name of the person who visited Malegaon and handed over the cheque to Lok Samiti as Mr Sunil Aggarwal. He added that



accused knew that he never visited Malegaon nor had given the cheque to Lok Samiti, yet she with a view to defame him in the eyes of Gujarati people deliberately made an attempt to tarnish his image. Complainant tendered a copy of advertisement issued by him in Indian Express on 10.11.2000 as Mark A.

**10.** In his examination in chief, complainant further stated that he had given a legal notice dated 09.12.200 to the accused which was duly received but was never replied. He tendered the copy of legal notice as exhibit CW1/C and receipt of same as exhibit CW1/D. After this news report, number of people in Gujarat and elsewhere, contacted him and enquired about his activities. He stated that it was a tough time for him to explain to all those people that he never visited Malegaon and that he was not the supporter of Narmada Bachao Andolan and never paid any donation to this organization. He added that since he did not receive any reply to his notice, he filed the present complaint in the court.

**11.** In his cross examination, complainant/CW1 could not disclose or show any document regarding registration of his organization. He volunteered that the documents for the same might have been filed by him in other connected cases. He stated that he got to know that Narmada Bachao Andolan is not a registered organization from accused herself, he added that he was not aware about the position held by the accused in above stated Andolan, however, he volunteered

that accused claimed herself to be the founder of the organization. In his cross examination, complainant admitted that there is no document on record to support his allegations that accused organization was involved in large scale violence in Narmada Valley and that it intended that project of national importance are scuttled and country remain poor in its power and water requirement. Complainant/CW1 denied the suggestion that his advertisement published in Indian Express on 10.11.2000 mark A titled as "*true face of Medha Patkar*", was given by him on the basis of false and fabricated documents to defame her and to put pressure on her to withdraw the defamation case.

**12.** Complainant/CW1 in his cross examination stated that he had no connection with Lalbhai group, and he was not aware that if any cheque was issued by this group. He added that receipt (mentioned in the advertisement issued by him) mark A (exhibit CW1/D1) came into his possession through a person who was earlier working with the accused. He added that he cannot disclose the name of that person as many people working with the accused started supplying documents to him.

**13.** In his further cross examination, complainant/CW1 stated that he did not write any letter to Lalbhai group to verify the said receipt. He added that he did not enquire from rediff.com in writing about the email exhibit CW1/A.

Complainant/CW1 volunteered that on 24.11.2000, the accused had issued a press note on the basis of which rediff.com issued news item, wherein it stated that the cheque was issued by him. He added that there was no record about its authenticity. He added that he had enquired about the news from the correspondent concerned. He stated correspondent had forwarded a copy of the press note to him, which is on record (Ex.CW1/A). He added that he never gave any notice to rediff.com about news exhibit CW1/D2 alleging it to be false. Complainant/CW1 added that he had given a legal notice to the accused regarding her press note. He added that he did not write any letter to editor or to the NBA. He volunteered that a press note was issued by him.

**14.** In his further cross examination, complainant/CW1 stated that receipt of Courier exhibit CW1/D shows that legal notice was received by the office of NBA. He admitted that the courier receipt exhibit CW1/D does not bear the signature of the accused. CW1/complainant volunteered that courier receipt exhibit CW1/D was received on behalf of the accused. Complainant/CW1 admitted that original receipt has not been filed on record. However, he stated that he can produce the same.

**15.** In his cross examination, complainant/CW1 pointed out portion from point A to A1 , B to B1, C to C1 in exhibit CW1/A to be defamatory to him.

Complainant/CW1 in his cross admitted the proceedings of prosecution for assault as pending between him and the accused. He denied that the documents filed and relied by him are forged and fabricated and have been filed to settle the defamation and false case. He denied that he had filed this case along with one another case to pressurize the accused.

### **EVIDENCE OF CW2**

16. He stated in his deposition that in November 2000, he was working in Gujarat section for rediff.com news portal. He stated that he knew complainant. He stated that he had received a press note EX CW1/A on 24 November 2000 with respect to the question raised by NBA against complainant. He added that after seeing the press note, they had published a news on same day after translating the content of press note in Gujarati. The news was published with headline “ *cheque was given by Saxena himself: NBA*”. He stated that The news published by rediff.com in Gujarati is already exhibit CW1/D2 and CW2 further tendered English translation of this news as exhibit CW2/D1.

17. In his examination in chief, CW2 further stated that thereafter, he made an enquiry from complainant. He added that complainant also issued press note which was received by them. CW2 relied on press note exhibit CW2/D2 issued by complainant, which was received by them on 25.11.2000.

**18.** In his examination in chief CW2 disclosed that he had forwarded the press note exhibit CW1/A issued by accused through email to complainant on 24.11.2000 itself. CW2 then stated that it might be that he had sent the email on the next day. CW2 stated that in the press release, it was mentioned that the details of project were sent to foreign national named therein. It was further claimed in the press release/note that analysis was done by NBA. He added that in the press release, it was claimed that complainant had gone to Malegaon to attend Lok Samiti and had issued a cheque of ₹40,000 which got dishonoured. He added that NBA had also explained that NBA works for welfare of public and its non-registration is of no affect. He added connection between complainant and Lal Bhai group was also mentioned in the said press release.

**19.** CW2 stated that he had made enquiry from complainant whereupon he informed him that he had never issued any cheque nor he had visited Malegaon and that he had no connection with Lalbhai group. Complainant used to work for water conservation in Sourashtra and he was also associated with rehabilitation work of people living near Narada Dam. CW2 stated that with the press note of Medha Patkar, questions arose in his mind as to why complainant gave cheque of ₹40,000 and what connection he had with Lalbhai group. He added that in his circle consisting of journalist and NGOs, questions were raised on these issues. He added that general opinion was that the press note could be motivated as

complainant was not such type of person. CW2 stated that general opinion of complainant was that since he had made payment of ₹40,000 to Lok Samiti, one should be careful while reporting about him in future. The impression of complainant before press release was that he was working for welfare of Gujarat. He added that general impression was also that he was working for water conservation of Dholera area.

**20.** In his cross examination, CW2 was shown Exhibit CW1/A. CW2 admitted that email ID of the person who sent it to him is not mentioned in exhibit CW1/A. However, he volunteered that it was sent by accused and her name appears at the end. CW2 stated that he cannot tell the email ID of the accused from which he received this email.

**21.** CW2 admitted that he was aware that while forwarding an email, the header of the original email is automatically included in the text of email verbatim. However, he volunteered that this email is 18 year old and added that time this facility might not be there, he added that he was not aware of the same. He then denied that this facility was available at that time and further denied that he was intentionally not deposing correctly in this regard. He admitted that exhibit CW1/A does not prove that email was sent to him by someone. He admitted that email, Exhibit CW1/A was forwarded by him from his own email ID.

He denied that, all employees of rediff.com were having email ID of Rediff mail.com. He further denied that his email ID at Satyam.net was his personal e-mail ID. He volunteered that he had no separate e-mail ID. He then volunteered that email service provided by rediff.com was Web service, whereas Satyam.net was a service provider and he preferred email of service provider. CW2 further denied that copy of email exhibit CW1/A is a false and fabricated document which has been concocted at the behest of complainant. He further denied that no such press release was ever received by him or anyone from rediff.com. He further denied that no press release was issued by accused for Narmada Bachao Andolan.

**22.** In his further cross examination, CW2 stated that complainant never asked him from which email he received this email Exhibit CW1/A. He added that he never enquired from accused about genuineness of email exhibit CW 1/A. He volunteered that he used to receive emails from accused, and hence, he did not deem it necessary to confirm the same.

**23.** CW2 further stated in his cross examination that it was correct that his name does not appear on news article exhibit CW1/D2 and its English translation Ex.CW2/D1. CW2 volunteer that there is a byline in routine story and only rediff correspondent is mentioned. Witness stated that he had enquired

from Lalbhai group before writing the article. He stated that he must have spoken to PRO of Lalbhai group. He added that he does not remember his or her name, he added that he does not remember the date on which he contacted the group and further stated that he had made enquiry from Lalbhai group after writing article exhibit CW1/D2.

### **EVIDENCE OF CW3**

**24.** CW3 Mr Nilesh Sachdeva, in examination in chief, stated that he knew complainant since 25 years as he had done a lot of technical consultancy for projects and they are related to. He stated that complainant has been active President of National Council for Civil Liberties (NCCL) and that he had been active in Dholera Port Ltd. He added that complainant has been actively involved in completion of Sardar Sarovar Project. CW3 stated in his examination in chief that as per his knowledge accused was working against Sardar Sarovar Project. He added that he knows about web portal rediff.com, which was read in Gujarat in 2000 and was relied upon for news contents. He added that he referred to Rediff.com on and off for news articles. He also relied on News article published in Gujarati exhibit CW1/D2 and its English translation exhibit CW2/D1. He stated that as the headline of article exhibit CW1/D2 mentioned that NBA claims that cheque was given by complainant himself, this article, drew his attention. Witness stated that crux of the news article was that the complainant had went



to Malegaon and handed over cheque of ₹40,000 to Samiti for NBA. He stated that he used to hold complainant in high esteem, and he knew his work for Sardar Sarovar Project. Witness stated, that after reading the article the high esteem which he held for complainant was shattered.

**25.** CW3, further deposed in his examination in chief that he thought while on one hand, complainant claims that NBA is working against Sardar Sarover Project and on other hand, he himself is giving funds to NBA. Witness stated that he immediately called complainant and sought clarifications from him. He stated that complainant appeared depressed and asked him to visit him first, for which he visited the complainant who denied having given any cheque or having ever visited Malegaon. Witness further deposed that complainant showed him a receipt in an advertisement by National Council of Civil Liberty and copy of cheque which was issued by Mr Sunil Agarwal by Lalbhai group. Witness CW3 deposed that he personally is of the opinion that complainant had nothing to do with Lalbhai group and the complainant had asked him if he would depose before the court as witness for which he agreed.

**26.** He further stated in his examination in chief that he tried to verify the truth of allegations for which he opened Narmada.org, where he found the press note issued by NBA dated 24.11.2000, copy of which was tendered by him as exhibit

CW3/A (colly). Witness CW3 further deposed that he tried to verify the authenticity of narmada.org and found the website having been created by National Alliance for People's Moment (NAPM) of which accused is the convener and therefore he was convinced that Narmada.org was the website of NAPM.

**27.** In his cross examination, CW3 stated that complainant was CEO of J K white cement at that time and thus he came in contact with him about 25 years ago. He added that his firm had provided consultancy services to J K White cement. He disclose that his wife and wife of complainant were real sisters. He admitted that he had been executive committee member of National Council for Civil Liberties. He stated that he does not remember the time period during which he was the executive committee member. He disclosed that he cannot say with certainty if he was the executive committee member of NCCL in 2000 and 2001.

**28.** In his cross examination witness CW3 was confronted with a report titled "*a decade, dedicated to consumerism and development*" the same was marked as CW3/D1. Pursuant to confrontation, witness stated that he does not recall whether he was executive committee member of NCCL in 2001. He stated that he does not remember when he had become the executive committee member. He added that he may be executive committee member till now. Witness stated

that though he was aware about the publication of advertisement by NCCL in November 2000, referring to cheque and receipt, however, he did not made any written query from Lalbhai group to verify the authenticity of cheque. He stated that he also never wrote anything to Lok Samiti for verifying authenticity of receipt.

**29.** In his cross examination, witness was shown exhibit CW3/A by the defence Counsel. Witness admitted that all the URLs at bottom of all the pages are different. He volunteered that since all the pages are different, the URLs are also different.

**30.** Thereafter, witness was shown exhibit CW3/A from point A to A at page number one by defence Counsel. Witness admitted that there is a link to page titled as “about us”. The witnesses was then shown another document by defence counsel exhibit CW3/D2 (colly). Witness disputed the authenticity of exhibit CW3/D2 stating that he cannot tell whether exhibit CW3/D2 is the page referring to title “about us” in exhibit CW3/A.

**31.** Witness disputed and stated that it was incorrect to say that he was deliberately deposing falsely before the court as exhibit CW3/D2 from point A to A makes it clear that this website is not owned by Narmadha Bachao Andolan or

by accused. Witness CW3 volunteered that he had deposed that website narmada.org is owned by National Alliance for People's Moment of which accused was the convener and further volunteered that after looking for the website of NBA, he came across this webpage.

**32.** In his further cross examination, witness disputed and stated that it was incorrect to say that accused was not the convener of National Alliance of People's Moment. He admitted that there is no document on record to show that accused was the convener. In his further cross examination, witness stated that he did not make any query from rediff.com about the receipt of authenticity of press note on the basis of which it allegedly published the news.

**33.** In further cross examination upon suggestions of learned counsel for accused, CW3 stated that it was incorrect to say that he had produced Exhibit CW3/A at the behest of complainant, after cross examination of CW2 to fill the lacuna. He further stated that it was incorrect to say that his high esteem in which he held the complainant was never shattered. At last, he stated that he did not resign from executive committee after seeing the advertisement.

#### **EVIDENCE OF CW4**

**34.** CW4 Mr. Rajesh Kumar was the Judicial Assistant, RKD Criminal Branch,

Delhi High Court who tendered complete record of CrI.M.C. No. 6026/2018, titled as Ms. Medha Patkar vs. The State (NCT of Delhi & Anr) filed before Hon'ble High Court. Petition along with annexures were Ex.CW4/A (59 pages), order dated 29.11.2018 Ex.CW4/B (01 page). Order dated 09.01.2019 Ex.CW4/C (1 page). CrI.M.A. 319/2019 in CrI.M.C. NO. 6026/2018, Ex.CW4/D.

### **ARGUMENT OF LD. COUNSEL FOR COMPLAINANT**

**35.** Ld. Counsel for the complaint argued that complainant has succeeded in proving that the accused had issued the press note. He argued that CW2, who was the correspondent concerned of rediff.com, who wrote the article in Gujarati based on press note has clearly stated in his evidence that it was accused who had issued the press note. He further stated that he had forwarded the same to complainant. Ld counsel for the complainant argued that this witness, being the receiver of the press note from the accused and being author of news based on such note, by stating that accused had issued the same has conclusively proven that she had issued it.

**36.** Ld counsel further argued that witness CW3 also has proved that accused had issued the press note as he has tendered print out EX CW3/A of website Narmada.org where the press note issued by the accused is published. Ld counsel then argued that while the authorship and issuance of press note have

been proved to have been made by accused, evidence of CW4 who brought the record of petition filed by the accused in High court, proves it beyond reasonable doubt that accused issued the press note, as in her petition she had herself admitted that she had issued the press note and made the averments that complainant came to Malegao, praised NBA and issued the cheque of Rs 40,000/- and that issue was published by rediff.com.

**37.** Ld. Counsel further argued that CW2 and CW3 has stated in their evidence that imputations leveled by the accused in her press note lowered the reputation of the complainant and they had to seek explanation from him. Ld. Counsel argued that the imputations published by the accused through her press note conveyed that the complainant was supporting NBA and the Samiti, whereas in reality, he was against NBA and in favour of Sardar Sarovar Project.

**38.** Ld. Counsel argued that the imputations conveyed by the press note issued by the accused projected complainant as a hypocrite as people knew him to be supporter of Sardar Sarovar Project, whereas the accused by above stated imputation conveyed that he was secretly supporting NBA, which was against Sardar Sarovar Project. He argued that such imputation lowered the reputation and credit of complainant amongst his known persons, friends and general public who knew him to be supporter of SSP. Ld. Counsel argued that

publication of such imputation was intentional or with the knowledge that the same would harm complainant's reputation as accused knew complainant to be against NBA and its activities and she deliberately imputed that he was supporting it. Such statement would not have been made had she not wanted to defame, as she knew it to be incorrect.

**39.** Ld. Counsel for the complainant relied on following cases to support his arguments;

- 1) Haripada Das & Ors vs. Ashok Das, 2019 SCC online 6442.
- 2) P.M Salim vs. Vasudevan Namboothri & Ors.
- 3) Ritadey vs. Ashit Kumar Shah, 2016, SCC online CAL 529.
- 4) Ram Niranjana Kajaria vs. Sheo Prakash Kajaria & Ors, (2015) 10 SCC, 203.
- 5) S Mala Reddy vs. Future Builders Cooperative Housing Society & Ors with Jai Lakshmi vs. Future Builders Cooperative Housing Society, (2019), 9 SCC, 349
- 6) Gautam Sarup vs. Leela Jaitley, 2008, 9 SCC 349.
- 7) Mohd. Saraj vs. Adibar Rehman & Ors.
- 8) Supreme Court Bar Association vs. Union of India 1998, 4 SCC 409.

#### **ARGUMENT OF LD. DEFENCE COUNSEL**

**40.** Ld. Counsel for the defence argued that while complainant has alleged that CW2 has proved that press note was issued by accused, there is no proof of

press note ever being sent to CW2 by accused. Ld counsel argued that the email through which CW2 state he received the press note, hasn't been brought on record. Ld counsel argued, that as the said email hasn't been produced, the very first link in the chain which links the accused with the alleged press note has not been proved. The document which is being alleged to be a press note is rather an email. Ld counsel stressed that the text in email could be easily typed and then sent to CW1/complainant and merely adding name of accused in last would not make her its author.

**41.** Ld counsel argued that there is no proof of text of email CW1/A being authored by the accused. Ld counsel further argued that beside there being no proof of authorship by accused, there is also no proof of CW2 being the employee of rediff.com nor the article named him as the author. Ld counsel further argued that as the complainant never gave notice to rediff to take down the defamatory news, evidence of statements of CW2 and CW3 that estimation of complainant had fallen in their eyes are meaningless. Ld counsel for the accused further argued that CW2 is himself an accused, if it is deemed that he was the reporter, and therefore his evidence is inadmissible as such.

**42.** Ld. Counsel argued that assertion by accused in petition EX CW4/A cannot be called an admission and no reliance can be placed on it as the said



petition was withdrawn with the permission of Hon'ble court as it was an incorrect copy with factual errors.

**43.** Ld. Counsel for the accused relied on following cases to support his arguments;

- 1) Anvar PV vs. PK Basheer, (2014) 10 SCC 473
- 2) Arjun Khotkar vs. Kailash Gorantyal (2020) 7 SCC
- 3) Smriti Kansagra vs. Perry Kansagra (2021) 12 SCC 289
- 4) Babu Ram Aggarwal vs. Krishan Kumar Bhatnagar 2013 SCC online 324
- 5) Abdul Rehman Kunji vs. State of West Bengal 2014 SCC Online Cal 18816
- 6) S Karuna Karan vs. Sri Leka 2019, SCC online 1402
- 7) Nidhi Kakkar vs. Munish Kakkar 2011 SCC online P&H 2599
- 8) Manish Kakkar vs. Nidhi Kakkar
- 9) Bhagwat Saran vs. Purshottam (2020) 6SCC 387
- 10) National Bank of Oman vs. Barakara Abdul Aziz & Anr (2013) 2SCC 488
- 11) Shashi Jena vs. Khadal Swain (2004) 4 SCC 236

**FINDING ON FACT IN ISSUE NO. 1**

***The press note has been proved to have been issued / published by the accused.***

44. Before the appreciation of electronic record tendered by the complainant and CW2, it is important to address the issue of its admissibility. The Ld. Counsel for the accused had objected to the same during trial and also argued in final arguments that there was no mark or signature on the documents to show that the complainant printed and downloaded them. She argued that requirements of section 65(2) and (4) of Indian Evidence Act, 1872 were not met, as the complainant merely reproduced the provisions without mentioning the necessary details to satisfy the requirements. She further argued that certificate under section 65 B Indian Evidence Act, 1872 was not produced by complainant and CW2 on the date of their evidence. She relied on **Anvar P V vs P K Basheer, (2014)10 SCC 473** to say that the certificate was required to be accompany the electronic record when it was produced in evidence.

45. The argument of the counsel that the document didn't bear any signature or mark to show that it was downloaded by complainant is absurd, as there is no such requirement for the document to be admissible in evidence under section 65B Indian Evidence Act, 1872. The Ld Counsel's argument that certificate furnished contained mere reproduction of provisions of section 65B Indian Evidence Act, 1872 without variable details, and hence doesn't meet its requirements, is also not tenable. The complainant in his certificate has specifically mentioned that for the present complaint, he had accessed his email

where he had received a press note in the email from CW2 on the gadgets mentioned in the certificate. He has stated that he downloaded the report into the computer described in the certificate and further stated that the computer was regularly used in the ordinary course of business and that he printed the relevant information using printer regularly used by him. In his certificate, he has also provided details of the computer as an assembled PC and further stated his computer was regularly used by him in his ordinary course. He specifically mentioned in the certificate that his computer and printer were regularly used to produce computer output such as email and official documents and other electronic record. He also stated that he had lawful control over the use of the system and printer. He has specifically mentioned that the computer system and printer were operating properly and the electronic records and their accuracy and contents have not been altered and tempered with. These statements made by the complainant clearly show that he not only complied with the requirements of section 65B(2) and (4), but also the specific details, such as the manner in which the record was produced and purpose for which it was produced.

**46.** The last objection of the Ld. Counsel was that the certificate was not produced at the time of giving evidence when the documents were tendered. This objection of Ld. Counsel is not valid in view of of the *judgement of Hon'ble Supreme Court in Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal*

**on 14 July, 2020** wherein Hon'ble court held that such certificates are not required to be mandatorily furnished at the time of evidence and can be allowed to be produced at later stage of trial, subject to cause of justice and balancing of right between parties. The relevant observations of the Hon'ble court are produced herein below:-

*“54. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the Court in accordance with law.”*

*57. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.”*

47. Complainant/CW1 stated in his evidence that accused Medha Patker issued a Press Note on 24.11.2000 which was forwarded to him by Mr. Dilip Gohil on 25.11.2000, who was the correspondent of Rediff.com news portal. He stated that on the basis of this press note issued by the accused, news was published in various newspapers including webportal, rediff.com on 24.11.2000.

48. Complainant CW-1 tendered email sent by Dilip Gohil/CW2 through which press note was forwarded to him as Ex. CW1/A. Complainant also tendered copy of news published in Gujarati as CW1/B. During his cross examination, qua his statement that accused had issued the said press note and it was forwarded to him by Dilip Gohil, nothing could be brought to fore by the defence counsel which could show that complainant was lying or that he was making things up.

49. Now the question arise, whether, from the testimony of the complainant, it is proved that press note was issued by the accused? To answer this, copy of email sent by Dilip Gohil Ex.CW1/A needs to be perused. This document shows that Mr Dilip Gohil had sent an email to the complainant on 25.11.2000 i.e one day after the date of alleged press note, asking comments from the complainant on the allegations in the press note. Complainant has relied on this email, to show that accused had issued the press note. Though, this email contains the

text of the alleged press note, it doesn't contain any PDF or weblink or any other attachments containing the press note itself. The contents of the email, which contains the text of alleged press note, is in typed form which shows that either the contents of press note were copied and pasted in it or the content has been typed from press note, either which way, the document doesn't prove that what is written in it was published/issued by the accused in a press note. Mere typing of some statements in email to have been said or published by someone would not make him the author/publisher. So, the answer to the question asked above is in negative. From the testimony of complainant, it is not proved that accused had issued the press note.

**50.** Now the testimony of CW2 is required to be appraised as this witness is Mr Dilip Gohil himself, who was the Rediff correspondent who had sent the above noted email to the complainant containing the alleged press note. In his evidence, this witness stated that at the time of incident he was working in the Gujarat section of the Rediff.com, news portal. He stated that he had received the press note on 24.11.2000 and thereafter, wrote the article and published the news on the basis of same in Gujarati.

**51.** He stated that he forwarded the press note issued by accused to the complainant through an email. The statements of this witness in his chief

examination shows that he was the person who had received the press note from the accused and therefore was best man to prove the said note. But that would have happened only when the witness had brought the press note sent by the accused on record, which is not the case.

**52.** In his cross examination, this witness stated that he cannot tell the email id of the accused from which he had received that email. He also admitted that email ID of the person who sent him the same is not mentioned in the email EX.CW1/A. These statements of the witness shows that he meant that press note was sent to him by accused through email and he forwarded the same to the complainant. His statements that it was correct that letter “FW” is automatically added in the subject on forwarded email and his justification, for not being the case with present email EX.CW1/A that this facility may not be there 18 years ago, when the email was sent, makes it clear that he admitted that press note sent to the complainant was received by him through email from accused.

**53.** It is important to note that this email, which the witness talked about to have been received from the accused containing press note, has not been tendered by him. This email was the best piece of evidence to prove the authorship/issuance of press note by the accused but that was not done. The

original press note has not been brought on record and the email through which the press note was received by this witness has also not been tendered. These are the missing links which could have connected the accused with the press note.

**54.** Though, this witness has stated that he had received the press note and published the news on the basis of same and as such was aware of the contents of the same, as also deposed by him in his evidence. His oral testimony of the contents of the documents/press note given by him would not act as proof of same as he had not deposed about its contents as secondary evidence u/s 63(5) of Indian Evidence Act, 1872. Besides, there was no such request or application made during trial to lead secondary evidence of contents of press note. So, till now there is no evidence which beyond reasonable doubt links the accused with the authorship/issuance of press note. It would not be out of place to note here that the fact of witness being employed with Rediff.com in Gujarat section and fact of him being author of news article based on alleged press note hasn't been challenged or disputed in the cross by accused.

**55.** As witness CW2 admitted in his cross that press note was sent by accused to him and since he didn't produce the said email or the press note itself in evidence, it remained inconclusive whether the press note was issued by



her. So, in order to prove the same, complainant examined Mr Nilesh Sachdeva as CW3. This witness stated in his examination in chief that in order to verify the truth of the allegations, he opened Narmada.org where he found the press note dated 24.11.200 issued by NBA. He tendered the copy of the website as EX.CW3/A (colly) to prove the press note issued by accused.

**56.** CW3 stated in his evidence that he found the website to have been created by National Alliance of People's Movement (NAPM) of which the accused was the convener. He stated that for such reason he was convinced that Narmada.org was the website of NAPM.

**57.** Before appreciating the cross examination of this witness, it would be better to evaluate the document Ex.CW3/A tendered by this witness. The document tendered is the printout of the site [www.narmada.org/nba-press-](http://www.narmada.org/nba-press-). The URL shows that the web page printed relates to "press release" page of this website Narmada.org and it contains the press note issued by NBA. Perusal of the contents of the press note published at the site shows that it is exactly same as that of contents of alleged press note contained in the email Ex.CW1/A. Not a single word is different. The press note in EX.CW3/A bears the name of accused at the bottom just like it was mentioned in the contents in the alleged press note in CW1/A. Both the press notes brought on record are identical to each other.

Both reflect that they bear name of NBA. This fact brings a question in mind as to why this website contains the press note in the name of the accused. There can only be two answers for the same, that accused issued the same and got it published on this website or the website managers/owner fabricated it in the name of accused and then published it, which is strange given there is no probable motive or reason for the same.

**58.** At this stage it needs to be mentioned that accused during complete trial and cross examination of complainant witnesses never disputed the fact that she was the convener/head of NBA.

**59.** Perusal of second page of EX.CW3/A would show that it contains dozens of press releases issued by the entity named NBA. Similarly page three of EX.CW3/A shows numerous press releases issued by NBA in year 2000, which contains the alleged press release/note. All the facts cumulatively brings suspicion on the accused's stance that she didn't issue the press note. Can it really be that all these dozens of press releases have been published by this website without it really being issued by NBA? when there was no motive or reason. The answer seems to be a 'NO'.

**60.** During cross examination defence confronted witness CW3 with printout

of web page “*about us*” of website Narmada.org EX.CW3/D2 wherein it is stated that “***we are not Narmada Bachao Andolan***”. However, upon a careful look in the same paragraph, It would be found that it has has been declared “***In particular, we are support and solidarity network of Narmada Bachao Andolan...***”. This statement shows that this site was being operated for the issues, agendas, plans and actions of NBA. When such is the case, the press release/note published on its webpage gets credibility and authenticity of it being made and issued by accused for NBA. This statement noted above, below the question “*who are we*” in the webpage “*about us*” of the above site Narmada.org leads credence to testimony of CW3 that press note was issued by accused, given she was the head of NBA.

61. Now the question arise whether, from the above evidence, it has been proved beyond reasonable doubt that the press note was issued by accused? In the above evidence there hasn't come any direct evidence linking the accused with the press note. Though, her name is mentioned at the bottom of the note but, there is no proof that she had issued the same. Though, it is unlikely that website made for supporting, propagating and solidarity of NBA would publish a fake press release on its name, it would not prove beyond reasonable doubt that accused issued the same. For arriving at such a conclusion, the chain of evidence has to be complete in such a manner that there arise no conclusion

other than guilt of accused; Which till now is not complete in such terms. It would not be out of place to say here that on standard of preponderance of probability the above evidence proves that accused had issued the said note. However, that is not the standard which is required here. So, we move forwards.

**62.** At last the complainant examined Judicial assistant RKD criminal branch Delhi High court as CW4 to bring on record petition CrI. M.C No 6026/2018 filed by the accused. This witness was called by the complainant to bring on record and to prove the admission suffered by the accused in the above petition where she had admitted that she had issued the press note and made averments in a press note that complainant had come in person to Malegaon, praised NBA and gave a cheque of Rs 40,000/- and further admitted that the said issue was also published in Rediff.com.

**63.** The sole contention of the complainant in the present case is that the accused issued a press note dated 24.11.2000 alleging that he had gone to Malegaon, praised NBA and issued a cheque of Rs 40,000 to the Lok Samiti an organisation of NBA. By proving the above admission of the accused in a judicial proceeding, complainant has tried to prove the issuance/publication of press note by the accused and subsequent publication of news on Rediff.com on the basis of same.

**64.** Issuance of press note by the accused is a fact in issue in the present case. It is on the proof of this issue that the fate of case of complainant depends. Admission made by the accused stated above is a relevant fact which suggests an inference as to fact in issue being true.

**65.** Before delving further deep in to the appreciation of this evidence and settled law on such admissions, it is important to note the argument of Ld. Counsel for the accused who argued that reliance placed on this admission of the accused is misconceived as the entire petition was withdrawn with the permission of the court as it was an incorrect copy with factual errors, which was filed by the mistake of counsel of the petitioner. She argued that even under civil law, in order to qualify as a valid admission, it should be unequivocal, unambiguous, unconditional and should be made with the intention to be bound by it. She added that it can only be a piece of evidence and is not a conclusion proof of fact stated there in. To support her argument she relied on Judgment of Hon'ble Supreme Court in ***Bhagwat Sharan vs Purushottam (2020) 6 SCC 387.***

**66.** In her petition filed before the Hon'ble High court, the accused has clearly stated, in the list of dates, that on 24.11.2000 she issued a press note and made

averments that the complainant had come in person to Malegaon, praised NBA and gave a cheque of Rs 40,000/-. She further stated that the said issue was also published in the Rediff.com. This statement of the complainant is an admission on her part of press not being issued by her. By bringing in evidence the judicial record of the petition the complainant has successfully proved that accused had indeed made the above statements. The said statements of the accused, on perusal, would make it crystal clear that there is no ambiguity or condition therein. The statement is unequivocal in its terms and therefore the contention of Ld. Counsel of defence is rejected as untenable. Besides, it can't be lost sight of the fact that accused had filed an affidavit signed by her with her petition stating that it was drafted as per her instructions and same was read and explained to her. When she has stated so on oath, there remains no reason to justifiably say that admission was unambiguous, conditional or that she had no intention to make it.

**67.** Whether these statements can be considered an admission as the petition was withdrawn later, on account of errors in the same? and what value is to be attached to these statements if it can be called admission and whether, if the admission is proved, it will prove beyond reasonable doubt that press note was issued by her? are questions which need to be answered. To answer the same the law relating to admission needs to be looked into.

68. The Hon'ble Supreme Court in ***Nagindas Ramdas Vs. Dalpatram Ichharam, AIR 1974, Supreme Court 471***, distinguished between the evidentiary admission and judicial admission while discussing and laying out their value and effect. The Hon'ble court held:-

*"27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."*

69. The principles and the concept laid by the Hon'ble Supreme Court above, settled that the admission made by a party in a judicial proceedings stand at a higher pedestal than other evidentiary admissions. It held that admissions are best evidence of facts contained therein. While admission proved in trial can be explain or countered with by giving evidence, the admission suffered in judicial proceedings binds the parties. As per section 58 of Indian evidence Act 1872 and as per above observation of the Hon'ble Supreme Court, facts admitted by any party need not be proved as it constitute a waiver of proof.

70. In the present case, the accused had admitted in the her pleadings before the Hon'ble High court that she had issued the press note on the said date and had made the said averments. This admission of the fact in issue by the accused in a judicial proceeding obviates any further evidence for proof of the same by the complainant.

71. It has been argued that the petition was withdrawn as there were some errors in the same and that the above statement of accused came to be filed as it was an incorrect copy. To appreciate this ground taken by accused, the judgement of Hon'ble Supreme Court in ***Basant Singh v. Janki Singh AIR 1967 SC 341*** would be of considerable help. In this case the Hon'ble court was dealing with issue of partition of joint Hindu family property where the date of



death of Mr Ramayan singh was in issue. Appellant contented that he died in 1939 whereas respondent contended he died in 1936. In this case, admission made by respondent in a separate title suit was relied upon where she had stated that Mr Ramayan singh died in 1939 (contrary to her claim in the appeal). She tried to wriggle out of her admission by stating that the plaint was drafted by their lawyer at the instance of panch and she signed the same without understanding the same. The Hon'ble court while rejecting her above ground held as under:-

*“Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true. The explanation of Janki Singh and Kailashpati Singh that the plaint was drafted by their lawyer Ramanand Singh at the instance of the panchas including- one Ramanand and they signed and verified the plaint without understanding its contents cannot be accepted. There is positive evidence on the record that the plaint was drafted at the instance of Janki Singh and was filed under his instructions. The plaint was signed not only by Janki Singh and Kailashpati Singh but also by their lawyer, Ramanand Singh. Neither Ramanand Singh nor the panch Ramanand was called as a witness. Even in this litigation, Ramanand Singh was acting as a lawyer on behalf of some of the defendants. Kailashpati Singh is a Homeopathic medical practitioner and knows English. The plaint was read*

*over to Janki Singh. Both Janki Singh and Kailashpati Singh signed the plaint after understanding its contents and verified all the statements made in it as true to their knowledge. They then well knew that Ramyad Singh had died in 1939 after the passing of the Hindu Women's Rights to Property Act. It is not shown that the admission in the plaint as to the date of death of Ramyad Singh is not true or that it was made under some error or misapprehension. This admission must be regarded as a strong piece of evidence in this suit with regard to the date of death of Ramyad Singh."*

**72.** In the above observation the Hon'ble court held that while the admission in judicial proceeding is admissible as proof of facts, it held that the same would not be conclusive proof of the facts therein and it was open to the parties to prove that the same was not true and it could give evidence for the same. In the above case, the petition and affirmation were signed by the respondent. It was stated in affirmation that plaint was read to her. The court didn't accept her contention that she was not aware as to what was written in the plaint as the same was signed by her. The Hon'ble court also observed that no attempt was made to prove that the admission made was not true or that it was made under error or misapprehension. As it was open for the respondent to disprove her admission and as she didn't lead any evidence to rebut the same, her ground was rejected by the Hon'ble court.

**73.** In the present case, in similar manner, the ground taken by accused to wriggle out from her admission is that her counsel had filed the draft copy containing factually incorrect statements and therefore she had withdrawn the petition from High court. The statements made by her in her petition are clear and unambiguous admission of facts in issue. This petition is accompanied with an affidavit containing her signatures, where she has stated on oath that the petition has been drafted by her counsel at her instructions and the same has been read over and explained to her. Due to her judicial admission, it constitutes a waiver of proof on the complainant for proving such admitted facts.

**74.** However, this admission by her was still not conclusive against her in proof of the facts stated therein. She could have examined herself, her lawyer who filed the above petition or could have brought any other evidence which would have shown that the statement was made by her in inadvertence and was a result of mistake of facts by her lawyer. However, she did nothing. She didn't examine anyone nor brought on record any evidence in her defence. In the absence of any evidence, which she could have brought, there is no reason to believe her bald averments and excuses.

**75.** On the proof of admission, the onus had shifted on her and it was on her under section 102 r/w 106 Indian evidence Act 1872 to prove her facts. As the

admission made by her in judicial proceeding is to be given high value and as she has failed to discharge her onus, it stands proved beyond reasonable doubt that she had issued the press note dated 24.11.2000.

### **FINDING ON FACT IN ISSUE NO. 2**

***The accused by issuing above press note made and published imputation that complainant had visited Malegao, praised Narmada bachao andolan, had issued a cheque of RS 40,000/- which came from lal bhai group and that he was a coward and not a patriot.***

76. Before appreciating the evidence to gather the answer, it is essential that interpretation relating to terms “makes or publishes”, be noted first. The Hon’ble High court of Gujarat in ***Rohini Singh vs State Of Gujarat & on 8 February, 2018*** interpreted the above ingredients as under:-

*“14. The term “makes”*

*14.1 The word "makes" in this context has been used in its etymological sense as connoting "to make public" or "to make known to people in general". As to who may be treated as the maker apart from the persons who do it personally, others may also be makers, for instance a journalist though he only types out from the written material received from a person or persons who remained anonymous, and only give shape to the article yet would be the maker of the offensive article.*

*15. The term "Publish"*

15.1 "To publish" means to make known to the others or to communicate to a third person (see Webster's Comprehensive Dictionary-International Edition). Publication will be complete if after making or printing the defamatory statement, it is made available to the public. (vide Collector of Central Excise vs. new Tobacco Company, AIR 1998 SC 668) Publication includes pleadings, affidavits, articles etc.

#### 16. Makes or Publishes

16.1 The expression "makes or publishes" has been interpreted as supplementing each other. If a person merely writes out defamatory matter but does not publish the same, that is, does not circulate to others, it will not be defamation. The word "make" is intended to refer to the originator of the imputation. In this sense, the mechanic or the compositor of the press, does neither "make or publish" the matter that may be impugned as defamatory. The word "publish" in section 499, IPC, as noted above, is used in its etymological sense as connoting "to make public" or "to make known to people in general".

17. Publication of imputation is an essential ingredient.

17.1 Under the Indian Penal Code, in order that an offence of defamation may be committed there must be making or publication of any imputation concerning any person by words either spoken or intended to be read or by sign or by visible representations, intending to harm, or knowing or having reasons to believe that such imputation will harm the reputation of such person. To constitute the offence of defamation, there must, therefore, be making or publication of an imputation concerning any person and the making or publication must be with the intent to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. Unless there is publication, there can be no offence of defamation committed."

77. The Hon'ble court held that for commission of offence of defamation it is essential that imputations are brought before the public and made available to it. Without communication or dissemination of imputation, defamation can't be proved as essential ingredient of "*making and publishing*" would not get proved.

78. The admission of the accused discussed in preceding paragraphs wherein she herself has stated that she had issued the press note containing the statement that complainant had gone to Malegaon, praised the NBA, issued a cheque of Rs 40,000 and also stated that the said issue was published in Rediff.com, is of crucial importance to decide this issue. These statements by her, in her press note, against the complainant are imputations as it conveys and attributes such acts upon him. This admission of facts i.e issuance of press note containing above mentioned statements, which has gone unrebutted during trial, proves it beyond reasonable doubt that the accused, by issuing the press note and thereby making it known and available to public, had published the above stated imputations.

### **FINDING ON FACT IN ISSUE NO.3**

***The accused by publishing above imputation intended to harm or knew or had reason to believe that such imputation will harm complainant's***

**reputation.**

79. The factum of imputation having been published has been proved. What remains to be seen is whether the imputation published constitute an offence of defamation. To arrive at any finding it is crucial to understand what is essential, in terms of ingredients of section 499 IPC, for calling an imputation to be defamatory. Interpretation given by Hon'ble Supreme Court in **Jeffrey J.Diermeier & Anr vs State Of West Bengal & Anr on 14 May, 2010** therefore is of much relevance. Hon'ble court held:-

*"24.To constitute "defamation" under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.*

*25.However, as per Explanation 4 to the Section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly 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, in the estimation of others 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.”*

**80.** For an imputation to be called defamation, it is essential that it must have been made with intention or knowledge or having reason to believe that it would cause harm to the reputation of the person about whom it is made. The ingredients of offence of defamation, as noted above, doesn't require proof of actual harm of reputation being suffered. It would be sufficient if it is proved that imputation was made with the intention or knowledge or with reason to believe that it would harm the reputation.

**81.** Explanation 4 to section 499 IPC however, clarifies that imputation can be said to cause harm, when it lowers the character moral/intellectual of that person or lowers the credit of that person, in the estimation of others. This explanation means that for proof of defamation, it would be essential to prove that imputation made was capable of causing such harm. There may be cases where the imputation is per-se of such a nature that it doesn't require proof of harm as on the face of it, it shows that it is defamatory, whereas in other cases evidence would be required to prove that it was defamatory. Following observation of Hon'ble Supreme Court in ***John Thomas vs Dr. K. Jagadeesan on 12 July, 2001*** would support this view. The Hon'ble court had observed:-

*“The only effect of an imputation being per-se*



*defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.”*

**82.** To see what were the imputations made and whether they were defamatory, perusal of press note issued by accused is essential. In her press note accused has published following imputations:-

*“V.K Saxena, on who is pained by the “hawala transactions”, himself came to Malegaon, praised NBA and gave a cheque for Rs 40,000... the cheque please note, came from Lalbhai group. What is the connection between Lalbhai group and V.K Saxena? Who among them is more ‘patriot’.  
Act of a coward, not a patriot.  
Not addressing the issues raised by movement for the last 15 years and coming up with fake stories, like Hawala transactions are examples for cowardliness and not of patriotism. One, Who is following the sordid tactics of government of Gujarat, its history of human rights from Dangs to ambergaon, and mortgaging the people and their resources before Bill Gates and Wolfensohn, knows, who is behind him.”*

**83.** As appears from above contents of her press note, she called the complainant to be pained with hawala transactions, a coward and not a patriot. She imputed upon him that he was mortgaging the people of Gujarat and their resources before bill gates and Wolfensohn and he was agent of Government of Gujarat. It is evident that the accused harbored a clear intention to defame the complainant through her press note, given the deliberate and calculated nature of her statements. By explicitly stating that the complainant was “pained with hawala transactions,” she aimed to associate him with illegal and unethical financial dealings, thereby inflicting significant harm to his reputation and standing. This assertion, without providing any substantive evidence, was a clear attempt to malign his financial integrity and create a public perception of wrongdoing.

**84.** Moreover, her decision to label the complainant as a “coward” and “not a patriot” was a direct attack on his personal character and loyalty to the nation. Such allegations are particularly grave in the public sphere, where patriotism is highly valued, and questioning someone’s courage and national loyalty can cause irreversible damage to their public image and social standing. These terms were not only inflammatory but also intended to provoke public outrage and diminish the complainant’s esteem in the eyes of the community.

**85.** Additionally, by imputing that the complainant was “*mortgaging the people of Gujarat and their resources before Bill Gates and Wolfensohn,*” she insinuated that he was betraying the trust of the people and compromising the state’s welfare for the benefit of foreign interests. This accusation suggests that the complainant was engaged in actions detrimental to the state and its citizens, thereby framing him as a traitor to public trust and interest.

**86.** The accused’s use of specific, emotionally charged language and her focus on highly sensitive issues such as financial misconduct, personal cowardice, and national loyalty demonstrate a calculated effort to damage the complainant’s reputation. Her statements were crafted not just to inform but to incite negative sentiments among the public, indicating a clear and malicious intent to defame. The gravity and precision of these accusations highlight the deliberate nature of her actions, affirming that her primary objective was to undermine the complainant’s credibility and integrity in the public eye.

**87.** While the aforementioned imputations were inherently defamatory, the complainant has also presented positive evidence to demonstrate that other allegations made by the accused—specifically, that he had gone to Malegaon, praised the NBA, and issued a cheque of Rs 40,000 to Lok Samiti—damaged his reputation in the eyes of the general public of Gujarat. The complainant and

witnesses CW2 and CW3 testified that the complainant was a staunch supporter of the Sardar Sarovar Dam (SSD), other projects in Gujarat, and actively fought against the NBA, which opposed the SSD and sought to halt its progress. Their testimony, detailing the complainant's work, public standing, and opposition to the NBA, remained unshaken.

**88.** The complainant and the witnesses established that he was widely recognized as a supporter of the SSD among the general public, friends, social workers, and acquaintances. In stark contrast, the accused's imputations suggested that the complainant praised the NBA and financially supported its Samiti, thereby portraying him as a hypocrite. This portrayal severely undermined his character, standing, and credibility, as it implied that despite his public opposition to the NBA and support for the SSD, he secretly endorsed and funded the NBA. Such allegations are contrary to the complainant's established image, work, and standing, indicating a clear intention by the accused to defame him and damage his reputation.

**89.** While it has been proved that the imputations were made by the accused with the intent to harm the complainant's reputation, there is also evidence of actual harm to his standing and credit. The complainant testified that following the publication of the press note and news in Gujarati, numerous people in

Gujarat and elsewhere contacted him with inquiries about his activities. CW2 stated that upon issuance of the press note, questions arose in his mind regarding why the complainant issued a cheque of Rs 40,000 and his connection with the Lal Bhai group. CW2 deposed that these questions were discussed within his circle of journalists and NGOs, and that the general opinion became one of caution when reporting about the complainant in the future. Similarly, CW3 deposed that the high esteem in which he held the complainant was shattered after reading the article. He testified that he was confused by the complainant's actions, believing that while the complainant publicly opposed the NBA, he simultaneously funded it.

**90.** The opinions expressed by CW2 and CW3 are relevant and admissible under Section 60(4) of the Indian Evidence Act, 1872. Although the learned counsel for the accused argued that CW3's testimony might be less credible due to his relationship with the complainant as his brother-in-law, CW2 is an independent witness, and there is no ground to reject his testimony. CW2's evidence unequivocally demonstrates that the complainant suffered harm to his reputation, standing, and credibility. Furthermore, CW3's testimony cannot be dismissed outright simply because of his familial relationship with the complainant. From the evidence given by these witnesses, it stands proved that the complainant suffered harm to his reputation, standing, credit, and worth in

the eyes of acquaintances and the general public.

## **CONCLUSION**

**91.** Reputation is one of the most valuable assets a person can possess, as it affects both personal and professional relationships and can significantly impact an individual's standing in society. The accused's statements, calling the complainant a coward, not a patriot, and alleging his involvement in hawala transactions, were not only defamatory per-se but also crafted to incite negative perceptions. Furthermore, the accusation that the complainant was mortgaging the people of Gujarat and their resources to foreign interests was a direct attack on his integrity and public service.

**92.** The complainant's testimony, supported by the depositions of CW2 and CW3, demonstrated that the defamatory statements made by the accused not only questioned his integrity and patriotism but also falsely associated him with activities contrary to his public stance. The accused failed to provide any evidence to counter these claims or to show that she did not intend or foresee the harm these imputations would cause. The resulting inquiries and doubts raised among the complainant's acquaintances, as well as the shift in perception highlighted by the witnesses, underscore the significant damage to his reputation.

**93.** Therefore, it is clear that the accused's actions were deliberate and malicious, aimed at tarnishing the complainant's good name, and have indeed caused substantial harm to his standing and credit in the eyes of the public. The accused's statements, calling the complainant a coward, not a patriot, and alleging his involvement in hawala transactions, were not only defamatory per-se but also crafted to incite negative perceptions.

### **JUDGMENT**

**94.** From the evidence appraised above, it has been proved beyond reasonable doubt that the accused published the imputations with the intent and knowledge that they would harm the reputation of the complainant and, therefore, committed an offence punishable under Section 500 of the IPC. She is hereby convicted of the same.

**Announced in the open court  
on 24.05.2024**

**(RAGHAV SHARMA)  
MM-06/SE/Saket/ New Delhi**

**It is certified that this judgment contains 55 pages and each page bears my signatures.**

**[RAGHAV SHARMA]  
MM-06, SED, New Delhi  
24.05.2024**