2026:KER:60595

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 7TH DAY OF AUGUST 2026 / 16TH SRAVANA, 1948

RFA NO. 74 OF 2018

AGAINST THE JUDGMENT AND DECREE DATED 12.10.2017 IN OS NO.296 OF 2012 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/DEFENDANT:

DR.KIRIT SOMAIYA
99/C, NEELAM NAGAR, MULUND (EAST), MUMBAI-400081, MAHARASHTRA.

BY ADVS.
SHRI.L.RAM MOHAN
SRI.M.AUBREY ABRAHAM ISAAC

RESPONDENTS/PLAINTIFFS:

1. **ZIQITZA HEALTH CARE LIMITED**
(THROUGH ITS AUTHORISED SIGNATORY), 401B, NIRANJAN-99, MARINE DRIVE, MUMBAI-400002, MAHARASHTRA.

2. **RAVI KRISHNA**
AGED 42 YEARS, S/O.VAYALAR RAVI,
R/O.VILLA NO.1, AUTUMN WOODS, SKYLINE VILLAS, JAWAHAR NAGAR, KADAVANTHARA, ERNAKULAM-682020.

BY ADVS.
SRI.E.S.SANEEJ FOR R2
SRI.VISHNU R. FOR R2
SRI.PRAVEEN K.JOY FOR R2

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 27.07.2026, ALONG WITH CO.8/2022, THE COURT ON 07.08.2026 DELIVERED THE FOLLOWING:

2026:KER:60595

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 7TH DAY OF AUGUST 2026 / 16TH SRAVANA, 1948

CO NO. 8 OF 2022 IN R.F.A.NO.74 /2018

CROSS OBJECTOR/RESPONDENT NO.1 AND 2:

1 ZIQITZA HEALTH CARE LIMITED
(THROUGH ITS AUTHORISED SIGNATORY), 401B,
NIRANJAN - 99, MARINE DRIVE,
MUMBAI - 400 002,MAHARASHTRA.

2 RAVI KRISHNA
AGED 51 YEARS
S/O.VAYALAR RAI, R/O VILLA NO.1,
AUTUMN WOODS, SKYLINE VILLAS, JAWHAR NAGAR,
KADAVANTHRA, ERNAKULAM - 682 020.
BY ADVS.
SHRI.PRAVEEN K. JOY FOR 2nd CROSS OBJECTOR
SRI.E.S.SANEEJ FOR 2nd CROSS OBJECTOR

RESPONDENT/APPELLANT:

DR. KIRIT SOMAIYA
99/C, NEELAM NAGAR, MULUND (EAST), MUMBAI - 400 081,
MAHARASHTRA.
BY ADV.L.RAM MOHAN (B/O)

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR HEARING ON 27.07.2026, ALONG WITH RFA.74/2018, THE COURT ON 07.08.2026 DELIVERED THE FOLLOWING:

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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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R.F.A.No.74 OF 2018 &

Cross Objection No.8 OF 2022

= =

Dated this the 7th day of August, 2026

JUDGMENT

P.Krishna Kumar, J.

A suit for damages and permanent prohibitory injunction was filed by the respondents herein, alleging that a defamatory publication made by the appellant caused substantial damage to their reputation. The trial court partly decreed the suit, awarded a sum of ₹5,00,000/- as compensation, and restrained the appellant from further publishing any defamatory imputations. The defendant in the suit is in appeal. The plaintiffs/respondents have also filed a cross-objection seeking enhancement of the compensation.

2. The parties shall hereinafter be referred to as they were arrayed in the suit. The second plaintiff is one of the Directors of the first plaintiff company. He is the son of the then Union Minister for Overseas Indian Affairs. The first plaintiff company was awarded contracts for providing ambulance services ("108"

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ambulance service) in Kerala, Rajasthan, Punjab, and Bihar pursuant to separate public tenders.

3. The defendant is a former Member of Parliament and a senior leader of the opposition party. The plaintiffs allege that the defendant published a defamatory article on his website (www.kiritsomiya.com), alleging that the first plaintiff had obtained the contract for ambulance services from the Government through a non-transparent tender process by taking advantage of the second plaintiff's relationship with the Union Minister. On 06.02.2012, the defendant conducted a press conference and reiterated the allegations. On 21.02.2012, the defendant published another article on his website, which is reproduced herein below:

> "The Congress-UPA Government at Centre and Gehalot Government of Rajasthan are indulged into cover up operation to project Ziqitza Health Care Limited, a company of son's of Congress Leaders. Dr.Kirit Somaiya, BJP National Secretary and Chairman Scam Expose Committee today released around 150 pages of documentary evidences of NRHM Scam of Ziqitza. The evidences also include the cover up operation issuing instructions to the Health Ministry to stop investigation and action.
>
> The "108 Ambulance Service" National Rural Health Mission Scheme of Government of India is jointly run by the State and Central Government. This is same scheme under which the NRHM scam of Uttar Pradesh took place. Ziqitza is a Company having Directors/Shareholders of Sons and Son-in-law of Congress leaders.
>
> 1. Karti Chidambaram, son of Chidambaram
> 2. Ravi Krishna, son of Vayalar Ravi
> 3. Sweta Mangal

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Ziqitza has been awarded contract in non-transparent manner have raised crores of rupees bills in scandalous manner with the help of benami and bogus trips of ambulance, carrying patients to and fro hospitals in Rajasthan.

Observations of the Health Ministry:-

1. Ziqitza has been allotted contract without having transparent competitive bidding.
2. The company has been awarded execution of NRHM project in States like Rajasthan, Maharashtra.
3. The project is going on for two years.
4. Queries consistently raised by officials at District level, State level and Directors, NRHM.
5. Bills have been raised for the ambulances which do not exist/off the road, e.g. thousands trips of 50 ambulances (which were of the road) in the bill of September, 2011.
6. Double billing of the same trips, e.g.Ramdev Mala, Jodhpur.
7. Ziqitza has shown 55326 trips in September 2011 while the actual trips found 37458.
8. Bogus phone calls/trips observed by Ministry.

9. The daily statement/bill of Ziqitza shows

Trip Nos.	Date	Call Time	On Scene Time
85078	3 Sep 2011	2.26 am	2.20 am
87420	4 Sep 2011	2.17 am	2.15 am
89659	5 Sep 2011	12.41 pm	11.20 am
92295	6 Sep 2011	06.50 pm	16.30 pm

The arrival time of the ambulance on site is shown before the time of the phone call.

10. In the similar manner bogus entries have

Trip ID	Date	Time of Call	Time Ambulance Reaches
82493	2.09.11	1.01 am	22.25 pm
89246	5.09.11	1.27 am	18.08 pm
89337	6.09.11	1.58 am	5.45 am

In spite of emergency ambulance services, ambulance reached the site after 10 to 22 hours.

11. Double trips have been shown

Sl. No.	Trip ID.	Patient Name	Telephone No.
1	71438 & 70737	Santhosh/Santhosh	01464222067
2	91272 & 91038	Maya/Maya	01575699600
3	182270 & 182446	Alissa/Alissa	02942100108

12. The officials at NRHM took strong objections and initiated action against the company.

13. Cover up operations initiated Chief Secretary; Health Secretary held urgent meetings and issued directives to stop investigation and action.

Dr.Kirit Somaiya demanded investigation of NRHM Scam by Special Investigation Team. Dr.Somaiya also produced the copies of official documents of Health Ministry, NRHM, investigation, action cover up operation and the records of the company including names of Directors/Share Holders".

According to the plaintiffs, the imputations were made solely to defame them, tarnish their image, and sully their reputation, without any iota of truth in those allegations. The plaintiffs contended that the first plaintiff had participated in the tender published by the Government of Rajasthan in leading newspapers, emerged as the lowest bidder, and thereby secured the contract. Alleging that the defamatory publication caused immense loss of reputation to the first plaintiff company as well as the second plaintiff, the suit was filed claiming compensation of ₹1,00,00,000/- as damages and also seeking a permanent prohibitory injunction against further defamatory publications.

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4. The defendant resisted the claim by contending that the publication was made in good faith and on the basis of the materials available. The defendant contended that he was not only a politician but also a former Member of Parliament and a Leader of the Opposition and had been engaged in espousing various causes of public importance through public interest litigations as well as by petitioning constitutional functionaries. According to the defendant, he believed that he had a duty towards society to uphold the truth and protect the interests of the public at large. An enquiry conducted by the National Rural Health Mission (NRHM) revealed that the work had been awarded to the first plaintiff by ignoring the qualifications possessed by another tenderer, which was the most experienced agency in the relevant field. The imputations made by him were subsequently substantiated by the report of the Comptroller and Auditor General of India (CAG). The Central Bureau of Investigation (CBI) had registered a crime against the Directors of the first plaintiff company, the then Chief Minister and Health Minister of Rajasthan, and the Director of NRHM, Rajasthan, for offences including cheating and forgery in relation to the said transaction, the defendant contended.

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5. During the trial, the plaintiffs examined PW1 to PW5 as well as CW1 and CW2, the Commissioner and the Expert appointed by the court to extract the publications made by the defendant on his website. Exts. A1 to A3, Exts. B1 and B2, Ext. C1, and Exts. X1 to X4 were marked in evidence. The defendant did not adduce any oral evidence. However, Exts. B1 and B2 were marked on his side.

6. Upon evaluating the oral and documentary evidence, the trial court concluded that, despite having raised the defences of justification by truth and qualified privilege, the defendant did not produce any records in support of his contentions, nor did he even enter the witness box. Accordingly, the trial court decreed the suit as aforesaid, holding that the defendant had failed to prove that the imputations were made in good faith, for the public good, and without malice.

7. We have heard Sri. Ram Mohan L., the learned counsel appearing for the defendant/appellant, and Sri. Praveen K. Joy, the learned counsel appearing for the plaintiffs/respondents.

8. The points for determination are as follows:

(i) Whether the publication made by the defendant is defamatory?

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(ii) Whether the defendant was justified in making the imputations?
(iii) Whether the decree is liable to be interfered with?

9. The publication on the defendant's website specifically states that the first plaintiff company had been awarded the contract in a non-transparent manner and had siphoned off crores of rupees through benami and bogus ambulance trips. These imputations are ex facie damaging to the reputation of the plaintiffs and are, therefore, defamatory. The question that remains is whether the defendant was in any way justified in making those imputations.

10. According to the defendant, he is a public-spirited person with a history of three decades of service to the nation, and his attempt was only to protect the interests of the State as well as the public. He also contended that he had the defence of justification by truth, as the imputations were supported by the reports of the Health Ministry and the CAG, as well as by the registration of a crime by the CBI.

11. The enquiry, therefore, is confined to whether the matters published by the defendant have been proved to be true or

are otherwise justified. The law is well settled that, when the defence of justification by truth is raised, the defendant is not required to prove every aspect of the publication to be true. It is sufficient if the essential or substantial part of the sting is proved to be true. [See *Gatley on Libel and Slander, Sweet & Maxwell, 12th Edition*, p. 392, following the law laid down in ***Chase v. News Group Newspapers Ltd.*** (2003) E.M.L.R. 218.] Similar views were expressed by the Madhya Pradesh High Court in ***Dainik Bhaskar and Another v. Madhusudan Bhargava and Another*** (AIR 1991 MP 162) and by the Delhi High Court in ***Ram Jethmalani v. Subramaniam Swamy*** (AIR 2006 Del. 300).

12. Indeed, the burden of proving that the substantial part of the sting is true lies upon the defendant. In the present case, the defendant contended that Ext. B2 FIR dated 24.08.2015, registered by the CBI, and the CAG report forming part of Ext. C1 Commission Report submitted by the Expert justified his action. The trial court rejected the above contentions for three reasons. First, the FIR was registered by the CBI much after the publication. Secondly, it is unknown whether the CAG report was accepted by the State Government, to have a binding effect. Lastly, the said report was held to be insufficient to justify

the allegation that the first plaintiff had secured the contract from the State of Rajasthan in a non-transparent manner by exerting high-level influence.

13. As already stated, the burden of a defendant who sets up justification as a defence is discharged by proving the truthfulness of the substantial part of the imputations. The question that then arises is whether the defendant is required to prove the truthfulness of the substantial part with certainty. In the present case, the defendant contends that the subsequent CAG report, the registration of the crime by the CBI, and the alleged enquiry report of the Health Ministry (which was not produced before the court) establish the truthfulness of his contentions. It is in this background that the trial court held that, unless the CAG report was accepted by the Government, it would not assist the defendant in establishing his defence of justification.

14. However, the burden on the defendant is only to establish the primary facts that give rise to reasonable grounds for suspicion, when judged objectively. He is not required to prove that every allegation, or even the substantial part thereof, is actually true with absolute certainty. *Gatley on*

Libel and Slander (*Sweet & Maxwell, 12th Edition*, at p. 408), while referring to the decision in *Chase v. News Group Newspapers Ltd.,* (2003) E.M.L.R. 218, states as follows:

> "The approach to proof of the defence of truth in Chase level 2 "reasonable grounds to suspect" cases was summarised by Eady J. in a passage approved by the Court of Appeal in Musa King v. Telegraph Group Ltd. [2003) EWHC 1312 (QB). In such cases, it is necessary for the defendant to prove the primary facts and matters giving rise to reasonable grounds of suspicion objectively judged. It is impermissible to plead as a primary fact the proposition that some person or persons (e.g. law enforcement authorities) announced, suspected or believed the claimant to be guilty (Sharma v. Singh (2007) EWHC 2988 (QB)]. A defendant may adduce hearsay evidence to establish a primary fact, but this in no way undermines the rule that the statements or beliefs of any individual cannot themselves serve as primary facts (Chase v. News Group Newspapers Ltd. (2003) E.M.L.R.218). Generally, it is necessary to plead allegations of fact tending to show that it was some conduct on the claimant's part that gave rise to the grounds of suspicion."

Hence, instead of discarding the CAG report on the ground that it had not been accepted by the Government, the trial court ought to have considered whether the report contained sufficient material to establish the primary facts underlying the allegations or, at any rate, whether it disclosed circumstances giving rise to reasonable grounds for suspicion regarding the conduct of the plaintiffs. The Comptroller and Auditor General of India is a constitutional authority entrusted with the duty of auditing the accounts of the Union and the States and examining matters

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relating to the proper and lawful utilisation of public funds. The conclusions recorded by the CAG on such matters do not lose their significance merely because they have not been accepted by the Government.

15. Though the general rule is that a defendant cannot rely upon post-publication events to establish the existence of reasonable grounds, the rule is not absolute [***Isaac Sarayiah v. Suren*** (2004) EWHC 1981 (QB) at para. 45]. Therefore, the court was not precluded from considering subsequent events, such as the registration of the FIR and the CAG report, while evaluating the defence of justification. The learned counsel appearing for the defendant further contended that the CBI had subsequently filed a charge sheet against the plaintiffs. The above discussion compels us to conclude that the trial court committed a serious error in evaluating the basic premise of the defence.

16. The defendant also raised the defence of qualified privilege. There are certain situations in which, on grounds of public policy, it is essential that persons be permitted to speak freely without fear of legal consequences arising from defamatory imputation. In such circumstances, the defence of qualified privilege can be invoked. To avail of the benefit of this

defence, it must appear from the records that the publication was made in the public interest. Similarly, the privilege stands defeated if the maker is actuated by malice, as evident from the attending circumstances.

17. It is not in dispute that the defendant was one of the leaders of the opposition party and a former Member of Parliament. The question, therefore, is whether his action was justified in the public interest and whether he acted in good faith. The trial court rejected the said contention by observing that the defendant had not specifically pleaded that the publication was made in discharge of a duty to protect the interests of the public. The court also found that the defendant did not enter the witness box and prove his contentions. However, we notice that the defendant has made pleadings indicating that, being a responsible politician, he owed a duty towards society to uphold the truth and protect the interests of the public at large and that the publication in question was made in that background.

18. Referring to the decision in ***Dr. P.H. Daniel v. Krishna Iyer*** (1982 KLT 1), the learned counsel appearing for the defendant contended that, in the absence of any evidence suggesting that the defendant was actuated by express malice, no

action for defamation would lie against him where the court can infer from the circumstances that the imputations were made for the public good. The above contention could have been appreciated had the defendant entered the witness box and deposed regarding his good faith in making the publication and whether his action constituted an honest pursuit of the truth in discharge of his role as a political leader. That was not done. Therefore, the said defence is of no avail.

19. Nevertheless, we have already found that the trial court failed to appreciate the defence of justification by truth in its proper perspective. Consequently, the impugned judgment is liable to be set aside.

20. At the same time, we notice that many of the relevant documents relied upon by the defendant, including the report of the CAG, were not formally marked in evidence. The alleged report of the Health Ministry has also not been brought on record. In this regard, it is submitted by the learned counsel for the defendant that the documents were not marked in evidence since the concerned officials were not summoned before the court. The law is well settled that public records of this nature can be brought on record by producing certified copies thereof, without

examining the makers of such reports. [See ***Madamanchi Ramappa and Another v. Muthaluru Bojjappa*** (AIR 1963 SC 1633).]

21. Considering all these aspects, we are of the view that the case requires to be remitted for fresh disposal after affording both sides an opportunity to adduce further evidence.

In the result, the appeal and cross objection are allowed, and the impugned judgment is set aside. The case is remitted to the trial court for fresh disposal after affording both sides sufficient opportunity to adduce further evidence, if sought for. The parties shall appear before the trial court on 01/09/2026. The court fee remitted on the memorandum of appeal and cross-objection, shall be refunded to the respective parties.

It is submitted by the learned counsel for the appellant that the appellant has produced a Demand Draft of Rs.6,00,000/- before the trial court. It is open to the appellant to move an application for its return, if he chooses so.

Sd/-

SATHISH NINAN, JUDGE

Sd/-

P. KRISHNA KUMAR, JUDGE

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