

**IN THE COURT OF MS. VIDHI GUPTA ANAND,
ACMM-01, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI**

**Criminal Case No. 07/2019
CNR No. DLCT12000332019
Surender Kumar Sharma Vs. Arvind Kejriwal & Ors.**

ID No.	: 07/2019
CNR No.	DLCT12000332019
Date of commission of offence	: 14.10.2013
Date of institution of the case	: 26.10.2013
Name of the Complainant	: Sh. Surender Kumar Sharma S/o Late Sh. Narender Nath Sharma R/o:- H.No. 159-A, Street Ganga Ram, Taliwara, Shahdara, Delhi-110032.
Name of Accused persons and addresses	: 1. Sh. Arvind Kejriwal, Founder/Member Aam Aadmi Party 2. Sh. Manish Sisodia, Spokesperson/Member Aam Aadmi Party 3. Sh. Yogender Yadav Member, Aam Aadmi Party All having office at A-119, Kaushambi, U.P.
Offence complained of	: U/s 500 IPC

Plea of the Accused	: Pleded not guilty
Final order	: Acquitted
Date of judgment	: 20.08.2022

J U D G M E N T

अकीर्तिं चापि भूतानि कथयिष्यन्ति तेऽव्ययाम् ।
संभावितस्य चाकीर्तिर्मरणादतिरिच्यते ॥

*“People also will speak of your unending infamy. And to an
honoured person infamy is worse than death.”*

1. The concept of *Reputation* is known in the society perhaps since the time the civilization itself established. The above quoted text from an ancient Indian Sanskrit epic *Bhagwat Geeta* dates back to 2nd Century CE highlighting the importance of a person's reputation. Even today, in modern India, governed by its Constitution, Right to reputation has been embedded as one of the fundamental rights covered under the larger concept of Right to Life. Hence, undoubtedly, since time immemorial, Indian society identifies reputation as a person's most prized possession and it holds even more importance for persons who are in the profession of public dealing; viz, advocates and politicians alike.

The case at hand is one such case where a practicing Advocate, also claiming to be also a social activist, had come to the court alleging that members of a leading political party i.e. Aam Aadmi Party, tarnished his reputation and defamed him so much so that he suffered immense mental agony, loss of respect

in the society and financial losses. This case emanated at a time when Aam Aadmi Party was still establishing itself in the mainstream politics with the main motto of giving a corruption free government. While the Complainant claims that in the alleged defamatory newspaper articles, he has falsely been presented as a person with criminal record and doubtful credentials; Accused persons, while disowning the news publication, have taken a defence of truth for public good.

The detailed facts of the case, evidence led by the parties, relevant law on the subject of defamation and the result of this litigation has been discussed in the following pages.

Brief introduction to the Case

2. This judgment shall decide and dispose off a case of defamation filed in the year 2013 by Sh. Surender Kumar Sharma, Advocate, Shahdara Bar Association (hereinafter Complainant) against three persons i.e. Sh. Arvind Kejriwal, presently the Chief Minister of Delhi and convener/founder of Aam Aadmi Party (hereinafter Accused no. 1), Sh. Manish Sisodia, presently Deputy Chief Minister of Delhi and the then Member of Political Affairs Committee of Aam Aadmi Party (hereinafter Accused no. 2) and Sh. Yogender Yadav, the then Member of Political Affairs Committee of Aam Aadmi Party (hereinafter Accused no. 3).

It is pertinent to note at this stage itself that before the trial could be concluded, the Complainant expired on 01.11.2020 and therefore, the trial was continued till its end by the Substituted

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Complainant i.e. Sh. Yogesh Kumar Gaur, nephew of the Complainant and an Advocate by profession.

Synopsis of Complainant's case

3. Before making a note of the Court proceedings which culminated the trial towards its end, it is necessary to peruse the contents of the complaint filed by the Complainant. The same is briefly reproduced in the following paragraphs.

3.1 The case of the Complainant is that he was an Advocate by profession and a Member of Shahdara Bar Association since 1989 and had been Honorary Secretary of the Shahdara Bar Association for several years having unblemished political career. He further claimed that he had been a social worker and had addressed the problem of scarcity of water in trans Yamuna Area by filing Writ Petitions before the Hon'ble High Court of Delhi.

3.2 As per the complaint, some volunteers of Aam Aadmi Party approached the Complainant in second week of June 2013 and told him that Accused no. 1 was impressed by the social services provided by the Complainant and had asked them to seek an application form from the Complainant for contesting the Elections of MLA on its ticket from Shahdara Constituency.

3.3 Allegedly on 28.06.2013, Complainant submitted his application form for contesting as an MLA from Shahdara Constituency on the ticket of Aam Aadmi Party, whereafter he was interviewed by its Political Affairs Committee and finally on

16.07.2013, he was short listed. Complainant submits that Official Press Release in this regard was published in several esteemed newspapers of the country. He has also stated that after this, on 23.07.2013, the Accused persons had also sought an explanation from the Complainant with respect to his long standing property dispute.

3.4 Complainant has further alleged that on 20.07.2013, he received a call from the office of Accused no. 1 directing him to reach at his residence at H.No. 403, Girnar Apartments, Kaushambi, U.P. where he went alongwith his nephew Yogesh Kumar Gaur. As per the Complainant, he was told there that the Aam Aadmi Party had decided to give him the ticket for contesting the MLA elections from Shahdara Constituency. Allegedly, photographs of the Complainant were also taken alongwith Accused no. 1 by a photographer of the Accused no. 1 and he was told that his name would be published in the newspapers on the next day.

3.5 Further, it is claimed by the Complainant that on 22.08.2013, he was called at the office of the Accused persons at A-119, Kaushambi, U.P where he met other short listed candidates namely Sh. Naveen Chauhan and Sh. Kanwal Singh Rawat and all three of them were called in the official room of the Accused persons where Accused no. 2 alongwith Accused no. 3 had told the Complainant that the Political Affairs Committee had decided to give him the ticket. Complainant submits that Press Release with regard to the official announcement of the

candidature of Complainant from Shahdara Constituency was published in the leading newspapers of the country and resultantly, the Complainant started his campaign as a candidate for MLA, Shahdara Constituency by pasting banners/posters, putting up hoardings and distributing pamphlets in Ward No. 237, 238, 239 and 240. Complainant has also alleged that Accused no. 1 had sent 20,000 copies of a letter to him containing the achievements of the Complainant which were also distributed during the campaign. It is the case of the Complainant that at the instance of the Accused persons, Complainant had spent Rs. 5,00,000/- from his own pocket on the campaigning as aforesaid.

3.6 Further, Complainant has put forward that on 01.09.2013, after the General Body Meeting of Shahdara Bar Association, he was appointed as the Chairman of its Election Committee to conduct the Bar Elections to be held on 01.10.2013. Complainant added that on 01.10.2013, he alongwith other Members of the Election Committee were conducting the elections but at around 3.00 pm, some disgruntled elements of the Bar and non-Advocates from outside, dismantled the process of election; as a result of which, the elections were stopped midway and with the assistance of police as well as Senior Members of the Bar and Election Committee Members, the Ballot Papers were sealed under the seal of the Complainant.

3.7 As per the Complainant, on 05.10.2013, it was decided in the General Body Meeting of the Bar that elections conducted on 01.10.2013 be cancelled and the Complainant continuing to be

Chairman of the Election Committee of the Bar Association, with the assistance of ten additional Senior Members of the Bar, shall conduct re-poll on 11.10.2013. In this regard, not only the Bar Association but the Complainant himself also issued a notice to the Members of the Bar. Thereafter, the elections were conducted and result was issued under the signature of the Complainant and the newly elected Secretary of the Bar Association also issued a Certificate to the Complainant for conducting free and fair elections on 11.10.2013.

3.8 The grievances of the Complainant with respect to his alleged defamation came to the fore on 14.10.2013 when he read some newspaper articles in the leading Hindi and English newspapers pertaining to his replacement as the candidate of seat of MLA from Shahdara Constituency on the ticket of Aam Aadmi Party. The newspapers reports quoted by the Complainant in his complaint are reproduced below:-

(i) *AAP replaces candidate with 'criminal' record:-*

“ It also came to the parties notice that the elections to the Shahdara Bar Association were cancelled due to allegations of use of unfair means and violence during the election under his chairmanship”. (Reported in Hindustan Times)

(ii) *AAP fires Shahdara candidate:-*

Party Acts After Reports Of Criminal Charges Against Him

“ Sharma was recently appointment as the chairperson of Shahdara Bar Association election committee. The release said the bar election was cancelled due to allegations of using unfair means and violence”..... “ said and AAM AADMI PARTY

spokesperson. He said that many Shahdara Bar Association Members had complained to them about the unfair role played by Sharma during the Bar election”.

“ Keeping the above in mind, the Political Affairs Committee (PAC) of the party felt that he is not a fit candidate to represent AAM AADMI PARTY in the Delhi assembly elections and thus his candidature has been cancelled unanimously by the PAC,”.

During several attempts Sharma did not respond to queries on the charges leveled against him or the reason for his disqualification from the party. His nephew and election manager Yogesh Gaur, however, claimed that none of the charges were proved. “ We will take legal action against AAP for defaming us. They had been told clearly that there was no charge-sheet against Sharma in any of the cases in July itself,” Gaur claimed. (Reported in Times of India)

Allegedly, similar derogatory and defamatory language has also been used and got published by the Accused persons in other daily leading Newspapers i.e. Hindustan Times (Hindi) and Rastriya Shahara (14.10.2013).

3.9 Complainant alleges that the aforesaid derogatory and defamatory words of the Accused persons published in the aforesaid newspapers have lowered his image and reputation at the Bar as well as in the eyes of general public and society at large. Allegedly, the language of the Accused persons had caused mental trauma to the Complainant and his family members and also affected his business of Advocacy as well as of his nephew Yogesh Kumar Gaur. Complainant has stated that most of their litigants stopped coming to them because of their defamation.

3.10 Complainant's case is that neither he nor any of his family

members have ever been charge-sheeted or convicted in any provision of law and they have a great image and reputation in the society. Complainant alleges that the Accused persons have committed the offences in furtherance of their common intention to cheat and defame the Complainant and his family members and have destroyed the goodwill and image of the Complainant.

3.11 Hence, **vide the aforesaid complaint, Complainant had prayed for taking lawful action against the Accused persons for offences U/s 120-B/420/499/500/34 IPC.**

Trial Proceedings

4. **This complaint case was received in the Court on 26.10.2013 and on the same day itself after taking cognizance of the alleged offence the matter was put up for pre-summoning Complainant's evidence.**

4.1 In order to establish his case for summoning of the Accused persons, **in his pre-summoning evidence Complainant examined two witnesses namely CW-1 Sh. Surender Kumar Sharma i.e. the Complainant himself and CW-2 Sh. Mohd Saleem.** After examination of both the said witnesses, Court heard the arguments on point of summoning of the Accused persons and conducted enquiries U/s 202 Cr.PC with regard to the pending criminal cases/civil disputes against the Complainant at the time of commission of the alleged offence of defamation (vide order dated 29.01.2014) as well as with regard to the Press Release containing the alleged defamatory contents (vide order dated 05.03.2014) which form the basis of this case.

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4.2 Thereafter, vide order dated 17.04.2014, the Court summoned the Accused persons namely Sh. Arvind Kejriwal (Accused no.1), Sh. Manish Sisodia (Accused no. 2) and Sh. Yogender Yadav (Accused no. 3) for the offence punishable U/s 499/500/34 IPC. Upon their appearances in the Court, Accused persons were admitted to bail and after exploring the possibilities of settlement, the matter was listed for framing of notice.

The notice of accusation U/s 251 Cr.PC was served upon Accused no. 1 and 2 through their counsel on 22.03.2019 and on Accused no. 3 on 29.04.2019. All the Accused persons pleaded not guilty and claimed trial.

4.3 After serving of notice of accusation upon the Accused persons as above mentioned, the matter was taken up for post notice Complainant's evidence. Complainant examined 12 witnesses in total including CW1 and CW2 who were recalled for their cross examination after their examination in pre-summoning evidence.

4.4 Relevant aspects and crux of the testimonies of the prosecution witnesses are given in the following paragraphs for a quick perusal of the prosecution evidence.

(I) CW-1 Surender Kumar Sharma (Complainant) :-

a) He is the prime witness to this case since he is the Complainant as well as the victim of the alleged offence of defamation herein. In his deposition, he reiterated the contents of his complaint and exhibited several documents on record to

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prove his case. The contents of the complaint have already been stated above and hence, the same are not being repeated here. However, it is important to take a note of the crux of the testimony of the Complainant as well as the documents relied upon and exhibited by him on record to prove his case.

b) He deposed that he is an advocate by profession and due to the writ petitions filed by him before the Hon'ble High Court of Delhi, the water crisis in the entire Trans Yamuna Area was solved. He exhibited the certified copies of the Orders passed by the Hon'ble High Court of Delhi in this regard as **Ex. CW-1/A1 – 22 (colly)** and the newspaper clippings related to the same as **Ex. CW-1/A23 – 25 (colly)**.

c) He also deposed that after finalization of his candidature from Aam Aadmi Party for MLA from Shahdara Constituency, he started his election campaign along with his workers and supporters and started pasting banners and posters, putting up hoardings and distributing pamphlets. Copy of the poster is **Ex. CW-1/B** and copy of pamphlet is **Ex. CW-1/C**. He has further testified that Accused no. 1 had sent to him 20,000 copies of a letter issued by him containing the achievements of the Complainant, which were also distributed by him during his election campaign. Copy of the said letter is **Ex. CW-1/D**. As per the testimony of the Complainant during the said campaign, he had spent around Rs. 5,00,000/- from his own pocket.

e) Complainant also deposed that on 01.09.2013, he was appointed as the Chairman of the Election Committee of the Bar Association. He further stated on record that on 01.10.2013, *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 11 of 81**
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when the elections of the Bar Association were being conducted, at around 3.00 p.m., some disgruntled elements of the Bar and some non-advocates dismantled the election process as a result of which the elections were stopped midway and ballot papers were got sealed. Complainant further brought on record that on 05.10.2013, in the general meeting of the bar association, the elections conducted on 01.10.2013 were declared null and void and it was resolved that re-polling be conducted on 11.10.2013 with the assistance of 10 additional senior members of the Bar. To this effect, the Complainant, being the Chairman of the Election Committee, issued two notices which are exhibited on record as **Ex. CW-1/E** dated 05.10.2013 and **Ex. CW-1/F** dated 08.10.2013. Complainant has also deposed that he conducted the elections of the Bar Association peacefully and fairly on 11.10.2013 and declared the election result on 12.10.2013; copy of which is **Ex. CW-1/G1 – G4 (colly)**. He also brought on record a certificate issued to him by the newly elected Secretary of the Bar Association for conducting peaceful and fair elections; which is **Ex. CW-1/H**.

f) Thereafter, Complainant has deposed that on 14.10.2013 he came across the alleged derogatory and defamatory language against him in the leading newspapers including the Hindustan Times (English as well as Hindi) [**Ex.CW1/I and Ex.CW1/K**], Times of India (English) [**Ex.CW1/J**] and Rashtriya Sahara [**Ex.CW1/L**].

g) Complainant has testified that the Accused persons got the aforesaid defamatory language published in the *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 12 of 81**
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newspapers and have lowered his reputation at the Bar as well as in the society at large as a result of which he and his family members have suffered mental trauma and his business of advocacy has been adversely affected resulting in financial losses. He also deposed that neither he nor any of his family members have either been convicted or charge-sheeted under any provision of law and on account of criminal conspiracy of the Accused persons his image as a social worker has been destroyed and hence, accused persons are liable to be prosecuted.

Complainant was extensively cross-examined by Ld. Counsel for all the Accused persons and several documents were put to him.

h) During his cross-examination, Complainant deposed that he joined the Aam Aadmi Party in the month of June 2013 and named two volunteers of Aam Aadmi Party i.e. Asha and Ravi Ahuja stating that they visited his house in June 2013 application form was given to him by them. Further, he admitted that the entire application form seeking election ticket was filled by him in his own handwriting and he also admitted the copy of the same which was put to him by defence i.e. **Ex. CW1/D1 (colly. including affidavit)**. He specifically admitted that he had crossed column no. 3 of the form Ex. CW1/D1 (Column no.3 pertains to details of any pending/decided cases or FIRs against the applicant or his family members). He admitted that he was not handed over any formal letter by Accused no.1 or the Aam Aadmi Party to the effect that party had decided to give him the ticket. He admitted the document **Ex.CW1/D2**, put to him by *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 13 of 81**

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defence, which pertained to the details of civil/criminal cases filed against him and included copies of judgments of the Court and copy of FIRs.

i) He admitted that in the year 1994 an FIR bearing No. 81/94 u/s 506 IPC PS Sabji Mandi was registered against him but added that the same was quashed, the certified copy of order is **Ex.CW1/D3**. Further, he also admitted that the FIR bearing No. 211/95 u/s 341/324/34 was registered against him at PS Vivek Vihar adding that he was discharged in that case vide order **Ex.CW1/D4**.

j) Further, he admitted that FIR bearing No. 55/2002 u/s 380/448/457/506/120B IPC PS Farsh Bazar was registered against him adding that with respect to it the police had filed a cancellation report, the certified copy of which is **Ex.CW1/D5**. Further, he admitted that a protest petition was filed by the Complainant in FIR No. 55/02 PS Farsh Bazar and also that he had filed criminal MC No. 1729/2014 before the Hon'ble High Court in the same matter which was disposed on 15.04.2014 with a direction to dispose of the matter within a period of six months; copy of the same is **Ex.CW1/D6**. He further admitted it to be correct that the Court had ordered further investigation in that case and his criminal MC filed before Hon'ble High Court of Delhi against the order of further investigation was dismissed vide order **Ex.CW1/D7**. He stated that the police finally filed a cancellation report in 2019 in this case; certified copy of which is **Ex.CW1/D8**.

He admitted that FIR bearing No. 58/2002 u/s
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323/341/506/34 IPC PS Farsh Bazar was registered against him adding that police had filed cancellation report in this case and it was accepted by the learned Court vide order **Ex.CW1/D9**.

He admitted that he was aware of the FIRs since 2002 and was even interrogated by the police. He also stated that he had not mentioned about these cases in the application form as he was not summoned as an Accused in these cases.

k) He denied the suggestion that he never met Accused no.1 during that period. Further, he stated that as per his information there were six members of Political Affairs Committee of Aam Aadmi Party i.e. Arvind Kejriwal, Manish Sisodia, Yogender Yadav, Pankaj Gupta, Kumar Vishwas and Sanjay Singh. He stated that his interview was taken only by Accused no.2, Accused no.3 and one Dilip Pandey and no one else.

l) Further, he admitted that during the enquiry u/s 202 Cr.PC police filed a Press release **Ex.CW1/D9 (Since, Exhibit no. CW1/D9 has already been given to another document, the press release as aforesaid be read as Ex.CW1/D9A)**. Further, he admitted that he had not seen any press release or interview of Accused no.2, Accused no.3 or Dilip Pandey in regard to finalization of his candidature. He denied the suggestion that he himself got the said letters printed for his publicity and to get the party ticket without formally receiving any letter from the party about the ticket.

m) With respect to the Shahdara Bar Elections on 01.10.2013 he deposed that he stopped the same because some
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fake voters tried to cast their vote and denied that they were scrapped due to unfair means and biasness on his part.

n) He admitted that he had not given any notice of this defamation case before filing the same. He could not bring any document on record to show the loss of business due to the alleged defamatory publications. He was unaware of any document in which the Accused may have personally made defamatory allegations against him.

o) He admitted that in his pre-summoning evidence or in the documents filed along with the complaint, he has not filed copy of the FIRs registered against him. Complainant admitted that upon directions of the Court he had filed an affidavit regarding pending criminal and civil cases against him; the same is **Ex.CW1/D10**.

p) Lastly, Complainant denied all the suggestions of Ld. Counsel for the Accused no.1 and 2 wherein it was put to him that the present complaint is based on distorted and exaggerated facts or that none of the contents of the press release are derogatory or defamatory in nature or that the complaint has been made with an intention to harass the party and its senior functionaries and for settling personal scores with the party for denying ticket to him for the elections 2013.

q) Ld. Counsel for Accused no.3 adopted the cross-examination of the Complainant conducted by Ld. Counsel for Accused no.1 and 2, however, added some suggestions and put some questions to him.

During his further cross-examination, complainant
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admitted that he has not moved any application against any other person except the Accused persons herein with respect to the publication of alleged defamatory language. He denied the suggestion that Accused no. 3 had no direct role in the matter of drafting or releasing the said alleged defamatory newspaper articles or press-release. Lastly, he denied the suggestion that he had threatened Accused no. 3 with dire consequences upon learning from news articles that the party had not accepted his application form due to the revelations of the wrong particulars in his application form as well as from public inputs.

(II) CW-2 Mohd. Saleem, Advocate, Karkardooma District Courts.

a) CW2 deposed that the Complainant has been Honorary Secretary of Shahdara Bar Association and has good image and reputation at the bar. Further, he testified that in September, 2013, the Complainant was appointed as the Chairman of the election committee of Shahdara Bar Association to conduct the election of the Bar pertaining to year 2013 and 2014.

b) Further, he deposed that on 01.10.2013 at about 2:45 p.m. some unknown persons and disgruntled elements of the bar had interfered with the bar election whereafter elections were stopped with police intervention and the ballot papers were sealed. Further, he stated that thereafter, again the Complainant was appointed as the Chairman in the General House of the Associations on 05.10.2013 and he announced re-poll of the bar for 11.10.2013. CW2 stated that the Complainant conducted the

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election of the bar honestly and smoothly as per the provisions of the constitution of the Bar. He specifically deposed that no unfair means of any kind were used by Complainant in the election and announcement of the result was made on the next date i.e. 12.10.2013 and the result card of the elected candidates was pasted on the notice board of the associations which is already Ex. CW 1/G1-G4.

c) CW2 also deposed that he read the newspapers i.e. the Hindustan Times, the Times of India, the Rashtriya Sahara and the Hindustan Times (Hindi) which are already Ex. CW 1/I to CW 1/L which contained defamatory and derogatory language against the Complainant whereupon he and other members of the bar were greatly shocked. He added that the said defamatory language has tarnished and lowered down the reputation of the Complainant in the eyes of the members of the bar as well as in his own eyes.

d) During his cross-examination by Ld. Counsel for Accused no.1 and 2, he stated that he had never worked with the Complainant as an Advocate. He denied having any knowledge of any criminal case pending against the Complainant. He also stated that in his presence no proceedings were conducted by the Complainant for seeking Aam Aadmi Ticket. He highlighted the portions from point A to A and B to B in Ex.CW1/I and from point A to A in Ex.CW1/J, Ex.PW1/K and Ex.CW1/L stating that they are defamatory in nature.

e) Further, he stated that neither any resolution was passed by Shahadra Bar Association condemning the alleged *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 18 of 81**
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defamatory publication nor was there any protest or strike observed by the lawyers due to resentment of such defamatory and derogatory language against the Complainant. He could not affirm whether there was any adverse effect upon the profession of the Complainant due to alleged defamatory publication. He also stated that he had not personally verified the veracity of the defamatory content against the Complainant. He denied all the other suggestions of Ld. Counsel for Accused no.1 and 2 that there was no defamation of the Complainant or that he was trying to shield the Complainant being his associate in Shahdara Bar Association. Ld. Counsel for Accused no.3 adopted the cross-examination of CW2 as conducted by Ld. Counsel for Accused no.1 and 2.

(III) CW-3 Yogesh Kumar Gaur, Advocate at Karkardooma Courts and Nephew of the Complainant.

CW-3 is an important witness to the case since he is not only a relative of the Complainant claiming to be affected by the alleged defamatory publication but also a member of Shahdara Bar Association.

He deposed that he is a member of Shahdara Bar Association since 2009 and a practicing advocate at District Court Complex, Karkardooma, Shahdara. He stated that he was one of the members of the election committee for conducting the election of the association on 01.10.2013. Further, he deposed that on the day of the election i.e. 01.10.2013, at about 3:00 p.m.

some non-advocates tried to cast fake votes with the help of
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gunda elements, therefore, the election was stopped by the Complainant, who was the Chairman of the election Committee. He also stated that thereafter on 05.10.2013, in its meeting Bar Association decided to cancel the election held on 01.10.2013 and further decided to conduct re-poll on 11.10.2013 under the chairmanship of the Complainant. He added that thereafter on 11.10.2013, the election was conducted peacefully and the results were announced.

Further, he testified that thereafter on 14.10.2013, he got information from his neighbours that the ticket of the Complainant for MLA from Shahdara Constituency had been revoked due to some allegations regarding pendency of criminal cases and also for using unfair means and violence during the course of conducting the Bar Association elections on 01.10.2013 under his chairmanship. He stated that it was quite shocking and surprising for him because he was also the campaign manager of Aam Aadmi Party for Shahdara Constituency MLA Election Campaign in 2013. He added that the Times of India, Hindustan Times, Hindustan Hindi and Rastriya Sahara newspapers, already exhibited on record, had contained very serious defamatory allegations and derogatory language against the Complainant.

He stated that thereafter, it became very hard and shameful for him to face the society being the family member of Complainant and also because of being the campaign manager for Aam Aadmi Party in the Shahdara constituency. Lastly, he stated that the Complainant has been defamed in the society and before public at large by the publication of those defamatory

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news articles.

He was duly cross examined by respective Ld. counsel for all the Accused persons.

During his cross examination he denied the suggestion that elections were adjourned due to irregularities committed by the Complainant. He stated that he got information about the denial of ticket to Complainant by Aam Aadmi Party from his neighbours namely Vinod, Ravi and Raman Sharma. Further, he stated that he had never seen any letter from Aam Aadmi Party in favour of the Complainant about the allotment of ticket for Shahdara Constituency adding to it that he got this news from various newspapers. He denied the suggestion that he was an interested witness being a close relative of the Complainant and therefore, deposing falsely.

**(IV) CW-4 Bala Krishan Chatry, Record Keeper,
Hindustan Times**

CW-4 was a summoned witness from the newspaper Hindustan Times. He exhibited on record the authority letter authorizing him to produce the summoned record in the present case as **Ex. CW4/A**. He brought copy of the original newspapers containing the news articles dated 14.10.2013 already Ex. CW1/I and Ex. CW1/K. The copies of original newspapers were taken on record as **Ex. CW4/B and Ex. CW4/C** respectively. Despite opportunity, he could not bring the source of said newspaper articles on Court record.

**(V) CW-5 Shri Bhagwan, Legal Assistant, Times of
India**

CW-5 was a summoned witness from the newspaper Times of India and deposed with respect to the news article dated 14.10.2013 already Ex.CW1/J which was published by Times of India. He brought copy of the original newspaper and the same was taken on record as **Ex.CW5/A**. He deposed that he had not brought the record on the basis of which the news articles were published.

When confronted with a letter written by Mr. Rajan Vaid, Chief Manager Corporate Legal, Bennett, Coleman and Co. Ltd, to HC Rajeev, PS Farsh Bazaar, he admitted the same adding that this letter was given by Rajan Vaid alongwith a document titled “Aam Aadmi Party replaces Shahdara Candidate” (referring to the Press release already Ex.CW1/D9A) and accordingly the said letter was exhibited as **Ex. CW5/B**.

During his cross-examination by Ld. counsel for the Accused persons, he admitted that there is no receiving from the Times of India on the document Ex.CW1/D9A and he stated that no receiving was given for Press Release. Further, during his cross-examination, he admitted that the news articles published with the name of the Press Reporter are pre-authenticated whereas those published against the name of Times News Network are taken as forwarded from the counter.

**(VI) CW-6 K.P. Giri, P.R. Executive, Rashtriya
Sahara**

CW-6 was also a summoned witness. He deposed in regard to the news article dated 14.10.2013 already Ex.CW1/L as published by Rastriya Sahara. He brought copy of the aforesaid *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 22 of 81**
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newspaper and the same was exhibited on record as **Ex.CW6/A**. With respect to the source of the news article, he pleaded ignorance, whereupon he was confronted with document **Mark CW6/B** i.e. an internet generated article containing the news titled as *Aam Aadmi Party replaces Shahdara Candidate*. He stated that he could not say whether the news Ex. CW1/L, was published in Rastriya Sahara, on the basis of document Mark CW6/B. However, during his further examination on the next date of hearing, he brought on record an e-mail dated 13.10.2013 received from Ashwati Murlidharan stating that this was the source of news article Ex. CW1/L dated 14.10.2013.

During his cross-examination, he pleaded ignorance as to whether the contents of e-mail Ex. CW6/C were verified before publication or not.

(VII) CW-7 Head Constable Rajeev, then posted at PS Farsh Bazar.

CW-7 deposed that the concerned Metropolitan Magistrate, Karkardooma Courts, Delhi, directed SHO Police Station Farsh Bazar, Shahdara District, to conduct an investigation u/s 202 Cr.PC in this matter which was assigned to him by the SHO. He deposed that accordingly he served notices u/s 91 Cr.PC upon the officials of the Times of the India, Hindustan Times and Rastriya Sahara which are **Ex.CW7/A**, **Ex.CW7/B** and **Ex.CW7/C**. He affirmed the document Ex. CW5/B as the letter received by him from the Times of India and he exhibited the speed post cover for the same as **Ex.CW7/D**.

He added that in response to his notice U/s 91 Cr.PC, the officials
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of the newspaper The Hindustan Times had sent him the source of Press Release i.e. **Ex.CW7/E**. Further he stated that in response to his notice u/s 91 Cr.PC, the officials of the newspaper Rastriya Sahara had sent him the source of Press Release i.e. **Ex.CW7/F**. (It may be noted here that the document Ex. CW7/F is the same document as Mark CW6/B). He stated that he filed the report **Ex.CW7/G** in the Court which was duly forwarded by the SHO. He also admitted that he filed the report **Ex.CW7/H** dated 04.04.2014 in the Court of concerned Metropolitan Magistrate Shahdara District in respect of the reply given by the Times of India, the Hindustan Times and Rastriya Sahara.

It is pertinent to mention here that the report Ex. CW7/G mentions that HC Rajeev went to the office of Aam Aadmi Party at A-119, Kaushambi, Ghaziabad, U.P where he met Advocate Rishikesh Kumar from the Legal Cell of Aam Aadmi Party who gave his response in writing on the letter head of Aam Aadmi Party which has been annexed alongwith the report.

(VIII) CW-8 Rishikesh, Advocate, stated to be the Representative of Legal Team of Aam Aadmi Party

CW-8 admitted the letter **Ex.CW8/B** stating that same was written by him and bears his signature but he pleaded ignorance with respect to document **Ex. CW8/A** dated 24.03.2014 i.e. a document vide which the concerned SHO had sought answers to certain questions from the Aam Aadmi Party with respect to the Press Release dated 14.10.2013 regarding Aam Aadmi Party Candidate for Delhi Legislative Assembly in terms of the enquiry directed to be conducted by the Court U/s

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202 Cr.PC.

The document Ex. CW8/B is addressed to SHO PS Farsh Bazar and specifically mentions that the same is pertaining to complaint case no. 728/1/13 PS Farsh Bazar, wherein the Court has required answers to the questions relating to the Press Release dated 14.10.2013 regarding Aam Aadmi Party Candidate for Delhi Legislative Assembly. It is specifically written in the said letter that the said Press Release was authorised and approved by the Political Affairs Committee of the Aam Aadmi Party and it comprises of Arvind Kejriwal, Gopal Rai, Manish Sisodia, Kumar Vishwas, Pankaj Gupta, Sanjay Singh and Yogender Yadav. It is also mentioned in the document that the Political Affairs of the party are managed by the Political Affairs Committee comprising of the above-said Members.

During his cross-examination, witness stated that he was not authorised by any person to sign the letter Ex. CW8/B and he gave the same on his own. Even during his re-examination by the Complainant, he denied that he was authorized by the members of the political affairs of the Aam Aadmi Party to mention the names in his letter Ex.CW8/B of the persons mentioned therein.

(IX) CW-9 Rajan Vaid, DGM Corporate (Legal), Bennett Coleman and Co. Ltd., owner of Times of India Newspaper.

CW-9 deposed that on 20.03.2013 Head constable Rajiv Police Station Farsh Bazar had served a notice under Section 91 Cr.PC (Ex.CW7/A), which was received by him and *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 25 of 81**
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in reply to the same, he had sent a letter already Ex. CW5/B contained in the envelope already Ex.CW7/D. He added that he had also sent a copy of the Press Release received through email which is already Ex.CW1/D9A.

In his cross-examination, he admitted that he did not verify the source of the press release personally and also that he did not see/receive the email. He admitted that he had no personal knowledge about the contents of email, press release or the person who had sent it.

(X) CW-10 Arun Pathak, Authorized Representative, Hindustan Times

CW-10 deposed on the lines of CW9 and stated that he had received a notice u/s 91 Cr.PC from the Head Constable Rajiv, Police Station Farsh Bazar, Shahdara, on 19.03.2014 which is already Ex.CW7/B and in response, he gave Press Release already Ex.CW7/E received through email from Aswathi Muralidharan. He exhibited a Certificate under section 65B of the Indian Evidence Act in support of the print out of the email Ex.CW7/E. The Certificate is **Ex.CW10/A**.

During his cross-examination, he also stated that he had not personally verified the contents of the alleged email and its alleged sender/author from its author. He further stated that he did not know if before publication of the news item, the contents of the news item were got verified by the Hindustan Times or not.

(XI) CW-11 Harish Chander, the then SHO PS Farsh Bazar.

Testimony of CW11 did not add much weight to complainant's evidence as he did not conduct any first hand inquiry in the present case. He basically deposed regarding handing over of the inquiry u/s 202 Cr.P.C. to HC Rajeev and forwarding the notices issued u/s 91 Cr.P.C. as well as the reports submitted in the court.

(XII) CW-12 Aswathi Murlidharan.

CW-12 is one of the most crucial witnesses to the case as the Press Release on the basis of which alleged defamatory articles have been published was sent through her e-mail address to various media houses.

In her testimony, she deposed that she was not the Media Manager of either the Aam Aadmi Party or the Accused persons on 13.10.2013. However, she admitted that the document Ex.CW7/E reflects her name as well as her e-mail ID. She stated that she could not recollect whether the said Press Release was given by her or not in any media house due to lapse of time.

She admitted to receiving of the document Ex.CW1/D-2 dated 23.07.2013 but denied being aware about its contents. She deposed that she was not working in the office of Chief Minister Arvind Kejriwal in the year 2013 or on the day of giving her testimony; rather she stated that she is working as a Member in Delhi Dialogue and Development Commission. She denied the suggestion of the Complainant that she was deposing falsely at the behest of the Accused persons in order to save them.

In her cross-examination, she stated that she had not
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seen the originals of documents Ex.CW7/E and Ex.CW1/D-2 in the Court. She admitted it to be correct that in document Ex.CW7/E, it is not specifically mentioned to whom the alleged email was sent or not. She also stated that nobody approached her for giving any certificate regarding the alleged email Ex.CW7/E. Further she stated that she had not gone through the contents of the documents put to her in examination in chief.

After examination of CW12, no further evidence was led by the Complainant and accordingly, vide his separate statement dated 25.11.2019, Complainant's evidence was closed.

4.5 After closing of the Complainant's evidence, the statement of the Accused persons U/s 313 Cr.PC was taken on record vide written statements filed by them to the questionnaire put to them U/s 313 (5) Cr.PC. While Accused no. 1 filed his answers to the questionnaire in compliance of Section 313 (5) Cr.PC on 19.02.2020, the same was filed on behalf of Accused no. 2 and 3 on 07.03.2020.

Accused persons denied all the allegations of the Complainant as well as the correctness of the evidence brought on record by the Complainant. A brief of the statements of the Accused persons U/s 313 Cr.PC is given in the following paragraphs.

(I) Statement of Accused no. 1 Arvind Kejriwal U/s 313 Cr.PC:

He denied being aware of activities of the

Complainant in Shahdara Bar Association or as a Social Worker or of the Writ Petitions filed by the Complainant Ex. CW1/A1-A25. He denied having sent any volunteer of Aam Aadmi Party to the Complainant as well as filing of the application form by the Complainant seeking ticket from Aam Aadmi Party. He denied having ever interviewed the Complainant and rather stated that he could not even recollect whether he has ever met the Complainant or not. He denied having any knowledge of the explanation dated 23.07.2013 filed by the Complainant with respect to pending cases against him. He specifically stated that no party ticket was allotted to the Complainant in the assembly election of 2013 and therefore, he was unaware of any election campaigning done by the Complainant in Shahdara constituency. With respect to document Ex. CW1/D, he stated that the same has been created by the Complainant himself and no such letter containing achievements of the Complainant was ever sent by him to the Complainant.

Further, he specifically stated that he had never used any defamatory and derogatory language against the Complainant in any manner in any form at any point of time. He stated that the candidature of the Complainant was considered and rejected due to non disclosure of his criminal antecedents whereby in his application Ex. CW1/D1 Complainant had concealed the FIR registered against him by striking out the question no. 3 of the application form. He also specifically stated that he never issued any Press Release or media briefing

regarding the candidature of the Complainant. He pleaded ignorance with respect to the news reports in October 2013.

With respect to the testimonies of CW2 and CW3, he stated that they are interested witnesses and he specifically stated that he was not aware about the mode and manner in which the elections of Shahdara Bar Association was conducted in October, 2013.

With respect to the testimonies of CW4 to CW6 as well as CW9 and CW10 i.e. the witnesses from various newspapers, he stated that none of them had produced the original documents with respect to the publication dated 14.10.2013 and therefore, the evidence given by them is false and inadmissible.

With respect to the testimonies of CW7, CW8 and CW11, he stated that they are formal witnesses and their evidence is not incriminating against him, however, he still denied the documents exhibited by them.

With respect to the witness CW12 Aswathi Murlidharan, he stated that she has not admitted the contents of the document Ex. CW7/E i.e. the Press Release on the basis of which, the alleged defamatory news articles were published and therefore, he stated that the same is not an evidence against him.

Accused no. 1 stated that this case is false and politically motivated. He claimed himself to be innocent and added that the Selection Committee of the party had allocated

party tickets to deserving candidates and it was a policy of a party that no person involved in any criminal case would be entitled for a party ticket. He added that the Complainant deliberately and dishonestly withheld material information with respect to his involvement in civil and criminal litigation and by filing this case, he intends to put pressure on Aam Aadmi Party and its senior leaders. Lastly, he added that the allegations levelled in the complaint are baseless and without any substance.

(ii) Statement of Accused no. 2 Manish Sisodia U/s 313 Cr.PC:

His statement was exactly on the lines of Accused no. 1 whereby he also denied all the evidences and documents produced by the Complainant and his witnesses and stated that the present case is false, politically motivated, baseless and without any substance. For the sake of brevity, the contents of the statement of Accused no. 2 U/s 313 Cr.PC are not being repeated here.

(iii) Statement of Accused no. 3 Yogender Yadav U/s 313 Cr.PC:

He stated that vide the present case, Complainant has set up a malicious claim driven by political vendetta in order to harass him. He denied being aware of the status and activities as claimed by the Complainant. He denied having interviewed the Complainant or seeking an explanation from him with respect to pending cases against him or informing him about the alleged decision of the Aam Aadmi Party to give him ticket. He denied

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being aware of the Press Release and stated that he had nothing to do with the alleged publication. He stated that he had never used any defamatory language against the Complainant. He stated that the testimonies of the Complainant i.e. CW1 as well as CW2, his colleague and CW3, his relative cannot be relied upon as they are interested witnesses and the present case was filed by the Complainant as he failed to secure a ticket from the Aam Aadmi Party. Lastly, he stated that the Complainant has not come to the Court with clean hands and has carried out vexatious and false litigation.

While Accused no. 1 & 2 specifically stated that they wanted to lead evidence in their defence, Accused no. 3 did not specifically affirm leading of defence evidence and reserved his right to do the same at appropriate stage. Accordingly, the matter was listed for defence evidence on behalf of Accused no.1 and 2.

4.6 Before proceeding further, it may be noted here that before defence evidence could be lead, the Complainant in this matter expired on 01.11.2020. Thereafter, an application for substitution of the Complainant was moved on record on 17.11.2020 and vide detailed order dated 29.01.2021, the said application was allowed where-after Sh. Yogesh Kumar Gaur, nephew of the Complainant was substituted on behalf of the deceased Complainant to conduct further proceedings in the matter.

4.7 In support of their case, Accused no. 1 and 2 examined two witnesses i.e. DW1 Satender Kumar, Advocate Shahdara

Bar Association and DW2 Swadesh Kumar, Chief Reporter, East Delhi Dainik Jagran.

(I) DW-1 Satender Kumar, Advocate, Shahdara Bar Association.

He brought on record his identity proofs as an advocate viz. his Bar Association ID Cards and receipts of Bar Association i.e. **Ex. DW1/A** (Colly.) and **Ex. DW1/B** (Colly.) With respect to the present case, he basically deposed that Complainant was the Chairperson/Returning officer for the Shahdara Bar Association Elections and on 01.10.2013, during the Bar Association Elections, Complainant promoted bogus voting as a result of which the elections had to be cancelled. He deposed that he was also a member of the Election Committee at that time. He further added that he along with some other advocates went and complained regarding the conduct of the Complainant to the Aam Aadmi Party office as they knew that Complainant was trying to get a ticket from Aam Aadmi Party to contest Assembly Elections in 2013 from Shahdara Vidhan Sabha Constituency.

This witness was extensively cross examined by the Substituted Complainant. During his cross-examination, the Substituted Complainant put photocopies of several photographs to the witness to show his association with the Aam Aadmi Party viz. **Mark DW1/C1, Mark DW1/C2 and Mark DW1/C3**, however, the witness denied the same. Witness admitted that vide documents **Mark DW1/C5 and Mark DW1/C6**, he was

appointed as Government Pleader/Panel Advocate for the District Court on behalf of Delhi Government but denied the suggestion that Accused no. 1 and 2 got him appointed as a Government Pleader considering him to be a dedicated volunteer of Aam Aadmi Party. Further, during his cross-examination, witness was shown a copy of Constitution of Shahdara Bar Association i.e. **Mark DW1/C7**, whereupon he stated that he had seen the document for the first time and denied the same to be the Constitution of Shahdara Bar Association. Witness denied the suggestion in his cross-examination that he was deposing falsely in order to win the trust of Accused no. 1 and 2 and to receive undue favours from them.

(II) DW-2 Swadesh Kumar Chief Reporter, East Delhi, Dainik Jagran Newspaper

He was a summoned witness and proved his identity by exhibiting his Office ID Card as Ex. **DW2/A**. He brought on record the copies of newspaper i.e. Dainik Jagran, Delhi Edition (Poorvi Delhi) Jagran City, of two dates i.e. 06.10.2013 (**Ex. DW2/B**) and 04.10.2013 (**Ex. DW2/C**).

For a quick perusal, a brief of the news items are given in the following paragraphs:-

The news article Ex. DW2/B dated 06.10.2013 is titled as *Bar Association Ka Chunav 11 Ko (The Bar Association Elections to be held on 11th)*. The entire contents of the article are not being produced here, however, the crux of article is that in

the General Body Meeting of the Bar Association, it was decided that the Elections of Bar Association would be held on 11th October in the Court premises. It is also written in the newspaper report that advocates had raised a demand to change the Chairman of the Election Committee, however, after discussion a Committee of ten advocates had been formed to keep a watch on the Chairman of the Election Committee.

The news article Ex. DW2/C dated 04.10.2013 is titled as *Nayi Chunav Samiti Ka Hoga Gathan Vakilo Ne Lia Faisla* (New Election Committee to be constituted as decided by advocates). The brief of the said news article is that a General Body Meeting of the Bar Association was to be held on 05.10.2013 and most of the Members of Bar Association were of the opinion that such members should be kept in the Election Committee that there is neither any dispute nor any allegation/counter allegations. The news report further mentions that on 01.10.2013, the Bar Association Elections were postponed as during elections, allegations were made upon the office bearers of the Election Committee to have got conducted bogus voting.

During his cross-examination, DW2 stated that he did not know about the source of information with respect to the said news articles or with respect to their authenticity.

4.8 After examination and cross examination of the said witnesses, defence evidence was closed on behalf of Accused no. 1 and 2 on 06.06.2022. Accused no. 3 preferred not to lead

any defence evidence separately and accordingly defence evidence of Accused no. 3 was closed by his counsel on 28.06.2022.

Thereafter, the matter was listed for final arguments.

Final Arguments

5. Respective counsel for both the sides addressed detailed final arguments while referring to the evidence brought on record as well as citing relevant case laws.

5.1. Arguments by the Substituted Complainant:

(i) In this matter, the final arguments were addressed by the substituted Complainant himself with the assistance of his legal team. While addressing his arguments, the substituted Complainant reiterated the contents of the complaint and stated that the Complainant and his family has been subjected to immense disgrace and defamation on account of irresponsible publication made by the Accused persons, which specifically questioned the conduct and character of the Complainant despite the fact that the Complainant has had an impeccable career record not only as a practicing advocate but also as an office bearer of the Bar Association.

(ii) It was argued by the Substituted Complainant that the Accused persons had prior knowledge with respect to the pending cases in which the Complainant was involved, which was manifest from the document Ex. CW-1/D2 dated 23.07.2013, i.e. the declaration given by him with respect to civil and

criminal litigations involving him, and the ticket for election of MLA from Shahdara Constituency from Aam Aadmi Party was given to him willingly by the Accused persons. Hence, he argued that when the Accused persons had prior knowledge about the previous court cases of the Complainant, it does not lie in their mouth to later claim that they had no knowledge about the antecedents of the Complainant. Moreover, he argued that there was no criminal case pending against the Complainant on the date of filing of the application form with the Aam Aadmi Party by the Complainant and thus, the publication in this regard in the newspapers shows their intention to defame him.

(iii) Substituted Complainant further stated that Press Release dated 13.10.2013 on the basis of which the defamatory newspaper articles were published had been issued from the office of Aam Aadmi Party after being so authorized by its Political Affairs Committee and therefore, the Accused persons are very much responsible for bringing disrepute to the Complainant and his family, which has resulted into mental agony and financial losses to the Complainant and his family.

(iv) The Substituted Complainant vehemently argued that because of the untrue and irresponsible publication made by the Accused persons, Complainant and his family suffered a major set-back as they were defamed in the society at large, which has been duly proved by the Complainant's witnesses and therefore, the Accused persons should be held guilty and given maximum punishment so that in future they do not make any such statements, which causes mental, physical or financial

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harassment to any common man. More so, because the Accused persons are the prominent political leaders of the country and each word spoken by them holds utmost importance in the eyes of common man.

(v) In order to support his arguments, the Substituted Complainant relied upon the judgment titled as ***Jeffrey J. Diermeier and Another v. State of West Bengal and Another [(2010) 6 SCC 243]***.

Written arguments were also filed by the Substituted Complainant to assert his case.

5.2. Arguments on behalf of the Accused persons

(i) On the other hand, on behalf of defence, arguments were mainly addressed by Ld. Senior Counsel Ms. Rebecca John appearing for Accused no. 1 and 2 who put forward detailed final arguments in this matter taking the Court again from the beginning of the trial till its end covering testimonies of all the witnesses brought by the Complainant as well as the Accused persons as well as the documents exhibited on record. Arguments were also addressed pertaining to the legal issues involved along with supporting authorities.

(ii) Ld. Senior Counsel for Accused no. 1 and 2, started her arguments by giving brief background of the events that transpired into filing of the present case. Ld. Senior Counsel divided her arguments in two parts whereby one pertained to the Press Release allegedly issued by the Accused persons, which led to the news articles being published, which are subject matter of the present case and the second limb of her arguments pertained ***Surender Kumar Sharma v. Arvind Kejriwal & Ors. page no. 38 of 81***

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to the lack of any defamatory content in the said newspaper articles.

(iii) It was vehemently argued by Ld. Senior Counsel that in order to prove the commission of any offence by any person a threshold of proving the guilt beyond reasonable doubt has to be crossed by the Complainant, which the Complainant has miserably failed to do in the present case.

(iv) Ld. Senior Counsel further argued that the onus was on the Complainant to prove that the Press Release dated 13.10.2013 was issued by either Accused no. 1 or Accused no. 2 or Accused no. 3 or all of them or at least authorized by them, which he has been unable to do. The author of the Press Release, on the basis of which the alleged defamatory articles were published, is still unknown despite completion of the trial. Even though, CW-12 Aswathi Muralidharan has admitted that the e-mail dated 13.10.2013 bears her e-mail address, she could not affirm as to whether the Press Release was sent by her or not.

(v) Ld. Senior Counsel also pointed out that Aswathi Muralidharan has specifically testified that she was not the Media Manager of the Aam Aadmi Party or the Accused persons on the date of issuance of Press Release dated 13.10.2013 and rather she stated that she did not work in the office of Chief Minister Arvind Kejriwal in the year 2013.

(vi) Ld. Senior Counsel further pressed that the only person, who could have proved the e-mail Ex. CW-7/E i.e. Press Release sent to the Media Houses through e-mail is CW-12

Aswathi Muralidharan, but, she has neither affirmed sending of

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any such e-mail and nor she has given any Certificate under Section 65-B of the Indian Evidence Act and therefore, the link connecting the Accused persons with the newspaper articles is lost.

(vii) Ld. Senior Counsel put forward that CW-12 Aswathi Muralidharan has denied the contents of the e-mail dated 13.10.2013, she has denied working for Aam Aadmi Party and she has not given any Certificate under Section 65-B of the Indian Evidence Act. It was pointed out that CW-12 has specifically stated that she is not the Media Manager of the Aam Aadmi party and she has not admitted sending the aforesaid e-mail and hence, at the first instance itself, the Press Release, which forms the entire basis of this case, is an inadmissible document.

(viii) It was further argued that CW4 Bala Krishna Chatry, CW5 Shri Bhagwan, CW6 K.P.Giri and CW9 Rajan Vaid have not produced the mandatory certificate u/s 65B of the Indian Evidence Act to prove the e-mail relied upon by them as the source of news articles published by them and hence, their evidence loses its relevancy. Further, it was argued that CW10 Arun Pathak has given a certificate u/s 65B as aforesaid, however the same is defective as it is not in consonance with the legal provisions and therefore, the validity of the sole certificate produced u/s 65B is also rendered nugatory.

(ix) Concluding her first leg of arguments, Ld. Senior Counsel strongly put forward that CW-12 Aswathi Muralidharan did not prove the Press Release and rather disowned the same,

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while, other newspaper correspondents also could not prove it. She further argued that newspaper evidence is hearsay evidence and is not admissible unless its source is proved. Thus, it was strongly argued on behalf of Accused no. 1 and 2 that it could not be proved on record that the Press Release was issued at the behest of the Accused persons and therefore the liability of defamatory content, if any, contained therein cannot be attributed to the Accused persons.

(ix) Further, referring to Ex. CW-8/B, which is response of the Aam Aadmi Party to the letter of the SHO concerned enquiring about the Press Release pertaining to this case, Ld. Senior Counsel for Accused no. 1 and 2 stated that Ex. CW-8/B refers to the Press Release dated 14.10.2013 and not 13.10.2013 and therefore, the said exhibit is irrelevant for the purpose of this case.

(x) Moving to the second leg of her arguments, Ld. Senior Counsel covered the issue whether the alleged newspaper articles were defamatory or not. It was argued that the Press Release contained two aspects, on the basis of which, the Complainant is alleging defamation; one is that the Complainant has previous criminal record and second is that the conduct of Shahadara Bar Association Elections during his chairmanship was not proper.

(xi) In regard to the previous criminal record of the Complainant, it was argued by Ld. Senior Counsel for Accused no. 1 and 2 that there is material suppression on the part of the Complainant, whereby he made false declaration. In his *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 41 of 81**
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application form filed with the Aam Aadmi Party, Complainant crossed the column asking for previous or present criminal record implying that there has never been any criminal case filed against him. However, admittedly, vide Ex. CW-1/D2, it is apparent that the Complainant had a long list of civil and criminal cases pending against him.

(xii) Further, it was pointed out that in his cross-examination dated 14.05.2019, the Complainant himself has admitted that the cancellation report with respect to FIR No. 55/02 PS Farsh Bazar was filed only in the year 2019 meaning thereby, that this case was still pending in the year 2013 i.e. the year in which the application form was filled by him with the Aam Aadmi Party and the same year, in which, the news articles were published stating that the Complainant had criminal record. Hence, it was argued by Ld. Senior Counsel for Accused persons that the Complainant has not stated the complete facts before the court and has not come to the Court with clean hands.

(xiii) Thus, Ld. Senior Counsel on behalf of Accused no. 1 and 2 brought the defence forward stating that it is a statement of fact that the cases were pending against the Complainant on the day of Press Release was issued.

(ix) Moving ahead to the second aspect of the second leg of the arguments on behalf of the Accused persons i.e. the conduct of Shahdara Bar Association Elections, Ld. Senior counsel argued that the improper conduct of the Complainant is manifest from the testimony of DW-1 Satender Kumar, who was

himself a member of Election Committee of Shahdara Bar
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Association.

Ld. Senior Counsel for Accused persons also relied upon the testimony of DW-2, the Chief Reporter of Dainik Jagaran Newspaper in which two news articles have been brought on record i.e. DW-2/B and DW-2/C, which are news articles specifically stating that there were allegations of misconduct on the Chairperson of the Election Committee and therefore, around 10 senior members have been nominated to oversee the elections of the Bar Association and keep watch on the Chairperson.

(x) Thus, it was argued by Ld. Senior Counsel that even the second aspect of the publication contains the fact which has been established on court record not only by the testimony of an advocate from the Bar Association but also from the newspaper publications and thus, the same also is a statement of fact.

(xi) Ld. Senior Counsel, therefore, argued in conclusion that the Accused persons cannot be made liable for the alleged offence of defamation in the present case as there is no proof of issuance of publication at their instance and even if, it is presumed that the publication was made at the instance of the Accused persons, the same contains a statement of facts, which is well covered within the exceptions provided under Section 499 IPC. Hence, Ld. Senior Counsel for Accused persons strongly pressed upon holding the Accused persons not guilty and acquitting them in the present case.

(xii) In order to add weight to her arguments, Ld. Senior Counsel for Accused persons had relied upon several authorities, *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 43 of 81**
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cited herein :

(a) **R.P. Goenka and Ors. vs. State of U.P. [2020 Cri LJ 1918];**

46. “The above authorities clearly show that a newspaper report by itself does not constitute an evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved either by production of Reporter who heard the statement and sent the same for reporting or by production of report sent by such Reporter and production of Newspaper’s Editor or publisher to prove such report. As held by Supreme Court in the above authorities a newspaper is at the best secondary evidence and not admissible in evidence without proper proof of contents under Indian Evidence Act, 1872. Trial Court cannot treat newspaper report as duly proved only by production of copies of newspaper. Thus the newspaper report was not a “legal evidence” which could have been examined to support the complaint.”

(b) **MCD Vs. State of Delhi [(2005) 4 SCC 605];**

21. “This apart, the respondent did not also disclose the fact in the criminal revision filed before the High Court that he has also been convicted in another Criminal Case No. 202 of 1997 by the Court of metropolitan magistrate, Patiala House, New Delhi. Thus, the contesting respondent has come to the High Court with unclean hands and withholds a vital document in order to gain advantage on the other side. In our opinion, he would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the court and he can be summarily thrown out at any stage of the litigation. In the instant case, non-production of the order and even non-mentioning of the

conviction and sentence in Criminal Case No. 202 of 1997 tantamounts to playing fraud on the Court. A litigant who approaches the court is bound to produce all documents which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. The second respondent, in our opinion, was not justified in suppressing the material fact that he was convicted by the magistrate on an earlier occasion. Since the second respondent deliberately suppressed the crucial and important fact, we disapprove strongly and particularly, the conduct of the second respondent and by reason of such conduct, the second respondent disentitled himself from getting any relief of assistance from this court. We, however, part with this case with a heavy heart expressing our strong disapproval of the conduct and behaviour but direct that the second respondent to pay a sum of Rs. 10,000 by way of cost to the appellant herein.

22. We have already reproduced Section 4 of the POB Act. It applied to all kinds of offenders whether under or above 21 years of age. This section is intended to attempt possible reformation of an offender instead of inflicting on him the normal punishment of his crime. The only limitation imposed by Section 6 is that in the first instance an offender under twenty-one years of age, will not be sentenced to imprisonment. While extending benefit of this case, the discretion of the court has to be exercised having regard to the circumstances in which the crime was committed, the age, character and circumstances in which the crime was committed, the age, character and antecedents of the offender. Such exercise of discretion needs a sense of responsibility. The offender can only be released on probation of good conduct under this section when the court forms an opinion, having considered the circumstances of the case, the nature of the offence and the character of the

offender, that in a particular case, the offender should be released on probation of good conduct. The section itself is clear that before applying the section, the Magistrate should carefully take into consideration the attendant circumstances. The second respondent is a previous convict as per the records placed before us. Such a previous convict cannot be released in view of Section 4 of the POB Act. The Court is bound to call for a report as per Section 4 of the POB Act but the High Court has failed to do so although the Court is not bound by the report of the probation officer but it must call for such a report before the case comes to its conclusion. The word “shall” in sub-section (2) of Section 4 is mandatory and the consideration of the report of the probation officer is a condition precedent to the release of the Accused in the case of State Vs Naguesh G. Shet Govenkar and a release without such a report would, therefore, be illegal.”

(c) **Anand Ramchandra Chougule Vs Sidarai Laxman Chouugala [(2019) 8 SCC 50];**

10. “The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the Accused has only to create a doubt about the prosecution case and the probability of its defence. An Accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the Accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the Accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubts.”

(d) **Arjun Panditrao Khotkar Vs Kaulash Kushanrao Gorantyal [(2020) 7 SCC 1];**

24. “Section 65-B (2) then refers to the condition that must be satisfied in respect of a computer output, and states that the test for being

included in conditions 65-B(2)(a) to 65-B(2)(d) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in such-sections (2)(a) to (2)(d) must be satisfied cumulatively.

24. Under sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of “relevant activities”- whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the best of the knowledge and belief of the person stating it”. Here, “doing any of the following things...” must be read as doing all of the following things, it being well settled that the expression “any” can mean “all” given the context (see, for example, this Court’s judgments in Banwarilal Agarwalla Vs State of Bihar and Om Parkash Vs Union of India). This being the case, the conditions mentioned in Section 65-B (4) must also be interpreted as being cumulative.”

(e) *Dr. Subramanian Swami v. Tajender Pal Singh Bagga (W.P (CRL.) 735/2022 decided by Hon'ble High Court of Delhi on 04.04.2022).*

Ld. Counsel for Accused no. 1 and 2 also brought forward their final arguments on Court record by filing a written synopsis of the arguments.

Ld. Counsel for Accused no. 3 adopted the arguments addressed by Ld. Senior counsel for Accused no. 1 and 2 stating that the points, which he wanted to cover in support

of the stand of the Accused no. 3, have already been addressed by the Ld. Senior Counsel for the Accused no. 1 and 2 and for the sake of brevity and saving time of the Court, he did not want to repeat the same. However, he added that there were contradictions in the cross-examination of the Complainant's witnesses and also the documents filed by the Complainant, which also weaken the case of the Complainant beyond repairs and bring the Accused persons in the realm of innocence. Taking support from the arguments of Ld. Senior Counsel for Accused no. 1 and 2, he stated that neither the alleged defamatory publication was made at the behest of Accused no. 3 nor has Accused no. 3 individually given any such statement, which can be termed as defamatory against the Complainant and therefore, he deserves to be set free from the charges leveled against him by being declared innocent and not guilty. Hence, he pressed upon acquittal of Accused no. 3. Written arguments were also filed on behalf of Accused no.3.

5.3 Arguments in rebuttal were also addressed by both the sides.

In rebuttal, the Substituted Complainant has argued that DW-1 Satender Kumar, who is the prime defence witness, is a planted witness and an interested witness as he has been working for Aam Aadmi Party since long and therefore, his testimony cannot be relied upon. The Substituted Complainant submitted to the court that the Complainant has not been harmed by the withdrawal of the ticket by the Aam Aadmi Party but by the defamatory reasons given behind the withdrawal of the ticket

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mentioned in the Press Release.

He further argued that even though, Ld. Counsel for Accused persons has relied upon exception No.1 to Section 499 IPC i.e. stating of statement of truth for public good, however, the same does not apply to this case as no public good has been shown for which such defamatory statements ought to have been made.

Further, he argued that the Ld. Senior Counsel has misled the Court by stating that the document Ex. CW-8/B pertains to the Press Release dated 14.10.2013 and not 13.10.2013 as the reports have been called with respect to the defamatory news articles mentioned by the Complainant, which were published on 14.10.2013 and therefore, Ex. CW-8/B pertains to the same Press Release.

Further, the Substituted Complainant argued that reliance of the Accused persons on the news articles Ex. DW-2/A and Ex. DW-2/B are contrary to their own arguments that news articles are indirect evidence and the source needs to be proved, therefore, he stated that no reliance can be placed on the said news articles.

Lastly, it was argued by the Substituted Complainant that no action has been taken by the Accused persons against the news publications for attributing the source of alleged defamatory news articles to them which shows that the said news articles were infact published at behest of the Accused persons only.

In response to the submissions of Ld. Counsel for
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the Complainant, Ld. Counsel for Accused no. 1 and 2 argued that testimony of DW-1 is very much admissible in the Court and he is a material witness as it has not been suggested to him by the substituted Complainant anywhere during his cross-examination that he is a planted witness or that he was not a member of the Election Committee.

With respect to the news articles Ex. DW-2/A and Ex. DW-2/B, Ld. Defence Counsel has argued that these are news articles of public domain as per information gathered by the reporters and not on the basis of Press Release. He further stated that no action has been taken by the Complainant with respect to these news articles despite the fact that they may direct imputation on the Complainant, which, therefore, makes them material piece of evidence.

Further, Ld. Defence Counsel has argued that the testimony of CW-8 Rishikesh cannot be read against the Accused persons as it refers to Press Release dated 14.10.2013 and no question has been put to him as to whether he is referring in his testimony to Press Release dated 13.10.2013 with respect to the Complainant or not.

Also, it was argued by Ld. Counsel for the Accused no. 1 and 2 that no police complaints have been made by the Complainant with respect to the supposedly disgruntled elements which led to the cancellation of election and therefore, his own stand is rendered questionable.

Lastly, Ld. Counsel for Accused no. 1 and 2 stated that contrary to the argument taken by the Substituted *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 50 of 81**
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Complainant that Accused persons should have taken action against the news publications, it is rather the Complainant who should have also made the concerned publishing houses a party to this case for alleged defamatory/derogatory publication, which the Complainant failed to do.

5.4. At last, on the completion of the arguments on behalf of the substituted Complainant as well as all the Accused persons, the trial was culminated towards its end. Both the sides intensely argued in support of their respective cases while one prayed for conviction of the Accused persons, the other, as is obvious, argued for their acquittal.

This Court has patiently heard the arguments from both the sides and has carefully noted the points of facts as well as law pointed out by them. This Court also gone through the entire court record and carefully perused each and every document exhibited on record.

Relevant Points of Law

6. Before adverting on to discussing the various aspects of the evidence led by the parties and its admissibility, it is necessary to discuss the law of *defamation* in India.

6.1. The offence of defamation is defined u/s 499 of the IPC, which provides as follows:

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

6.2. Punishment for the offence of defamation is provided under **Section 500 IPC** as follows:

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

6.3. As already discussed above, the root of the offence of defamation lies in one word - "*Reputation*". No formal definition of the term Reputation has been provided in any of the penal statutes, however, the same has been enunciated in several judicial authorities of the Superior Courts.

In the case titled as ***Kiran Bedi & Ors vs Committee Of Inquiry & Anr. [1989 AIR 714]*** the Hon'ble Apex Court of India referring to Corpus Juris Secundum, Vol. 77 at page 268

mentioned that:

It is stated in the definition Person, 70 C.J.S.p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those fights which are annexed to the person, jura personarum, and acquired fights in external objects, jura rerum; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of fight to enjoy the goods opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal fight, and the right to reputation is put among those absolute personal fights equal in dignity and importance to security from violence. According to Chancellor Kent, "as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

Also, in the case titled as **Vishwanath Agrawal v. Sarla Vishwanath Agrawal [(2012) 7 SCC 288]**, the Supreme Court of India while dealing with the aspect of reputation observed that:

Reputation is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.

Further, the concept of reputation was also highlighted in the leading judgment titled as **Om Prakash Chautala vs Kanwar Bhan & Ors [AIR 2014 SC 1220]** where the Supreme Court of India observed that:

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Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the down trodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time.

Undoubtedly, right to *reputation* of a person is akin to his right to live with dignity. Perhaps, the importance attached to this right can be adjudged from the fact that in Indian law, an attack of reputation of a person, is not just a civil wrong covered under the law of torts but a criminal wrong punishable not only with fine but imprisonment as well under section 499/500 IPC.

6.4. Though there have been various debates on the issue as to whether defamation should continue to be an offence or not and as to whether it should be made only a civil wrong, the issue has now been settled vide the recent judgment of Hon'ble Supreme Court of India titled as ***Subramanian Swamy vs Union Of India [(2016) 7 SCC 221]*** wherein, upholding the Constitutional validity of Section-499/500 IPC, it was held that:

186. One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 IPC is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest. Thus, we are unable to accept that provisions relating to criminal defamation are not

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saved by doctrine of proportionality because it determines a limit which is not impermissible within the criterion of reasonable restriction. It has been held in D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India¹⁸⁰, though in a different context, that if maintenance of (1996) 5 SCC 216 democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The Court had further observed that the State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation.

The **Subramanian Swamy judgement** (*supra*) also dwelled on the ingredients which constitute the offence of defamation and held that:

165. For the aforesaid purpose, it is imperative to analyse in detail what constitutes the offence of "defamation" as provided under Section 499 of IPC. To constitute the offence, there has to be imputation and it must have made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasizes on the intention or harm. Section 44 of IPC defines "injury". It denotes any harm whatever illegally caused to any person,

in body, mind, reputation or property. Thus, the word “injury” encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person’s body and mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant. In Jeffrey J. Diermeier and another v. State of West Bengal and another 152, a two-Judge Bench deliberated on the aspect as to what constitutes defamation under Section 499 of IPC and in that context, it held that there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. 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.

From the above quoted observation of the Hon'ble Apex Court, it is manifest that *mens rea i.e. intention of defame* is indispensable to establish the offence of defamation. There must be an intention on the part of the Accused to cause harm to the reputation of the complainant.

6.5 In the light of the above held discussion, from a cumulative reading of the provisions in the IPC as well as the law elucidated by the Superior Courts, following ingredients of the offence of defamation can be culled out:

(i) Imputation made by the Accused: The first and foremost essential is that the imputation must be made by the Accused upon the Complainant be it through words, spoken or written, or through signs or by visible representations. Hence, *actus reus* on the part of the Accused is an essential element.

In the case at hand, it has been denied by the Accused persons that they gave any press-release on the basis of which the alleged defamatory news articles were published. Hence, it becomes a question for determination of this court as to whether the alleged defamatory news articles were published at the behest of the Accused persons or not.

(ii) Statement/Imputation must be published: The second most important ingredient is *publication* of the statement/imputation made by the the Accused. It is essential that a third party to the communication must have seen, read or heard the statement. In a leading judgement titled as ***Mahender Ram vs Harnandan Prasad*** [AIR 1958 Pat 445], it was held by the Hon'ble Patna High Court that:

It seems well settled that mere writing of words howsoever defamatory they may be, to a person intended to be read by him & not intended to be read by a third person, does not constitute an offence of defamation and does not make a man liable to pay damages in a Civil action. It is necessary to show that the writer intended his defamatory writing to be read by person or persons other than the addressee or at least he ought to have known that they were likely to be so read by a third person or persons. In absence of such a proof it cannot be held that the writer would be liable for defamation simply because the writing got publication.

In the case at hand, the entire basis of the alleged defamation is several news-articles published in leading newspapers on 14.10.2013. Hence, as regards publication of the statement/imputation, there remains no scope of doubt as undoubtedly, newspaper is a document in public domain which can be accessed by any person and rather the entire purpose of

publication is such that the information reaches as many people as possible.

(iii) Intention to cause harm to the reputation of the Complainant: This is the most important ingredient required to prove the commission of the offence by the Complainant. *Mens Rea i.e. guilty intention* is indispensable to establish the defamation. It has to be proved on record that the defamatory imputation was made by the accused intending to harm or knowing or having reason to believe that such imputation will harm the reputation of the Complainant.

The parameter to judge as to whether a particular statement or imputation has harmed the reputation of a person or not, as encoded in Explanation – 4 to Section 499 IPC, is whether the imputation, directly or indirectly, in the estimation of others, lowers the character or credit of that person or causes it to be believed that the person is in a loathsome or disgraceful state. Thus, in order to prove that injury was caused to his reputation, it is essential for the Complainant to prove that in the eyes of a third person, his character and credentials were questioned.

6.6. Keeping the above stated legal aspects and discussion in mind, this court shall now proceed on to appreciate the evidence in the case at hand to ascertain as to whether the Complainant has proved its case beyond all reasonable doubts establishing the guilty intention of the Accused persons or the Accused persons have been able to prove their innocence and *bona fide*.

Appreciation of Evidence

7. As already mentioned above, the primary aspect which needs to be dealt in the case at hand pertains to *actus reus* on the part of the Accused persons, more so, because they have denied giving any such press-release which is stated to be the source of the alleged news articles published on 14.10.2013 in the leading daily newspapers.

Hence, before proceeding on to deciding upon the issue as to whether the news articles dated 14.10.2013 were defamatory or not, this court shall first delve upon the issue *whether the alleged defamatory news articles were published at behest of Accused persons or not?*

7.1 For answering the question as to whether the alleged news articles were got published by the Accused persons or not, it is crucial to ascertain the source of information contained in them. The answer can be found in the testimonies of the witnesses from different newspapers as well as CW8 Rishikesh and CW12 Aswathi Murlidharan. Testimonies of all the witnesses have already been briefly discussed in the preceding pages. However, in order to get clarity on the issue at hand, this court shall again look into the same and cull out the relevant aspects.

7.2. The Newspaper Hindustan Times Ltd. had published two news items, one in the English version and other in the Hindi version on 14.10.2013, relevant to the case at hand.

The English edition of The Hindustan Times Newspaper dated 14.10.2013, contained the following news article i.e.

Ex.CW1/I:

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Hindustan Times dated 14.10.2013

SHAHDARA CONSTITUENCY

AAP replaces candidate with 'criminal' record

New Delhi : The Aam Aadmi Party (AAP) has decided to replace its candidate from the Shahdara constituency. A statement released by AAP on Sunday said the party had recently discovered that the candidate had FIRs registered against him as well as pending criminal cases.

Surendera Sharma, who is also an advocate has now been replaced by Balbeer Singh, an RTI activist, by the party's political affairs committee.

A statement from the Arvind Kejriwal led party on Sunday said, "This action is in line with AAP's commitment to ensure that no person with doubtful credentials represents the party in the upcoming elections."

The party claimed that in his application, Sharma had failed to mention that there were criminal cases and FIRs pending against him. He is also embroiled in a number of property disputes, the statement read.

"It also came to the party's notice that the elections to the Shahdara bar Association were cancelled due to allegations of use of unfair means and violence during the election under his chairmanship," said the party in its statement.

Even if on the last day of the nomination we receive any credible information against any of our candidate with regard to his criminal record, we will cancel his candidature and keep the seat vacant," the party reiterated.

HT could not reach Sharma for his comments on the matter.

But the party's diktat on criminal records, it seems, does not extend to Uttam Nagar. As reported by HT earlier, several party volunteers of the area have been protesting against the candidature of Desh Raj Raghav.

"We had personally met Arvindji (Kejriwal) and submitted our demand on October 8. He said he was personally looking into the issue. But we have not yet heard from either him or any other

leader.” said Deepak Kumar Chaudhary one of the protesters.

The volunteers claimed that they had opted for ‘none of the above’ option when asked to chose a party candidate for the constituency. And yet, the party had come up with Raghav’s name despite there being no clear-cut consensus.

Manish Sisodia, AAP spokesperson, said they (Uttam Nagar protesters) have not been able to produce any authentic documents against Raghav, (so) there was no need of replacing (the candidate).

The Hindi edition of The Hindustan Times Newspaper dated 14.10.2013, contained the following news article i.e. Ex.CW1/K:

हिन्दुस्तान, नई दिल्ली 14 अक्टूबर 2013

‘आप’ ने रद्द की उम्मीदवारी

नई दिल्ली आम आदमी पार्टी ने शाहदरा क्षेत्र से पार्टी के नामित उम्मीदवार सुरेंद्र शर्मा की जगह बलबीर सिंह को चुनाव लड़ाने का फैसला किया है। सुरेंद्र शर्मा की उम्मीदवारी को रद्द किए जाने के पीछे उनपर चल रहे आपराधिक मामलो को मुख्य वजह बताया रहा है। पार्टी प्रवक्ता मनीष सीसोदिया ने बताया कि जांच के बाद पाया गया कि शर्मा पर सम्पत्ति के मामले के साथ-साथ कुछ एफआईआर भी दर्ज हैं। इसे देखते हुए हमने उनकी उम्मीदवारी रद्द कर दी है।

On behalf of Hindustan Times, two witnesses have been examined viz. CW4 Bala Krishna Chatry, Record Keeper and CW10 Arun Pathak, Authorized representative of Hindustan Times House.

As has already been mentioned above, CW4 was only a formal witness and affirmed the publication of the above news articles vide Ex.CW4/B and Ex.CW4/C. He could not throw any light on the source of the said news articles and hence, as regards

the issue in question i.e. whether the news articles were published at the behest of Accused persons or not, his testimony is of no help.

On the other hand, CW10 provided somewhat useful information with respect to the source of news articles stating that the same were based on press release Ex.CW7/E received through an e-mail from Aswathi Muralidharan. He also annexed a certificate u/s 65B of the Indian Evidence Act in support of the print out of the email containing the press release Ex.CW7/E.

It is pertinent to note here that the Hindi news article of the Hindustan Newspaper mentions that spokesperson of the Aam Aadmi Party, i.e. Accused no.2 herein, has stated that the candidature of the Complainant has been cancelled as apart from property disputes, FIRs are also pending against him. However, no first hand statement given by Accused no.2 has been brought on record either on paper or digitally on the basis of which such news article has been published. No reporter has been brought in the witness box to whom such statement would have been given by Accused no.2. Further, as per their own testimonies, the source of news reports is the e-mail Ex.CW7/E and it has nowhere been stated that the source of information is a broadcast or an interview by Accused no.2.

7.3 The news paper Times of India printed one news article (Ex.CW1/J) in its edition dated 14.10.2013 relevant to the present case which is reproduced below:

THE TIMES OF INDIA, NEW DELHI

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MONDAY, OCTOBER 14,2013

AAP fires Shahdara candidate

Party Acts After Reports of Criminal Charges Against Him

New Delhi : *The Aam Aadmi Party (AAP) on Sunday removed its candidate for the Shahdara assembly constituency after reports of criminal charges against him.*

According to an AAP release, Surendra Sharma did not disclose in his application for selection as a candidate that there were criminal cases, property disputes and FIRs lodged against him.

Sharma was recently appointed as the chairperson of Shahdara Bar Association Election Committee. The release said the bar election was cancelled due to allegations of using unfair means and violence.

“This action is in line with the commitment of AAP to ensure that no person with doubtful credentials shall represent the party in the forthcoming assembly elections”. Said an Aam Aadmi Party spokesperson. He said that many Shahdara Bar Association members had complained to them about the unfair role played by Sharma during the bar election.

“Keeping the above in mind, the Political Affairs Committee (PAC) of the party felt that he is not a fit candidate to represent Aam Aadmi Party in the Delhi assembly elections and thus his candidature has been cancelled unanimously by the PAC”, the party spokesperson added.

Despite several attempts, Sharma did not respond to queries on the charges levelled against him or the reason for his disqualification from the party. His nephew and election manager Yogesh Gaur, however, claimed that none of the charges were proved. “We will take legal action against AAP for defaming us. They had been told clearly that there was no chargesheet against Sharma in any of the cases in July itself.” Gaur claimed.

The controversy nonetheless puts AAP a debutant into electoral politics, in the dock. The party has been relying on its candidates impeccable integrity and clean criminal record as a distinctive feature when compared to BJP or Congress. It had put in place a

multi-layer screening process for selection of candidates.

“Even if on the last day of the nomination we receive any credible information against any of our candidate with regard to his criminal record, we will cancel the candidature of that candidate and keep the seat vacant,” said a party member.

On behalf of the Times of India newspaper, two witnesses deposed in the witness box i.e. CW5 Shri Bhagwan, Assistant(Legal), Times of India and CW9 Rajan Vaid, DGM Corporate (Legal), Bennett, Coleman & Co. Ltd., owner of Times of India.

CW5 was also a formal witness and exhibited the copy of the newspaper containing the above mentioned news article as Ex.CW5/A. He could not disclose the source of the information with respect to the above-mentioned news article but admitted the document Ex.CW1/D9A (press-release) as the document given by Rajan Vaid to the IO during inquiry u/s 202 Cr.P.C. as the source of the news article mentioned above. In his testimony, CW9 Rajan Vaid also affirmed the press-release Ex.CW1/D9A to be the source of the published news article dated 14.10.2013 Ex.CW1/J. CW9 also affirmed vide document Ex.CW5/B that the news (Ex.CW1/J) was based on the press release received from Aswathi Muralidharan having e-mail ID ash.aswathi2012@gmail.com. In addition it is also admitted that no verification of the source of the press release was done by him personally. No certificate u/s 65B of the Indian Evidence Act was given by any of the witnesses with respect to the aforesaid e-mail containing the press release.

7.4. The news paper Rashtriya Sahara printed one news article (Ex.CW1/L) in its edition dated 14.10.2013 relevant to the present case which is reproduced below:

आप ने शाहदरा सीट से घोषित उम्मीदवार हटाया

नई दिल्ली: आम आदमी पार्टी ने शाहदरा विधानसभा सीट से घोषित उम्मीदवार सुरेंद्र शर्मा को हटा दिया है। कई गंभीर आरोप लगाए जाने के बाद पार्टी ने उम्मीदवार बदलने का फैसला लिया है।

पार्टी ने कहा कि यह फैसला पार्टी की इस संकल्प के तहत लिया गया है कि दिल्ली विधानसभा चुनाव में केवल बेदाग छवि वाले उमीदवार को ही खड़ा किया जाएगा। पार्टी सूत्रों के अनुसार उस उम्मीदवार के खिलाफ कुछ आपराधिक मामले लंबित थे। इसके अलावा उस उम्मीदवार को लेकर सम्पत्ति के कई विवाद थे। पार्टी ने कहा कि इसके अलावा उस उम्मीदवार को हाल ही में शाहदरा बार एसोसिएशन चुनाव की चुनाव समिति का अध्यक्ष बनाया गया था। हालांकि उसकी अध्यक्षता में होने वाला चुनाव बाद में रद्द हो गया। पार्टी ने कहा कि यह पाया गया कि यह चुनाव इसलिए रद्द हुआ क्योंकि कथित चुनाव में गलत तरीके अपनाये जाने और हिंसा होने की रिपोर्ट सामने आयी। एसोसिएशन के अनेक सदस्यों ने उक्त उम्मीदवार के गलत कार्यों के बारे में आप को शिकायत की थी। पार्टी सूत्रों ने कहा कि उक्त बातों को ध्यान में रखकर यह पाया गया कि आगामी विधानसभा चुनाव में उक्त व्यक्ति पार्टी का प्रतिनिधित्व करने के योग्य नहीं है और इसलिये पार्टी ने उसकी उम्मीदवारी को सर्वसम्मति से खारिज करने का फैसला किया।

Only one witness has been examined from the newspaper Rashtriya Sahara i.e. CW6 K.P.Giri, PR Executive. He also testified in regard to printing of the above said news vide document Ex.CW6/A and stated that the source on the basis of which the said news article was published is document Ex.CW6/C which is again an e-mail from Aswathi Murlidharan dated 13.10.2013 the contents of which are exactly the same as

Ex.CW7/E. No certificate u/s 65 B of the Indian Evidence Act has been attached with the e-mail by the witness to certify its authenticity.

7.5. It is apparent from a bare reading of the above quoted news articles and the testimonies of different news agencies that the source of their information is the same i.e. an e-mail sent by one Aswathi Murlidharan on 13.10.2013, which has been testified by different witnesses albeit with different exhibit numbers viz. Ex.CW7/E, Ex.CW1/D9A and Ex.CW6/C. All these exhibit numbers have the same contents i.e. the aforesaid e-mail and therefore, it becomes imperative to go carefully peruse the same as it is on the basis of this document that the above-mentioned news articles were published.

The source of information of the news articles i.e. the email from Aswathi Muralidharan is reproduced below verbatim:

From: Aswathi Muralidharan <ash.aswathi2012@gmail.com>

Date: Sun, Oct 13, 2013 at 4:26 PM

Subject: Aam Aadmi Party replaces Shahdara Candidate

To:

Aam Aadmi Party replaces Shahdara Candidate

Mr. Surendra Sharma who was initially selected as the candidate to represent AAP in Shahdara Assembly Constituency in the upcoming Delhi Assembly Elections has been removed as a candidate by the PAC of Aam Aadmi Party.

This action is in line with the commitment of AAP to ensure that no person with doubtful credentials shall represent the party in the upcoming election.

In his application for his selection as candidate of "Aam

Aadmi Party” from Shahdara, he had not disclosed that there were criminal cases lodged & FIRs pending against him. We have also come to know that he had a large number of property disputes going against him.

Recently he was appointed as the Chairperson of the election commission (Shahdara Bar Association Election). It is learnt that this election was cancelled due to the allegations of use of unfair means and violence during the said election, under his Chairmanship. A number of respected members of the bar also complained to us about the unfair role played by him during the conduct of the above mentioned election.

Keeping the above in mind, the PAC of the party felt that he is not a fit candidate to represent Aam Aadmi party in the upcoming Delhi Assembly Elections & thus, his candidature has been cancelled unanimously by the PAC of the party.

The party has made it clear in the past that it will only approve such persons as candidate who has impeccable integrity. Even if on the last day of the nomination we receive any credible information against any of the candidate with regard to his criminal record, we will cancel the candidature of that candidate and keep the seat vacant.

The above-quoted email containing the alleged press release dated 13.10.2013 is the source of news articles published on 14.10.2013 in the Newspaper the Hindustan Times (in both Hindi and English Edition), the Times of India as well the newspaper Rashtriya Sahara (Ex.CW1/I to Ex.CW1/L).

From the plain reading of the e-mail itself it is apparent that the same has been sent through private e-mail address of one person namely Aswathi Murlidharan. In fact, it is also vital to note that the e-mail mentions nothing about it being a press release or being given for the purpose of being issued as a

statement on behalf of the Aam Aadmi Party; it is more like a letter of information sent by one person to another. There is nothing in the e-mail as such which can connect the Accused persons to the making or authorizing of the contents contained therein. Moreover, nothing has been stated by any of the witnesses from the newspapers as to whether Aswathi Muralidharan was the media representative of the Aam Aadmi Party or that she used to send press-releases of the Aam Aadmi Party to them in general course of work and therefore, the connection between the aforesaid news articles published in the Hindustan Times Newspapers on 14.10.2013 and the Accused persons remains questionable.

7.6. At this stage, it is pertinent to note that Aswathi Muralidharan, the sender of the said e-mail has also been called to depose in this matter. It becomes utmost important to discuss her testimony for the source of information of the news articles emanated from her.

Interestingly, in her testimony as CW12, Aswathi Muralidharan denied not only being the Media Manager of the Aam Aadmi Party but also of the Accused Persons on the day of sending of the aforementioned e-mail i.e. 13.10.2013. Even though she admitted her name and e-mail address on the Ex.CW7/E she could not admit or deny sending of the alleged press release stating that she did not remember it due to long lapse of time. In sum and substance, the bottom-line of the deposition of Aswathi Muralidharan is that *the e-mail Ex.CW7/E*

may have been sent by her but certainly not at the behest of the
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Accused persons or the Aam Aadmi Party.

Meaning thereby, that Aswathi Muralidharan has cut-off the chain linking the Accused persons to the alleged defamatory news articles. The ideal flow of information would have been from the Political Affairs Committee of the Aam Aadmi Party to Aswathi Muralidharan and from her to the Media Channels. However, no connection could be established during the trial between the Aam Aadmi Party and CW12 Aswathi Muralidharan by whom the so called press-release was issued.

Even though CW12 Aswathi Muralidharan has admitted her signatures on the document Ex.CW1/D2 dt.23.07.2013, i.e. a document brought by accused no.1 and 2 on court record, however, that by itself does not establish that she was the Media Manager of the Aam Aadmi Party in 2013 or that the e-mail Ex.CW7/E was sent by her at the behest of the Accused persons.

Hence, the source of the news articles which was determined after going through testimonies of several witnesses i.e. the e-mail from Aswathi Muralidharan, could not lend much support to the Complainant's case so as to attribute the *actus reus* to the Accused persons.

7.7. Moreover, on technical grounds as well, the admissibility of the e-mail from Aswathi Muralidharan is rendered questionable i.e. the aspect covered under section 65B of the Indian Evidence Act titled as *Admissibility of the Electronic Records*. The section reads as follows:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical

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or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or

more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate;

and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

It is apparent from the bare reading of the section itself that an electronic evidence, when not produced in original in the court, shall be admissible in evidence only when it is supported by an affidavit as mentioned in Section 65B Sub-Clause (4) of the Indian Evidence Act. In simple words, copy of a computer generated document which is not supported by certificate u/s 65B of the Indian Evidence Act is inadmissible in evidence. In its leading judgment titled as ***Arjun Panditrao Khotkar vs. Kaulash Kushanrao Gorantyal (supra)***, the Hon'ble Apex Court upholding the judgment in ***Anvar P.V. vs. P.K. Basheer & Ors.***

[(2014) 10 S.C.C. 473], has laid down that:

59. We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly “clarified” in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.

....

The required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the “computer” happens to be a part of a “computer system” or “computer network” and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).

Further, in its judgment titled as **Kundan Singh vs. The State [(2016) C.C.R.1(Del)]**, Hon'ble High Court of Delhi held that:

55. In terms of sub-section (1) to Section 65B, original evidence need not be produced when conditions of Section 65B are satisfied. The computer output in relation to the information and computer in question are admissible as secondary evidence, when certificate under Section 65B is produced. However, Section 65B nowhere states that the contents of the computer output shall be treated as the truth of the statement. Section 65B deals with admissibility of secondary evidence in the case of “electronic records” and not with the truthfulness or veracity of the contents.

Thus, any document on a computer device, unless produced in original, is admissible in the form of secondary evidence only when supported by a mandatory certificate as

required u/s 65B(4) of the Indian Evidence Act.

Coming now to the case at hand, as already discussed above, the source of all the alleged defamatory newspaper articles produced on record is one e-mail sent by Aswathi Muralidharan. Print outs of the said e-mail have already been produced and exhibited on record by all the news publishing houses separately i.e. Ex.CW7/E, Ex.CW1/D9A and Ex.CW6/C.

However, while certificate u/s 65B(4) of the Indian Evidence Act has been produced by CW10 Arun Pathak vide Ex.CW10/A i.e. with respect to email Ex.CW7/E received by Hindustan Times; no certificate at all has been produced by any other witness from other news publications i.e. Times of India and Rashtriya Sahara, with respect to the e-mails received by them. No primary evidence has been produced during the trial with respect to the receipt of the e-mail by Aswathi Muralidharan, hence, in view of the law elucidated above, filing of a certificate u/s 65B(4) of the Indian Evidence Act was mandatory in this case. Thus, the admissibility of the e-mails relied upon by the Times of India and Rashtriya Sahara becomes questionable.

The only witness who has produced the requisite certificate u/s 65B(4) of the Indian Evidence Act is CW10 Arun Pathak. It has been argued by Ld. Senior Counsel for Accused no.1 and 2 that the certificate Ex.CW10/A given by witness Arun Pathak is not proper and therefore, even the e-mail Ex.CW7/E relied upon by him is inadmissible in evidence.

Coming to the requirements of certificate u/s 65B of the *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 73 of 81**
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Indian Evidence Act, the same have already been highlighted above, however, it would be apt here to peruse **Anvar P.V. vs. P.K. Basheer & Ors. (supra) judgment** wherein the essentials of the certificate u/s 65B(4) of the Indian Evidence Act were enlisted as follows:

Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;*
- (b) The certificate must describe the manner in which the electronic record was produced;*
- (c) The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

Coming now to the certificate Ex.CW10/A, the same is not complete in as much as it does not mention the details/particulars of the devices which were used to take the print out of the email.

As is manifest from the essentials quoted above, merely stating that the electronic record is generated from the computer and printer maintained in the office in regular course of business shall not suffice and specifications of the devices used to generate the copy of the electronic record has also to be mentioned in the certificate u/s 65B(4) of the Indian Evidence Act. Hence, the only certificate brought on record u/s 65B(4) of the Indian Evidence Act is also not proper.

In view of the discussion held above, it can be concluded that the e-mails produced on record by the witnesses claiming them to the source of news articles in question are inadmissible in evidence.

7.8. Another important aspect which needs to be discussed herein pertains to the testimony of CW8 Rishikesh, who is stated to be the head of the legal team of the Aam Aadmi Party. He first became a part of this case during an inquiry by the IO u/s 202 Cr.P.C. wherein he was asked to respond about the press release pertaining to this case.

The aforesaid letter issued by the IO has been exhibited on record as Ex.CW8/A. In the said letter, an inquiry has been made by the IO from the Incharge/Manager of the Aam Aadmi Party with respect to the press-release dated 14.10.2013 in the present case making two queries:

First: Regarding the authorship/signatory of the said press release or communication made to the press and by whom.

Second: Persons/Officials responsible for and managing the matters relating to the public affairs of the Aam Aadmi Party.

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Even though CW8 Rishikesh has not admitted to receiving of the said letter, he has admitted the letter Ex.CW8/B apparently written in response to the said letter. Ex.CW8/B is a letter addressed to the SHO, PS Farsh Bazar, New Delhi, written on the *letter head* of the Aam Aadmi Party and signed by CW8 Rishikesh. The letter specifically mentions that it is in regard to the query raised in complaint case no.728/1/13 PS Farsh Baazar wherein court has required answers to certain points with respect to the press release dated 14.10.2013 regarding AAP Candidate for Delhi Legislative Assembly. As already mentioned earlier in the judgment, document Ex.CW8/B specifically states that the *said press release was authorized and approved by the Political Affairs Committee of Aam Aadmi Party comprising of Sh.Arvind Kejriwal, Sh. Gopal Rai, Sh. Manish Sisodia, Sh. Kumar Vishwas, Sh.Pankaj Gupta, Sh. Sanjay Singh and Sh. Yogender Yadav*. Further, it is stated that *the political affairs of the party are managed by the PAC committee comprising of members as mentioned above*. In his cross-examination, CW8 stated that he was not authorized by any person to sign the letter Ex.CW8/B and that he was not instructed by any party functionary to write the said letter.

While arguing the matter on behalf of Accused no.1 and 2, Ld. Senior Counsel asserted that there is difference between *press release* and *news article*. Maintaining that the letter issued by the IO asked queries about a press-release dated 14.10.2013, it was argued that the press-release in question is dated 13.10.2013 and thus, the letter Ex.CW8/B, which talks about press-release *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 76 of 81**
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dated 14.10.2013 is of no significance to this case.

On this aspect, this court disagrees to the contention taken by Ld. Senior Counsel. To understand its contents, any document is to be read as a whole, including the context in which it is written, and not just superficially. *Document Ex.CW8/B specifically mentions that it is written in the context of the present case* and pertains to the news article pertaining to AAP candidate for Delhi Legislative Assembly. This clearly implies that the letter written by the IO is in respect of the press release dated 13.10.2013 and news articles dated 14.10.2013. Just because a different nomenclature is used while referring to the news articles dated 14.10.2013, that does not change its nature and purpose. Moreover, no suggestion has been put to CW8 that document Ex.CW8/B does not pertain to this case or that it pertains to some other matter. Hence, as such document Ex.CW8/B very much talks about the present case and is thus relevant to the case.

However, even though the relevancy of the document Ex.CW8/B stands established, its connection to the actual issuance of the press release remains questionable. Even though CW8 Rishikesh has stated that he has signed the letter Ex.CW8/B, he has specifically denied that he was authorized by party to sign the same. No witness or evidence has been brought on record to establish that CW8 Rishikesh did have authorization to issue any official communication on behalf of the party. Moreover, even if assuming that CW8 Rishikesh was indeed authorized to issue the letter Ex.CW8/B, the letter is silent on the *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 77 of 81**
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aspect as to who made a communication to the press with regard to the release. It is already mentioned above that the IO had inquired about two aspects from the Aam Aadmi Party, first being - *Regarding the authorship/signatory of the said press release or communication made to the press and by whom.* The letter Ex.CW8/B is blank on this aspect. Neither it speaks about who was the signatory or author of the press release nor it speaks about who made the communication to the press. Moreover, in order to connect the issuance of alleged press release to the Accused persons, it was imperative for the letter Ex.CW8/B to have mention of Aswathi Muralidharan as the e-mail containing the press release was actually sent by her, however, no such link can be established. The letter Ex.CW8/B can at best be categorized as preparation for publication but not publication itself and thus, even though the letter Ex.CW8/B is relevant to the case it does not connect the missing link so as to establish the publication of alleged defamatory news articles by the Accused persons.

8. Thus, despite scrutiny of the entire evidence on record, it could not be established that the news publication was made by the Accused persons. The most essential ingredient of the offence i.e. *Actus Reus* could not be established on the part of the Accused persons. Thus, this Court shall not get into the question as to whether the alleged news articles were defamatory or not and straight away move to the decision.

Brief reasons for the decision

9. The Indian Legal System follows Adversarial System of *Surender Kumar Sharma v. Arvind Kejriwal & Ors.* **page no. 78 of 81**
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law and accordingly, the cardinal principles of Criminal Jurisprudence in India are, one, *that the accused is presumed to be innocent unless proved guilty* and two, *that the burden upon the prosecution lies to the extent of proving the guilt of the accused beyond all reasonable doubts*. Thus, it is incumbent upon the prosecution/complainant to prove all the ingredients which constitute the offence so that all reasonable doubts in the case of the Complainant are removed. It may be noted that the strongest of suspicion upon the accused, does not lead to proof of the guilt of the accused.

10. The law on burden of proof upon the Prosecution has been enunciated in several judicial pronouncements. Hon'ble Supreme Court's Judgment in **Anand Ramchandra Chougule case (supra)** has already been quoted in the preceding pages. The Hon'ble Delhi High Court in the matter titled as **Sushil Kumar vs. State Govt. Of Nct Of Delhi [Cr.A.No.982/11 dt. 22 July, 2014]**, has held as follows:

It is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt. Even if there may be an element of truth in the prosecution story against the accused but considered as a whole there is invariably a long distance to travel and whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

Thus, on the mere basis of conjectures and surmises and bald allegations, the complainant can not bring home the guilt of the Accused and the level of proof required to be brought by the complainant is on a much higher pedestal.

10. In the case at hand, even though Complainant alleges that the Accused persons defamed him by getting the alleged news articles published on 14.10.2013, he has been unable to prove on record that the accused persons either authored or authorized the issuance of alleged press release dated 13.10.2013. Neither any media representative of the Accused persons was brought in the witness box to prove the issuance of press release at the instance of the Accused persons nor any first hand statement of any of the Accused persons in respect of the alleged defamatory articles was brought on record. There is no denial to the fact that nothing on record has been brought by the Complainant to establish that it was the Accused persons who got the alleged defamatory news articles published.

Hence, at the outset, the Complainant has been unable to prove any affirmative act on the part of the Accused persons to constitute the offense of defamation.

11. As already discussed above, in order to constitute any offence two essential ingredients are – *actus reus* i.e. act or omission on the part of the Accused to constitute physical element of crime and *mens rea* i.e. guilty intention on the part of the accused. Particularly in regard to the offence of defamation, the primary ingredient, that is *actus reus*, is making of a statement or imputation by words or signs or visible representations by the Accused and all other ingredients, viz. publication and intention to defame, come thereafter. The case of the Complainant becomes weak on the very first aspect itself.

When the Complainant has been unable to prove that it was the
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Accused persons who gave the alleged defamatory press release/statements, no question arises to go into the discussion as to whether those statements were defamatory or not. *In other words, where the foundation of the complaint case itself fails, the superstructure built on the same is bound to fail.*

12. Thus, this court has no hesitation in holding that despite examination of plethora of witnesses and bringing several documents on record, Complainant failed to prove his case beyond all reasonable doubts as required in law. Quality and relevancy; and not quantity of evidence, is what determines the fate of a case. Culpability can be attached to the Accused persons only if it is proved that they have committed the alleged offence, which in this case, the Complainant failed to do despite several efforts. In these circumstances, as a natural corollary following to the discussion above held, this court cannot hold the Accused persons guilty in the present case.

Conclusion

13. In view of the appreciation of evidence as well as above held discussion, **all the accused persons namely Arvind Kejriwal, Manish Sisodia and Yogender Yadav are held not guilty and acquitted** for the charge leveled against them under section 500 IPC.

Announced in the open Court (Vidhi Gupta Anand)
today i.e. 20th August, 2022. ACMM-01,RADC/New Delhi

This judgment has been directly typed to dictation.