IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 303 OF 2024

Nishant S/o. Pradeep Agrawal,
aged about 34 years, Occ. - Nil,
R/o. House No.449, Nehru Nagar,
Rudki, District : Haridwar,
Uttarakhand.

… APPELLANT.

// VERSUS //

1) Anti Terrorist Squad, Lucknow,
through Investigating Officer,
Uttar Pradesh

2) State of Maharashtra,
through Police Station Officer,
Police Station, Sonegaon, Nagpur.

… RESPONDENTS.

Shri Sunil Maohar, Sr.Advocate a/b Shri C.B.Barve, Advocate for Appellant.
Shri S.S.Doifode, Addl.Public Prosecutor a/w Shri A.B.Badar, APP for Respondent / State.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE ORDER : 24/04/2025
DATE OF PRONOUNCING THE JUDGMENT : 01/12/2025

JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.

2. This is an appeal filed under Section 374 of the Criminal Procedure Code questioning the legality and validity of the judgment and order dated 3rd June, 2024 passed by the learned Additional Sessions Judge-1, Nagpur in Sessions Case No.726 of 2021, thereby convicting the appellant for offences punishable under Section 66-F of the Information Technology Act, 2000 (hereinafter referred to as "the Act of 2000") read with Section 3(1)(c) and Section 5(1)(a), (b), (c) and (d) of the Official Secrets Act, 1923 (hereinafter referred to as "the Act of 1923").

3. The appellant is sentenced to suffer life imprisonment for the offence punishable under Section 66-F of the Act of 2000. He is sentenced to suffer rigorous imprisonment for fourteen years under Section 3(1)(c) of the Act of 1923 and is further sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.3,000/-, in default to suffer further simple imprisonment for six months under Section 5(1)(a), (b), (c) and (d) and Section 5(3) of the Act of 1923.

4. As recorded by the trial Court, it is the case of the prosecution that the informant Harishanker Mishra (PW-1) filed a First Information Report stating that he received secret information that Neha Sharma and Pooja Ranjan were operating the Facebook accounts in the fake names from Pakistan. The said foreign agents and spy are in contact via Internet

through these Facebook accounts with the unknown employees holding important posts in various defence establishments in India. Important data was leaked through them, which was pertaining to National Security. The ID of Neha Sharma was URL https://www.facebook.com/100009767463432 and email ID was braveneha@yahoo.com and the ID of Pooja Rajan was URL https://www.facebook.com/100009951960524 and the email ID was poojaranjan923@gmail.com. These Facebook accounts were operated from Pakistan and it was likely to adversely affect the sovereignty, integrity and security of India, which was directly useful to an enemy. So, he filed the report at ATS, Lucknow, Uttar Pradesh.

5. The offence was registered vide Crime No.7 of 2018 under Sections 419, 420, 467, 468, 121A, 120B of the Indian Penal Code and under Section 66-F of the Act of 2000 and under Sections 3, 4, 5, 9 of the Act of 1923.

6. The proposal for sanction order under Section 13(3) of the Act of 1923 was sent to the Secretary (Home), Government of Uttar Pradesh, Lucknow. The investigation was handed over to the Investigating Officer Inspector Pankaj Awasthi, ATS Uttar Pradesh, Kanpur. For the investigation purpose, he received the copy of report, general diary and related documents.

7. After going through the report, he recorded the statement of Inspector Harishankar Mishra, the informant, and Yogendranath Shukla, the Head Constable, who registered the offence. He issued the letter to the Director, Indian Computer Emergency Response Team, Ministry of Information and Technology, Government of India, Delhi and sought the details of Facebook accounts and IP, creation IP address and other relevant details. He issued letter by official e-mail to Deputy Superintendent of Police Sonkar.

8. He opened the Facebook accounts of Pooja Ranjan and Neha Sharma and found two Scientists, namely Debmalya Roy and Aarti Kolhe, working in DMSRDE, Kanpur and accused Nishant Agrawal, working at BrahMos Aerospace, Nagpur are in the friend-list of Pooja Ranjan and Neha Sharma. With the help of Cert-In, New Delhi, the Investigating Officer received the account details of the Facebook account of Neha Sharma, which shows address of Islamabad, Pakistan.

9. The PI-Pankaj Awasthi, who is Investigating Officer (PW-11), got search warrant against the accused and Debmalya Roy and Aarti Kolhe.

10. The Investigating Officer approached ATS Nagpur and took search of the house of the accused. On enquiry, the accused consented to open his Facebook account on the official laptop of computer operator Wakil Ahmad. It was found that the accused was in the friend-list of Neha Sharma and Pooja Ranjan and was having communication with Sejal Kapoor on Linkedin App. It was found that there was communication in between Sejal Kapoor and the accused and Sejal Kapoor had sent some links and asked the accused to download them on laptop. The accused tried to download those links. On inspecting the personal laptop of the accused, it was found that the accused was having various files regarding BrahMos Supersonic Cruise Missiles and files of BrahMos Company.

11. The Investigating Officer asked the Assistant Investigating Officer to visit BrahMos Station, Nagpur, give notice under Section 91 of the Criminal Procedure Code and seek information about the secret files.

12. Thereafter, the Investigating Officer seized the laptop, three mobile handsets, one router, one hard-disc, laptop bag and charger and prepared the seizure panchnama, by visiting house of the accused at Nagpur. The Investigating Officer arrested the accused.

13. The Investigating Officer got details of Facebook accounts of Sejal Kapoor and Pooja Ranjan by giving letter to the Director General, Cert-In, New Delhi. The Investigating Officer searched the address of Sejal Kapoor and personal laptop and found that the IP address of Sejal Kapoor was created in Pakistan. The Facebook account of Pooja Ranjan was having linked numbers from Pakistan.

14. The Investigating Officer prepared the questionnaires and sent it to Director, Cert-In, New Delhi. The Investigating Officer collected the documents from Hyderabad Team Officers.

15. The Assistant Investigating Officer Krushna Mohan Rai (PW-8) visited the BrahMos Aerospace Hyderabad and made investigation with regard to section in which the accused was working. He collected all the documents and sent it to the Investigating Officer. He found that from time to time external devices were inserted to the system of BrahMos Aerospace Hyderabad, which was used by the accused Nishant Agrawal. The system was containing various secret files pertaining to BrahMos Missile. Those secret files were found in the personal laptop of accused Nishant Agrawal.

16. When the personal laptop of the accused Nishant Agrawal was seized, the Assistant Investigating Officer drew the hash value of all the files of official system and prepared two copies in different DVD's. One DVD was handed over to authority of Hyderabad and one DVD was seized for investigation purpose.

17. The Assistant Investigating Officer has given notice to BrahMos Aerospace Hyderabad and received the necessary documents. Investigating Officer Inspector Pankaj Awasthi found that there was chatting in between Nishant Agrawal and Sejal Kapoor. Nishant Agrawal shared his bio-data on e-mail linked with Sejal Kapoor's Linkedin account.

18. The Investigating Officer Pankaj Awasthi had sent laptop, mobile phones and sim cards of accused Nishant Agrawal to Forensic Laboratory, Cert-In, New Delhi. After receipt of report of analysis, it was found that the accused Nishant Agrawal was having data on his laptop and personal hard-disc containing stealing malware, namely chat 2 hire, X-trust, Q-whisper and one update version of X-trust. It was mentioned in the forensic report that links, which were already installed in the laptop of the accused and remained active, are capable of sharing all the data and cloud base server.

19. The Investigating Officer found 19 files which were titled as secret and restricted files. Nishant Agrawal, while joining the duty, has given the undertaking of maintaining secrecy. However, he has disclosed his identity and accepted the friend request of the Facebook accounts which were operated from Pakistan. It was found that those links namely chat 2 hire, X-trust, Q-whisper and one update version of X-trust were data stealing malware. The accused Nishant Agrawal during his posting at Hyderabad unauthorizedly copied the secret and restricted files in his personal laptop and personal hard-disc. All the data was pertaining to BrahMos Supersonic cruise missiles used by all defence forces.

20. Investigating Officer Pankaj Awasthi has also given letter to the Additional Director General (Crimes). The Additional Director General (Crimes) gave letter to the Home Secretary, Uttar Pradesh Government. He issued notice to the Chief Executive Officer/Managing Director of BrahMos Aerospace. The Special Chief Judicial Magistrate, Custom, Lucknow passed the order that it is not the Competent Court to take cognizance. Thereafter, he filed the complaint before the learned Judicial Magistrate First Class, Court No.8, Nagpur. He has submitted all the documents to the Ministry of Home Affairs, New Delhi, which gave sanction and authority to institute the complaint. So, he filed the complaint under Section 66-F of the I.T.Act and under Sections 3(1)(c), 5(1)(a), (b), (c) and (d) and 5(3) of the Act of 1923.

21. The charge was framed against the accused under Section 66-F of the Act of 2000 and under Sections 3(c), 5(1)(a), (b), (c) and (d) and 5(3) of the Act of 1923.

22. The accused pleaded not guilty and claimed to be tried.

23. The statement of the accused under Section 313 of the Criminal Procedure Code was recorded.

24. The defence of the accused was of total denial. It was the defence of the accused that on the basis of his qualifications, he got placed in BrahMos Aerospace initially as Executive Trainee and thereafter, as System Engineer and Senior System Engineer. His work was appreciated by the Authorities of BrahMos. His Boss Alan Abraham gave pen-drive having project material in official capacity in authorized manner to all 23 executive trainees. He made project of Combined Pneumatic Hydraulic System (CPHS) and submitted the project to his superiors. Those documents were given to him by his superior Alan Abraham. None of those files were secret, restricted and classified. He was a part of the core team dealing with handing over of 70 to 80 missiles during 2014 and 2018, to Armed Forces. He was part of the top secret projects of BrahMos. He was having these files, documents in his official

system and he had not copied those documents on his personal devices. He was awarded with 'Young Scientist Award' in the year 2017-2018.

25. It is the say of the defence that Sejal Kapoor approached him on Linkedin account for a recruitment proposal. He sent his bio-data to her. Sejal Kapoor asked him to download all three applications. He verified the authenticity and genuineness of those applications and clicked on the link. He accepted the friend request of Neha Sharma and Pooja Ranjan in a normal stance. He was looking for new job prospects outside India. He is innocent.

26. After considering and appreciating the material in the chargesheet and the oral and documentary evidence and after hearing the parties, the learned Additional Sessions Judge-1, Nagpur, has passed the judgment and order dated 3rd June, 2024, which is impugned in the present appeal.

27. We have heard learned counsel for both the parties.

28. Shri Manohar, learned Senior Advocate appearing for the appellant argued that the learned trial Court committed grave error in holding the appellant guilty. It is submitted that the prosecution has failed to prove the offence beyond reasonable doubt.

29. It is submitted that even if the oral as well as documentary evidence is considered, no offence under Section 66F of the Act of 2000 or under Section 3(1)(c), Section 5(1)(a), (b) & (c) and Section 5(3) of the Act of 1923 can be said to be proved. It is argued that at the most it can be said that the accused failed to take reasonable care or the accused so conducted himself as to endanger the safety of the information possessed by him. It is therefore, argued that the evidence brought on record by the prosecution does not go beyond the offence punishable under Section 5(1)(d) of the Act of 1923.

30. Shri Manohar, learned Senior Advocate has argued that there is no evidence to show that the appellant unauthorisedly copied the secrets or classified files in his personal device. It is argued that the material which was found in the laptop of the appellant was relating to his project which he did while working at Hyderabad.

31. It is argued that the appellant shared his bio-data on the e-mail of Sejal Kapoor and also chatted with her on the Linked-in account for the purpose of securing a job in the UK. However, there was no such intention, as alleged, to attract Section 66F of the I.T.Act or Section 5(1)(a),(b),(c) of the Act of 1923.

32. It is argued that the learned trial Court has not recorded a single finding to show the presence of prerequisites to attract offence punishable under Section 66F of the Act of 2000 and despite the same the appellant has been held guilty for the offence punishable under Section 66F of the Act of 2000 and Sections 3(1)(c), 5(1)(a),(b) and (c) of the Act of 1923, and thus, the conviction of the appellant is perverse and without any evidence.

33. On the other hand, learned Additional Public Prosecutor Shri Doifode strongly opposed the appeal and submited that the undertaking to maintain secrecy (Exh.26) submitted by the appellant is sufficient to show that the appellant had every knowledge about the importance of the documents and the consequences if the said documents are leaked. It is argued that despite this fact he accepted the friend request of Neha Sharma and Pooja Ranjan and further shared his bio-data to Sejal Kapoor. It is submitted that the appellant also downloaded malware and because of such malware the secret and classified information available in the computer of the appellant was leaked. It is therefore, submitted that the appellant was rightly held guilty and punished by the trial Court.

34. It is argued that the prosecution has examined 15 witnesses to bring the guilt of the accused at home. It is submitted that the prosecution has succeeded in proving and establishing the guilt of the

appellant beyond doubt. The evidence brought on record by the prosecution has established the act of the appellant to copy the secret and classified documents from the official desktop into his laptop and then leaked the same by downloading the malware. It is, therefore, submitted that no perversity is committed by the learned trial Court in punishing the accused for the offence punishable under Section 66F of the Act of 2000 and Section 3(1)(c), 5(1) (a), (b), (c), (d) and 5(3) of the Act of 1923.

35. In light of the rival contentions, let us now examine and scrutinize the evidence on record.

36. PW-1-Harishankar Ramaj Mishra, who was working as Inspector with ATS Kanpur at the relevant time in the year 2018, has deposed that he received the information that Neha Sharma and Pooja Ranjan were operating in fake names from Pakistan on facebook. The said foreign agents and spy are in contact via internet through these facebook accounts with the unknown employees holding important positions with various defence establishments in India including Uttar Pradesh. The important data was leaked through them, which was pertaining to national security. He further deposed that he prepared a report and lodged it with the Police Station, A.T.S., Lucknow.

37. PW-2 Yogendra Nath Shivkant Shukla who was working as Constable with Police Station-ATS, Lucknow has deposed that on lodging the report by PW-1, he had registered the offence vide Crime No.7/2018 (Exh.22) for the offences punishable under Sections 419, 420, 467, 121-A, 120-B of the IPC, Sections 66-D of the I.T.Act and under Sections 3, 4, 5 & 9 of the Act of 1923.

38. Thus, PW-1 and PW-2 have established that on receiving an information by PW-1 that Neha Sharma and Pooja Ranjan were operating in fake names from Pakistan on Facebook and important data was leaked through the unknown employees holding important positions with various defence establishments in India and on submission of report by PW-1, PW-2 registered the crime vide Crime No.07 of 2018.

39. The learned trial Court while holding the accused guilty, has observed in Para 92 that the accused unauthorizedly obtained the classified documents on his personal device, he copied the secret, restricted and sensitive information and documents from the official computer of BrahMos Aerospace Limited, Hyderabad-Nagpur and retained the same to his personal laptop and hard-disk. The accused contacted various foreign agents through social media applications and internet, and due to which, secret, restricted and sensitive documents

containing prohibited information was passed on to the foreign agents which was prejudicial to the safety and security of State through internet spyware. Thus, the act of the accused is prejudicial to safety, security and interest of the State and constitutes offences under Section 3(1)(c), Section 5(1)(a),(b),(c) and (d) and Section 5 of the Act of 1923 and Section 66F of the Act of 2000.

40. At this stage, therefore, it will be appropriate and beneficial to refer to the above referred provisions under which the accused has been held guilty. Section 66F of the Information Technology Act, 2000 reads thus :

> *"Section 66F. - Punishment for cyber terrorism.*
> *(1) Whoever,--*
> *(A) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by-*
> *(i) denying or cause the denial of access to any person authorised to access computer resource; or*
> *(ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or*
> *(iii) introducing or causing to introduce any computer contaminant, and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70; or*
> *(B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer data base that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer data base, with reasons to believe that such information, data or*

computer data base so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.
(2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

Sections 3 and 5 of the Official Secrets Act, 1923 read thus :

3. Penalties for spying-
(1) If any person for any purpose prejudicial to the safety or interests of the State-

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place, or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy (or which relates to a matter the disclosure of which is likely to affect the sovereignty and Integrity of India, the security of the State or friendly relations with foreign States),

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a

purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State, and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, (information, code or password shall be presumed to have been made), obtained, collected, recorded published or communicated for a purpose prejudicial to the safety or interests of the State.

4. …

5. Wrongful communication, etc., of information.—

(1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, [or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act,] or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made, on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State his duty to communicate it; or

> *(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or*
> *(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or*
>
> *(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or password or information;*
> *he shall be guilty of an offence under this section.*
>
> *(2) If any person voluntarily receives any secret official code or password or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.*
>
> *(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.*
>
> *(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."*

41. It is evident from the language of Section 66F (1)(A) and 1(B) of the Act of 2000, wherein the expressions used 'with intent to threaten the unity' and 'knowingly or intentionally' show that *mens rea,* which means 'guilty mind', is an essential ingredient to attract the said provision.

42. Similarly, Section 3(1) of the Act of 1923 uses expression "*if any person for any purpose prejudicial to the safety or interest of the State*." The word "purpose" also indicates the intention and knowledge of such person. Under Section 3(2) of the Act of 1923, there is a presumption that if a person, without lawful authority, makes, obtains, collects, records, publishes or communicates any secret or prohibited defence-related material, it is deemed to have been done with a purpose prejudicial to the safety or interests of the State. However, for this presumption to arise, the prosecution must first establish the circumstances of the case, the conduct of the accused, or his known character; once these are proved, it is not necessary to show that the accused committed any specific act demonstrating a prejudicial purpose.

43. Similarly, the provision of Section 5(1)(a), (b) and (c) of the Act of 1923 uses expressions "*wilfully communicates...*", "*uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State;*" or "*wilfully fails to comply...*", which indicate that to attract Section 5(1)(a), (b) and (c) of the Act of 1923, *mens rea* is required as a foundational requirement for conviction.

44. Contrary to the above-referred requirements of Section 5(1) (a), (b) and (c) of the Act of 1923, the language in Section 5(1)(d) of the said Act uses expression "*fails to take reasonable care of, or so conducts himself as to endanger the safety of ...*" which indicates negligence on the part of the accused rather than a wilfull intent to disclose. In other words, Section 5(1)(d) attracts where the accused does not take proper, normal and sensible precautions to protect the confidential material, or behaves in a manner which exposes its secrecy or security, even if he did not specifically intent to look or communicate it.

45. The expression "reasonable care", as used in Section 5(1)(d) of the Act of 1923, has been judiciously and academically associated with negligence. The Black's Law Dictionary, Ninth Edition defines the word 'reasonable care' as follows :

> *"As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances."*

46. After having appreciated the pre-requisites to attract the offences under which the appellant has been convicted, let us now move to the oral evidence led by the prosecution to find out whether the prosecution succeeded to bring on record the aforesaid prerequisites to prove the guilt against the accused.

47. The prosecution has examined total 15 witnesses to bring the guilt of the accused at home. PW-3, PW-4, PW-6 and PW-10 are the witnesses who deposed about duties of the accused while working in BrahMos Aerospace Private Limited at Hyderabad or at Nagpur, the data allegedly collected from the desktop, and other relevant information about the accused and the alleged classified documents, which according to the prosecution were leaked by the accused.

48. PW-3-N.N.Kumar, who was working as Executive Director (Production) with BrahMos Aerospace Private Limited, Hyderabad, has deposed that initially, the accused was working as executive trainee at Hyderabad during July 2013 to December 2013. Thereafter, he was appointed as System Engineer on 30th December 2013 and then transferred to Nagpur in August 2014.

49. PW-4-Achyut Deo, who was working as General Manager at BrahMos Aerospace Private Limited, Nagpur has deposed that Nishant Agrawal was promoted in the year 2017 as Senior System Engineer and was responsible for supervision of the mechanical parts of warhead integration.

50. PW-10-Setu Ramchandran Krushnamurthy Ayer, Former Chief General Manager of BrahMos has deposed that Nishant Agrawal joined BrahMos as Executive Trainee in the year 2013. Thereafter, he was appointed as Executive Engineer and was lastly posted at Nagpur.

51. Thus, it is evident that initially the accused was working as Executive Trainee at Hyderabad during July 2013 to December 2013, then he was appointed as System Engineer on 30th December, 2013. He was transferred to Nagpur in August 2014 and was then promoted in the year 2017 as Senior System Engineer.

52. Let us now move to examine the material/documents found in the desktop seized from the office at Hyderabad and the laptop of the appellant, which are alleged to have been leaked by the accused.

53. According to PW-3, the accused was assigned to the Leak Check and Fueling Section of Missile Integration at Hyderabad. It is one of the stages of integration. One Masood Ahmad was Additional General Manager (Production) at Hyderabad, who was subordinate to PW-3 and accused Nishant was subordinate to Masood Ahmad. Accused Nishant was also subordinate to Alan Abraham, who was incharge of the Leak Check and Fueling Facility.

54. As per the version of PW-8-Krushna Mohan Rai, who was working as Inspector, ATS, Kanpur, on his application permission was granted for verification of the Desktop used by the accused. He further states that the desktop which was used by accused Nishant was pointed out by Bibish Thomas (PW-6). The file BrahMos Missile 310 was found in the said desktop after extensive search, which was named as "secret" in red colour. Other 12 files were searched, which were secret files relating to BrahMos Missile. He states that when the desktop was checked, it was revealed that previously on several occasions the pen-drive and hard disk were used.

55. PW-10 has deposed that he received notice from ATS along with pendrive wherein the documents were in the soft copy. He states that the documents at Sr. Nos. 1 to 17 and 19 were created for training and user documentation purpose. The document at Sr. No.18 was created for inspection purpose for use by production agencies to ensure quality. Document at Sr. No.11 is a technology received from Russia, which contains more sensitive information. It contains seeker which is critical part of the missile. He then states that if the technology is compromised then the enemy can jam the transmission. He admitted that he deposed on the basis of his general knowledge that if technology is compromised the enemy can jam the transmission and seeker is critical part of the

missile. The unauthorized possession of all these documents is not in the national interest.

56. He further deposed that there are four categories viz. top secret, secret, confidential and restricted. Any information which may cause harm to the national security is a classified information. Any information which may cause serious damage to the national security is the secret information. The restricted information is that which is not to be shared or to be published and it is only for the official use of the organization. No employee is authorized to keep the classified information in his personal device. He further deposed that accused was not authorized to keep the classified information in his personal device.

57. PW-7-Nilesh Mahadeorao Punse, who acted as Panch to house search of the accused, has deposed that Nishant opened his Laptop and showed his Facebook account. Neha Sharma and Pooja Ranjan were in his friends list of Facebook account. One file with the file name 'secret' in red colour was found in the laptop of Nishant.

58. According to PW-3, the accused was not authorized to keep the departmental secret information in his computer. The secret document No.BM/UDN/MSL was prepared as a draft version for approval by technical specialists for issuing to the user. The document is a technical

description of BrahMos Missile CK-310. There are different classifications of the documents. This document is classified as a secret document considering its contents. If this document is compromised, the technical know-how and the capability of the missile will be known to the persons, who are not authorized to know it. The document was a sensitive document.

59. PW-4 states that he knows the procedure adopted by the armed forces for classification of information and documents, where he has worked for 32 years. The information which is not required to be shared other than the company people is a classified information. No employee is authorized to keep the classified information in his personal electronic device. The accused was not authorized to keep any classified information in his personal device. The document bearing Secret Document No. BM/UDN/MSL/1002/02/00, Technical Description BrahMos missile (CK 10) was a classified information. This information was sensitive and was relating to the security and integrity of the country. From this information, the enemy may prepare defence to counter the effect of the missile.

60. PW-6-Bibish Thomas Mathew, who was working as System Manager, BrahMos, Hyderabad, has deposed that he had shown the ATS team, the computer system, which was used by accused Nishant. At that

time, Gautam Das and Rohit Ravi Chandran were using the said computer system. Lal Dhari Yadav, officer of ATS Lucknow started inspecting the computer system. The officers of ATS Lucknow tried to search secret files in the said system. They could find file No.BM/ UDN/ MSL/1002/02/00. Its technical description was BrahMos Missile (CK310). In that folder 12 files were found. The files were of secret nature.

61. It is thus, evident from the above discussed oral evidence that the accused was assigned to the Leak Check and Fueling Section of Missile Integration at Hyderabad. He was subordinate to Alan Abraham who was the incharge of the Leak Check and Fueling Facility. Upon inspection of the desktop, which was used by the appellant while he was working in the office of BrahMos Aerospace Private limited, Hyderabad, the file BrahMos missile CK310 was found. The file was named as 'secret' in red colour. Other 12 files were searched and those were secret files relating to BrahMos Missile. It was also noticed on inspection of desktop that previously on several occasions the pendrives and hard disks were used.

62. It is further evident that the documents found in the desktop of the appellant, i.e. Documents at Serial Nos. 1 to 17 and 19 were created for training and user documentation purpose. The document at

Sr. No. 18 was created for inspection purpose for the use by production agencies to ensure quality. Whereas, Serial No.11 is a technology from Russia which, according to PW-10, contains sensitive information.

63. Furthermore, it is evident from the above referred oral evidence that HP company laptop hard disks and mobiles were seized from the appellant from his house at Nagpur. In the laptop, it was found that in the friend list of his Facebook account, Neha Sharma and Pooja Ranjan were there. Similarly, one file with the file name 'secret', in red colour, was found in the laptop of the appellant. Furthermore, the chatting data of the appellant with one Sejal Kapoor was found.

64. At the same time, the secret document No.BM/UDN/MSL which is a technical description of BrahMos missile CK-310, was found in the computer of the accused.

65. Thus, there is no element of doubt that certain important documents which, according to the prosecution are secret and classified documents, were found in the desktop used by the appellant when he was at Hyderabad.

66. However, the defence of the appellant is that he was working under Alan Abraham who gave pendrive, having project material to him

in official capacity, in authorized manner, like all 23 executive trainees. He made project of CPHS and submitted the project to his superiors. Thus, according to the defence, those documents were given to accused by his superior Alan Abraham and none of those files were secret or classified.

67. Let us test the merit in the case of the defence.

68. PW-3 has deposed that Alan Abraham worked with BrahMos for approximately 7 to 8 years. He resigned from BrahMos on 31/8/2018. Alan Abraham was imparting training to the newly recruited executive trainees. It was his discretion to allot the projects to the trainees.

69. PW-3 further states that accused Nishant Agrawal worked under Alan Abraham as a trainee and System Engineer. The trainees were required to submit the project report of the projects allotted to them. There is no prohibition or circular for preparing a project by a trainee on his own electronic device.

70. He states that the trainees were prohibited to bring their electronic devices within the campus of BrahMos.

71. According to PW-3, there was a Guest House for executive trainees a few kilometers away from the BrahMos establishment at Hyderabad. There was no prohibition for trainees to prepare projects at the Guest House on their own electronic device. The concerned Project Coordinator was responsible to provide data to the trainees for the project.

72. PW-3 states that Alan Abraham was competent to provide data to the concerned trainees for their respective projects and accused-Nishant was authorized and permitted to have access to the computer of Alan Abraham.

73. According to PW-3, Alan Abraham never complained that Nishant Agrawal misused his computer or compromised its data. He had not received any complaint from Alan Abraham that Nishant Agrawal had no authority to possess the information/data found in his laptop.

74. He states that when the information was found in the laptop of the accused, by that time, Alan Abraham had resigned. No efforts were made by BrahMos to confirm from Alan Abraham that the information/data found in the laptop of the accused was without his authority. The project of the accused was completed when Alan Abraham was working with BrahMos.

75. PW-3 in his cross-examination has deposed that it might be true that the accused was undertaking a project by name CPHS. He admitted that the accused was working with the Hydraulic Pneumatic Department, which was part of the Leak Check and Fueling Department. He admitted that the information, which was allegedly found in the laptop of the accused, was related to his project. The accused Agrawal was authorized and permitted to have access to the computer of Alan Abraham.

76. PW-4 in his cross-examination has deposed that he came to know that the accused was working at Hyderabad in the Leak Check Department which is a Hydraulic Pneumatic Department. Combined Pneumatic Hydraulic System (CPHS) is part of the said department.

77. PW-6 deposed that he was allotted the same computer system, which was allotted to Alan Abraham. Nishant and Alan were working on the said computer system. Except for these two, the other person was not authorized to have access to the said system.

78. Thus, it is evident that Alan Abraham, while working in BrahMos, used to impart training to the newly instituted trainees. Accused worked under Alan Abraham as a trainee and System Engineer. Trainees were required to submit the project reports of the projects allotted to them and there was no prohibition for preparing a project by

trainee on his personal electronic device. There was also no prohibition to prepare projects at the guest house by the trainees on their own electronic device. The concerned project coordinator was responsible to provide data to the trainees for the project. And as such, Alan Abraham was competent to provide data to the concerned trainees for their respective projects.

79. It is further evident that the desktop which was seized from the Hyderabad office was allotted to Alan Abraham. Nishant and Alan Abraham were working on the said computer system. Alan Abraham never complained that Nishant Agrawal misused his computer or compromised its data. PW-3 never received any complaint from Alan Abraham that Nishant Agrawal had no authority to possess information/ data found in his laptop. It is further evident that no efforts were made by the prosecution or BrahMos to confirm from Alan Abraham that the information/data found in the laptop of the accused was without Alan's authority.

80. Moreover, PW-10 in his cross-examination stated that if the employee obtained possession of this document from a senior employee, who has authority to possess it, then such possession of the employee would be a valid possession.

81. PW-6 in his cross-examination has deposed that when the system was checked, five different drives were found. When the system was inspected, personal files of Alan Abraham were found in D, E and F Drives.

82. He further states that the system does not allow insertion of pendrive or external hard disk. At the time of inspection, it was noticed that previously external hard disks, pendrives and other memory devices were used. Furthermore, there were 1170 files of Alan Abraham in the system and no file in the name of Nishant Agrawal was found.

83. It is imperative to note that Alan Abraham was not examined by the prosecution. In light of above discussion made on scrutiny of evidence, an adverse inference can be drawn against the prosecution for not examining this vital witness.

84. In the circumstances, the possibility that Alan Abraham gave the alleged secret documents to the accused during training for the project purpose cannot be ruled out.

85. PW-1 and PW-11 have stated that initially information received by them was with respect to honey trap. Let us, therefore, examine whether it was a honey trap

86. PW-1, in his cross examination, stated that he received the information that Facebook accounts in the name of Neha Sharma and Pooja Ranjan were created to honey trap the officers. Similarly, PW-11 in his cross examination admitted that as per the FIR, the informant received secret information that two fake Facebook accounts are created in the name of Neha Sharma and Pooja Ranjan and the said accounts are operated in Pakistan and they are trying to contact important persons of defence by using honey trap and money allurement with intent to extract secret information.

87. Thus, since beginning, it was the case of the prosecution that it was a case of honey trap and not giving secret information to the third party with intention, knowledge and purpose prejudicial to the safety and interest of the State.

88. PW-11 has stated that the first connection was sent by Sejal Kapoor to accused-Nishant. He further stated that there are four days of chat on 18/12/2017, 19/12/2017, 20/12/2017 and 21/12/2017. He states that from the chat of 19/12/2017, it is found that Sejal Kapoor gave information about a job in Aviation at Hays United Kingdom and Nishant has shown interest in the said job. He admitted that Sejal Kapoor asked to send the CV of Nishant on her e-mail ID. He has investigated

with regard to e-mail address of Sejal Kapoor but, CERT-in has not replied about the e-mail address. He does not know that Yandex.com is a Russian e-mail service provider. He states that Sejal Kapoor asked Nishant to download the X-trust link in the Windows system on 20/12/2017. From the chat, it appears that Sejal Kapoor is inviting the accused for an interview with the Manager of the company and for that X-trust link is sent by Sejal Kapoor.

89. According to PW-11, it appeared that Nishant Agrawal was trying to face an interview. He has sent the queries with regard to X-trust link and Q-whisper link to CERT-in. He personally has not investigated about X-trust link and Q-whisper link. He does not know that X-trust link and Q-whisper link are the communication apps in other countries. After going through Exh.170, it is found that Nishant has not sent any departmental documents on the LinkedIn App. He further states that Nishant has not communicated with Sejal Kapoor, Pooja Ranjan and Neha Sharma through phone or any other electronic media except chat. He states that there is no restriction to use any social media platform. He further states that none of the Circulars from BrahMos Aerospace prohibits use of LinkedIn App. He states that none of the circular from BrahMos Aerospace prohibits any employee to apply in other company for a job during his employment.

90. Thus, the prosecution has failed to establish wrongful communication or any information as stated in Section 5(1)(a),(b),(c) and 5(3) of the Act of 1923. It has not been established that the accused willfully communicated or used the same for the benefit of any foreign power or any other manner prejudicial to the safety of the State or willfully failed to comply with any direction issued by any lawful Authority with regard to return or for disposal of such material.

91. At this juncture, it is necessary to find out evidence, if any, produced by the prosecution to establish that the accused unauthorizedly accessed the computer data and copied the same in his personal device.

92. For this purpose, evidence of PW-8 is important. PW-8 in his cross-examination has admitted that after giving 'run-type-regedit' command, they found that several pen-drives and external hard disks were used in the said desktop in the past and the list of the past users of the pen-drives and external hard disks was generated. He did not find any entry in the list of the usage of pen-drives or external hard disks by accused Nishant Agrawal in the past.

93. Thus, it is evident that after giving the command 'run-type-regedit' it was found that several pendrives and external hard disks were used in the said desktop in the past. After giving the command, the list of

past users of the pendrives and external hard disks was generated. No entry was found in the said list of the usage of pendrives or external hard disks by the accused in the past.

94. PW-6, however, refused to answer the question whether upon giving the command 'run-type-regedit' complete user history was generated. He stated that he does not remember that when the command run-type-regedit was given, the system generated the list of pendrives, external hard-disks, and memory devices used previously in the system along with date, time and users' name.

95. Therefore, we are of the opinion that there is a substance in the version of the defence that accused was having these files and documents as they are relating to his project and not copied in his personal device.

96. Moving further, as regards the classification of the alleged documents as 'secret' or 'classified documents', it is the case of the defence that none of these files were secret, restricted or classified.

97. PW-10 in his cross-examination has stated that he has not produced any document to show that the classified information is to be retained in the official device at the office. There was no prohibition for accused-Nishant to receive the classified information.

98. PW-4 has deposed that as he had received a single hard copy of the document in question from the Hyderabad office on which it was written as "secret", therefore, he treated it as a classified secret document. He did not inquire from the Hyderabad office the reason for tagging this document as a secret document.

99. PW-4 deposed that he was not given the entire document by the investigating officer when the notice was issued to him. The investigating officer has only provided the name of the document. He was never informed from which drive of Nishant's laptop the documents were taken. He was also not informed that in which folder of the drive this document was found. He was also not informed which other material was found in the laptop. He did not have any personal knowledge whether the said secret information was derived from the laptop of the Nishant.

100. PW-4 further states that he was never given the file which is alleged to have been found in the laptop of the accused for giving reply to the query raised by the Investigating Officer. He was only provided with the name of the document. He cannot say whether the said document was actually found in the laptop of the accused or not.

101. Moving further, it is the case of the defence that most of the information about the BrahMos is in public domain and therefore it cannot be said that any information was leaked by the accused relating to BrahMos missile.

102. The evidence of PW-4 and PW-10 is relevant for this purpose.

103. PW-4 in his cross-examination states that much of the information of the missile is in the public domain and is known to the general public. These missiles are displayed since 10 years. The part of the information which was alleged to be found in the laptop of the accused was already in the public domain. The information alleged to be found in the laptop was not a complete classified information. The technical information was classified information and was not available in the public domain.

104. PW-10 in his cross-examination states that there is a website of BrahMos as brahmos.com. On the website details of working of BrahMos missile and the manner of production of BrahMos missile are available. Most of the information about the components of BrahMos missile is available in the public domain.

105. Thus, the above referred evidence of PW-4 and PW-10 and other evidence brought on record by the prosecution takes us to only conclusion that the alleged malware which were downloaded by the appellant were with an intention to apply to secure a job in the UK and not to transfer any information or data. Thus, no offence, as alleged, attracts against the appellant except the offence under Section 5(1)(d) of the Act of 1923 i.e., failure to take reasonable care or for the conduct of the appellant of downloading the alleged malware at the instruction of Sejal Kapoor.

106. We have considered the language of Section 66F of the Act of 2000 and Section 3(1) and 5(1)(a), (b), (c) of the Act of 1923 and observed that to attract these provisions, *mens rea* is a paramount requirement.

107. It is important to note that the accused was at Hyderabad from 01/07/2013 to 24/08/2014. And the allegation that the accused copied the secret and classified information from his official desktop to his personal device was with respect to the period from 01/07/2013 to 30/12/2013.

108. PW-11, in his cross examination, has admitted that during the investigation it was found that alleged secret files were pertaining to the period when the accused was working in BrahMos, Hyderabad, from 01/07/2013 to 30/12/2013. He further admitted that name of Nishant was not found in the list of inserted devices. He further admits that in Exh.95 (Annexure-V) it is mentioned that the files are suspected to be leaked and not absolutely leaked.

109. PW-11 stated that while working at Nagpur in BrahMos Aerospace the accused might be having several secret files in his official system.

110. Admittedly, the chat of the accused with Sejal Kapoor on LinkedIn, produced on record by the prosecution shows that it was of December 2017, while the accused was posted at Nagpur. The accused was posted at Nagpur since August 2014.

111. Thus, the first chat with Sejal Kapoor is dated 18/12/2017, i.e., after more than 3 years of alleged access by the appellant to the official computer. It is the case of the prosecution that at the instruction of Sejal Kapoor the accused downloaded three malware which were sufficient to give access to third party to the documents and material in the laptop of the accused.

112. Even if this assertion of the prosecution is accepted, the prosecution has failed to establish that there was any intention of the accused during the period 01/07/2013 to 30/12/2013 to copy the information for the purpose to leak the same to Sejal Kapoor subsequently in the year 2018. To attract section 66F(1)(A)(ii) of the Act of 2000, it has to be established that when the attempt to penetrate or access a computer resource without authorization or exceeding authorized access was made, it was done, at that relevant time, with intent to threaten the unity, integrity, security, or sovereignty of India or to strike terror in the people or any section of the people. The prosecution failed to establish such intention of the appellant when such data was allegedly copied by the appellant during the period 01/07/2013 to 30/12/2013.

113. Thus, there is nothing brought on record by the prosecution to show that the accused intentionally, to threaten the unity, integrity, security or safety of India, or to strike terror in the people or any section of the society, or knowingly or intentionally penetrated or accessed a computer resource to cause or likely to cause injury to the interests of safety and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in intention to contempt of court, defamation or incitement to offence or to the

advantage of any foreign nation, group of individuals or otherwise, committed a cyber terrorism.

114. While holding the appellant guilty under section 66F of the Act of 2000, there is not a single observation or finding recorded by the learned trial court that there was such intention of the appellant during the period 01/07/2013 to 30/12/2013, during which period the said information and data was allegedly copied by the appellant.

115. In the circumstances, it is difficult to say that the prosecution has established beyond reasonable doubt that the accused is guilty of the offence punishable under Sections 66F of the Act of 2000 and Section 5(1)(a)(b)(c) and 5(3) of the Act of 1923.

116. As far as section 3(1) of Act of 1923 is concerned, as observed, under Section 3(2) of the said Act, there is a presumption that if a person, without lawful authority, makes, obtains, collects, records, publishes or communicates any secret or prohibited defence-related material, it is deemed to have been done with a purpose prejudicial to the safety or interests of the State. However, for this presumption to arise, the prosecution must first establish the circumstances of the case, the conduct of the accused, or his known character; once these are proved, it is not

necessary to show that the accused committed any specific act demonstrating a prejudicial purpose.

117. In the circumstances, the conduct of the appellant or his known character is to be seen from the oral evidence of the witnesses.

118. Much emphasis is placed on Undertaking of Secrecy (Exh.26) submitted by the accused. The undertaking is to the effect to keep all information known to him and data related to the business of the company in his possession as strictly confidential. There is nothing brought on record by the prosecution to show that the appellant knowingly or intentionally transferred any information known to him and data related to the business of the company which was in his possession as strictly confidential.

119. PW-4 in his cross-examination has deposed that he did not receive any negative report as regard working of the accused from Hyderabad office when the accused joined at Nagpur. Even there was no report regarding the accused's suspicious conduct. He has not also received any report as regards the accused's misconduct while working at Hyderabad. He never received any negative inputs as regards accused from I.B. or other security agencies.

120. PW-4 in his cross-examination has further deposed that during his working at Nagpur he had no occasion to summon accused or issue memo for violation of any of the service conditions. He never found accused violating Govt. circular, office order, circular and guidelines issued by him. The Annual Confidential Reports of Nishant Agrawal, written by the reporting officer Shri Krantikumar, were always 'very good' and 'outstanding'. Due to his performance he was promoted as Sr.System Engineer. He recommended the name of the accused for the Young Scientist Award in the year 2017. He was granted with the said award in the year 2018.

121. PW-3 in his cross-examination has deposed that there was no complaint as regards working and conduct of Nishant while working as a trainee and system engineer at Hyderabad. He admitted that none of his subordinates reported any suspicious conduct of Nishant Agrawal. He further deposed that during the entire service tenure of the accused with BrahMos, he did not get any input from any of the security agencies as regards the suspicious working and conduct of the accused.

122. PW-10 in his cross-examination has admitted that being HR Head he was receiving the Annual Confidential Reports of all the officers including Nishant. He admitted that he never received any adverse

confidential report against Nishant. He admitted that many Russian officers were also working with BrahMos. He admitted that none of the conduct of the Nishant Agrawal was against the national interest and there was no such intention on his part.

123. PW-4 in his cross-examination has deposed that the accused was working in the assembly unit at Nagpur and that he was also responsible for delivery of missiles to the armed forces. While working at Nagpur for a period of 4 years, the accused was personally involved in delivery of around 70 to 80 missiles to the armed forces. The accused was having all the information about the customers and delivery locations of the missiles. He admitted that this information was equally secret and the computer which was provided to him at the Nagpur office was having more secret and classified information in it than the present information. He never had any occasion to come across with the incident where the accused shared, tampered or misused the information available in the office computer at Nagpur.

124. PW-11, in his cross-examination, deposed that he has not investigated as to what work was allotted to the accused and what work he has done during his training period. He has not made a detailed investigation as to what work was allotted to the accused. He never felt it

necessary to investigate as to what work was allotted to the accused when he was working as System Engineer and Senior System Engineer. He does not know that when Nishant Agrawal was working as System Engineer at that time he has handed over 70 missiles to the Armed Forces. He stated that while working as System Engineer and Senior System Engineer, Nishant may be having much more secret information. He does not know that in the year 2015-16, Nishant was working on a top secret project of Air Version BrahMos. He further deposed that he has not investigated about the character and conduct of accused-Nishant during interrogation with Senior Officers of BrahMos Aerospace. He admitted that no secret file was found in the official system of BrahMos Aerospace, Nagpur in the section where the accused was working. He stated that during the investigation, it was found that the alleged secret files were pertaining to the period when the accused was working at BrahMos, Hyderabad from 1st July, 2013 to 30th December, 2013.

125. PW-6 in his cross-examination admitted that Nishant Agrawal joined BrahMos as Executive Trainee on 1/7/2013 and he was transferred from Hyderabad on 24/8/2014. No internal enquiry was done to find out who violated the guidelines, circulars etc. of the BrahMos for using the external devices with the computer. He had also not recommended for any such enquiry.

126. Thus, it is evident that no file was found in the laptop of the appellant of the period after December 2013. Whereas, the appellant was a part of the core team dealing with handing over 70 to 80 missiles during 2014 and 2018 to the armed forces. He was part of the top-secret projects of BrahMos. He was having these files, documents in his official system. He could have copied those documents on his personal device had there been any such intention to transfer the secret and confidential information to the third party. Even from the evidence of PW-11, it is clear that no chats were found with Pooja Ranjan and Neha Sharma. The chats which were found with Sejal Kapoor were in respect of job in the UK. It has also come on record that no telephonic conversation took place between them at any time.

127. Having observed so, it can be said that the prosecution has failed to prove the circumstances or the conduct of the accused or his known character to show purpose prejudicial to the safety or interest of the State, to presume under Section 3(2) of the Act of 1923.

128. The conduct of the accused, or his known character, as has come on record, show that the Annual Confidential Report of the appellant was always 'very good' and 'outstanding'. Due to his performance, he was promoted as Senior System Engineer and awarded

with Young Scientist Award. And none of the conduct of the appellant was ever found against the national interest or that he had any such intention since the joining of BrahMos Aerospace Private Limited. Thus, the conviction under Section 3(1) of Act of 1923 is based on perverse findings. Hence, the same is not sustainable in the eyes of law.

129. In the above referred facts and circumstances, and the findings recorded on scrutinizing and examining oral as well as documentary evidence available on record, we have no hesitation to hold that except the offence punishable under Section 5(1)(d) of the Act of 1923, no other offence, under which the appellant was tried, is proved by the prosecution.

130. In that view of the matter, we pass the following order :

i) The appeal is **partly allowed**.

ii) The impugned judgment and order dated 03/06/2024 passed by Additional Sessions Judge-1, Nagpur in Sessions Case No.726 of 2021 is hereby quashed and set aside.

iii) The conviction and sentence, imposed upon the appellant, for the offences punishable under Section 66F of the Information Technology Act, 2000, Section 3(1)(c) of the Official Secrets Act, 1923 and Section 5(1)(a), (b) and (c) and 5(3) of the Official Secrets Act, 1923 is set aside.

iv) The conviction and sentence, imposed upon the appellant, for the offence punishable under Section 5(1)(d) of the Official Secrets Act, 1923, is maintained.

v) Set off be given to the appellant under Section 428 of the Code of Criminal Procedure.

The Criminal Appeal is **disposed of** accordingly. Pending application (s), if any, shall stand disposed of.

(PRAVIN S. PATIL, J) (ANIL S. KILOR, J)

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