

**IN THE COURT OF ADDITIONAL CHIEF**  
**METROPOLITAN MAGISTRATE- I**  
**ROUSE AVENUE DISTRICT COURTS, DELHI**

**PRESIDING OFFICER:- SH. VISHAL PAHUJA.**

**RAMESH BIDHURI V. ARVIND KEJRIWAL**

**CT NO. 19/19**

**PS : PARLIAMENT STREET**

**U/S: 500 IPC.**

**J U D G M E N T**

<b>Case No.</b>	<b>:</b>	<b>19/2019</b>
<b>Date of Commission of offence</b>	<b>:</b>	<b>17.07.2015</b>
<b>Date of institution of the case</b>	<b>:</b>	<b>28.08.2015</b>
<b>Name of the complainant</b>	<b>:</b>	<b>Sh. Ramesh Bidhuri s/o Sh. Ramrikh 179, Sunpat House, Tughlakabad, New Delhi-110044.</b>
<b>Name of accused and address</b>	<b>:</b>	<b>Sh. Arvind Kejriwal Chief Minister, Government of NCT of Delhi, Delhi Secretariat, IP Estate, New Delhi.</b>
<b>Offence complained of or proved</b>	<b>:</b>	<b>u/s 499/ 500 IPC.</b>
<b>Plea of the accused</b>	<b>:</b>	<b>Pleaded not guilty</b>
<b>Final order</b>	<b>:</b>	<b>Acquitted</b>

**Date on which reserved for judgment : 23.10.2020**

**Date of judgment : 28.10.2020**

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**BRIEF STATEMENT OF THE FACTS FOR DECISION:**

1. This is the prosecution of accused u/s 499/500 Indian Penal Code, 1860 (here in short called as 'IPC') and u/s 200 Criminal Procedure Code, 1973 (here in short called as 'Cr.P.C'). pursuant to the complaint filed by the complainant.

2. It is alleged by the complainant that accused has made defamatory remarks against the complainant in a programme aired on 17.07.2015 and repeated on 18.07.2015 and 19.07.2015 on TV news channel namely 'AajTak' wherein the accused was interviewed by Mr. Rajdeep Sardesai of AajTak TV Channel. The accused spoke that “RAMESH BIDHURI KE KHILAF BADE BADE SANGEEN CHARGES HEIN, UNKO PAKDA AAPNE”. It is further stated that when complainant was at party office, 14 Pant Marg, New Delhi-110001 many supporters and voters of the Parliamentary Constituency of the complainant informed that a programme was aired on the said above mentioned date and during the interview the accused pronounced the complainant's name before the camera of news channel posing as the complainant is wanted by the Delhi Police or any other state or complainant is declared proclaimed

offender by any of the Hon'ble Court of India. Hearing this the complainant felt speechless and awful as voters and supporters were looking at the complainant in a suspicious manner and doubted on integrity of the complainant. This lowered the dignity and image of the complainant before the supporters and voters of the constituency of the complainant and public at large.

3. Complainant allegedly saw re-telecast of the said interview on 19.07.2015 and found the accused giving interview speaking words that "RAMESH BIDHURI KE KHILAF BADE BADE SANGEEN CHARGES HEIN, UNKO PAKDA AAPNE". These words spoken by the accused knowingly to be false have been uttered deliberately and maliciously with the intent to defame and tarnish the reputation and image of the complainant and to gain the sympathy of people of Delhi. Allegedly, the scandalous and defamatory remarks made by the accused against the complainant has defamed the complainant in the eyes of public, thus, accused committed offence u/s 499/500 IPC. Such remark has disgraced and lowered the moral and intellectual character of the complainant. Complainant served a legal notice upon the accused but the same was not replied. Hence, the present complaint has been filed.

**PRE SUMMONING EVIDENCE:-**

4. The complainant examined two witnesses in his pre-summoning evidence including himself. After considering the pre summoning evidence, accused was summoned to face the trial

for the offence u/s 500 IPC vide order dated 08.02.2016 passed by the Ld. Predecessor of this Court.

**NOTICE FRAMED U/S 251 Cr.P.C.:-**

5. Upon appearance of the accused, the compliance of section 207 Cr.P.C. was ensured. Notice under section 251 Cr.P.C. was served upon the accused vide order dated 22.10.2016 u/s 500 IPC to which the accused pleaded not guilty and claimed trial. Thereafter, the matter was listed for post-notice complainant's evidence.

**POST NOTICE COMPLAINANT'S EVIDENCE:-**

6. In his post-notice evidence, the complainant examined three witnesses including himself.

7. Complainant stepped into the witness box as CW-1 and deposed that he is a Member of Parliament and remained member of Legislative Assembly of Delhi for three terms prior to becoming of Member of Parliament. On 17.07.2015, the accused gave an interview on a news channel AajTak to its anchor Rajdeep Sardesai which was repeated on the next day. Accused made serious allegations against the complainant stating that complainant is involved in serious offences and questioned Delhi police for not arresting him and this defamatory statement was made when accused was asked by the anchor about the cases, which the MLAs

of Aam Aadmi Party particularly Jitender Singh Tomar and Manoj Kumar are facing. It is stated that on the next day i.e. 18.07.2015 when the complainant reached the party office, the party members namely Atif Rashid, the President of Minority Cell of Delhi, BJP and Deepak Jain, District General Secretary of South Delhi District of Delhi, BJP, confronted CW-1 that he has many serious criminal cases against him and this is causing embarrassment to the party.

It is further deposed that the accused has made the defamatory statement knowingly and intentionally to lower the reputation of the complainant more particularly in view of the fact that he was made the Incharge (ABVP, Student Wing of BJP) of upcoming Student Union Election of the Delhi University in which the Aam Aadmi Party was also participating, the expansion of the Cabinet of Central Government as well as the fact that the complainant was made co-Incharge of U.P. in upcoming State Assembly Elections. It is further deposed that the defamatory statement adversely affected his image in the eyes of General Public and Party. CW-1 relied upon the documents already exhibited by him in his pre summoning evidence i.e. CD as CW1/1, certificate u/s 65B of Indian Evidence Act as Ex. CW1/2 and complaint as Ex. CW1/3. CW-1 was cross-examined by the accused.

8. Sh. Deepak Jain was examined as CW-2. He deposed that on 17.07.2015, he was present at his home and watching news channel AajTak at around 10.15 AM. He saw an exclusive interview of Sh. Arvind Kejriwal taken by anchor Sh. Rajdeep Sardesai. During the

interview Sh. Arvind Kejriwal was confronted that his MLAs namely Manoj Kumar and Jitender Singh Tomar are having serious allegations against them and what action Arvind Kejriwal has taken against those MLAs. In reply to that Sh. Arvind Kejriwal stated that Ramesh Bidhuri is also accused of serious charges but no action has been taken against him. It is further deposed that on 18.07.2015 at about 04:00 PM, CW-2 was present in the BJP party office at 14, Pandit Pant marg, where Sh Ramesh Bidhuri was also present. It is stated that media personnels and other party workers were also present at that point of time. It is stated that Sh. Atif Rasid who was President of Minority Cell of BJP confronted Sh. Ramesh Bidhuri that “are there any serious charges against him and for which he is absconding” and Sh. Ramesh Bidhuri denied the same. He also mentioned about the alleged interview dated 18.07.2015. CW-2 further stated that he also told Sh. Ramesh Bidhuri that he has also seen the said interview and felt bad about it. It is stated that by that interview the image and reputation of Sh. Ramesh Bidhuri has been lowered in his eyes as well as in the eyes of general public. CW-2 was cross examined on behalf of accused.

9. Sh. Atif Rasheed was examined as CW-3. CW-3 adopted his pre summoning evidence wherein he stated that he is the member of BJP and presently holding the post of President Minority Morcha, Delhi State. It is stated that he know Sh. Ramesh Bidhuri for last 18 years and he is an honest and dedicated politician in social service. It is stated that on 17.07.2015 CW-3 was at his home watching

AajTak, where he saw an exclusive interview given by accused Arvind Kejriwal. It is stated that in that interview, accused stated that "Ramesh Bidhuri ke khilaf bade bade sangeen charges hai, unko pakda apne". As per him accused sought to connect and equate Sh. Ramesh Bidhuri with accused such as Jitender Singh Tomar and Manoj Kumar of Aam Aadmi Party. CW-3 further stated that Sh. Ramesh Bidhuri enjoys good reputation and high moral character. The statement of accused has tarnished the image of Sh. Ramesh Bidhuri in the eyes of public and CW-3 felt bad after seeing the interview. The statement was made by the accused with an intention to harm the reputation of complainant. It is further stated that on 18.07.2015, it was complainant's birthday and several people visited the office of BJP at around 04:00 PM. It is stated that CW-3 informed Sh. Ramesh Bidhuri about the defamatory statement made by the accused and asked Ramesh Ji whether he is absconding from police or has been declared proclaimed offender by any court. Similarly, Sh. Deepak Jain also informed Sh. Ramesh Bidhuri about the statement. CW-3 was also cross examined on behalf of accused.

10. No other witness was examined by the complainant at the stage of post notice evidence, accordingly, the complainant's evidence was closed vide order dated 26.04.2019.

#### **STATEMENT OF ACCUSED U/S 313 Cr.P.C.**

11. Statement of accused Arvind Kejriwal U/s 313 Cr.P.C. was

recorded in which all incriminating circumstances appearing in evidence were put to him to which he denied and stated that he has been falsely implicated in the present case and he did not make any defamatory and derogatory remarks against the complainant. It is further stated that the statement made by him was general to highlight the discriminatory attitude of Delhi police against the supporters and leaders of Aam Aadmi Party. The interview in question was general in nature. The complainant and other witnesses are interested witnesses being political rival and have falsely implicated the accused in this case. Accused opted to lead defence evidence.

#### **DEFENCE EVIDENCE:**

12. Accused Arvind Kejriwal opted to lead defence evidence and examined six witnesses. All the six witnesses are official witnesses.

ASI Ramroop was examined as DW-1 who exhibited on record the copy of FIR no. 189/09 PS Govind Puri as Ex. DW1/A.

ASI Sunder Singh was examined as DW-2 who exhibited on record copy of FIR no. 26/11 PS Pul Prahladpur as Ex. DW2/A.

HC Yogender was examined as DW-3 who exhibited on record copy of FIR no. 657/04 and FIR no. 193/09, PS Okhla Industrial Area as Ex. DW3/A (Colly) and Ex. DW3/B (Colly).

ASI Sunil Kumar was examined as DW-4 who exhibited on record copy of FIR no. 53/13, PS IP Estate as Ex. DW4/A. This witness further exhibited on record details of the charge sheet



prepared in the above mentioned case as Ex. DW4/B.

Insp. D.V. Singh was examined as DW-5 who exhibited on record copy of FIR no. 343/98, PS Okhla Industrial Area as Ex. DW5/A along with the book no. 79. It is further stated that the name of Sh. Ramesh Bidhuri was mentioned in the said FIR.

HC Devraj was examined as DW-6 as MHC(R) in PS Sangam Vihar who exhibited on record copy of FIR no. 334/10 as DW6/A.

All the six defence witnesses were cross examined by the complainant.

### **ARGUMENTS :**

13. Ld. Senior Advocate Sh. Ajay Burman for the complainant ambitiously argued that the complainant has successfully proved his case against the accused by leading cogent evidence on record and establishing all the ingredients of section 499 Cr.P.C. Ld. Senior Advocate further argued that the defamatory statement given by the accused during interview has also been admitted by him in his statement u/s 313 Cr.P.C. and also that he did not deny the same during the cross examination of complainant's witnesses, hence, the accused is liable to be convicted u/s 500 IPC. Ld. Senior Counsel further canvassed that the documents such as CD, certificate u/s 65B of Indian Evidence Act relied upon by the complainant have been duly proved on record. It is further argued that accused has failed to prove his plea of defence by leading any cogent evidence. It is further urged that the exception 1 of section 499 IPC pleaded by

accused has not been established as neither he proved on record the involvement of complainant in heinous offences nor he could establish that the statement made by him was for public good. While concluding his argument Ld. Senior Advocate submitted that any reasonable man would think that complainant is of a bad character and that is sufficient to hold the statement of the accused to be a defamatory statement. In support of his arguments Ld. Counsel relied upon the following judgments.

1. Sanjay Mishra v. NCT of Delhi – 2012 SCC Online Del 1779.
2. Bikramjit Ahluwalia v. Simran Ahluwalia – 2015 SCC Online Del 9242.
3. Mohanlal, Murlidhar v. Ramcharandevi Prasad – Cr. Appeal No. 27 of 1957, 1957 SCC Online MP 177 : AIR 1958 MP 83 : 1958 Cri LJ 520.
4. Balraj Khanna and ors. v. Moti Ram – Crl. Appeal No. 14 of 1971.
5. Gangabhavani v. Rayapati Venkat Reddy and ors – Criminal Appeal No. 86 of 2011.
6. Baby v. Thiagarjan – 2004 (2) CTC 331.
7. Tarju Bhai Narsing Bhai Rathwa v. State of Gujarat, Crl. Appeal No. 2083 of 2008.
8. Dharnidhar and ors. v. State of UP – Cr. Appeal no. 239/05.
9. Paul v. State of Kerala – Crl. Appeal no. 38/20.
10. Bihari Lal v. The State – 2009 SCC Online Del 759.

11. Manharan Rajwade v. State of Chhattisgarh – 2017 SCC Online Chh 1117.
12. Brajendra Singh v. State of Madhya Pradesh - Criminal Appeal Nos. 113-114 of 2010.
13. Mohan Lal v. State of HP, Cr. Revision No. 192 of 2004.
14. Kamalasanan v. Vasudevan and others – 1968 SCC Online Ker 50.
15. Chaman Lal v. State of Punjab – 1970(1) Supreme Court cases 590.
16. Subramanian Swamy v. Union of India – (2016) 7 Supreme Court Cases 221.

14. On the contrary, Ld. Senior Advocate Ms. Rebecca John appearing for the accused clamored for his acquittal on the ground that complainant has miserably failed to establish the essential ingredients of the offence u/s 499 IPC as neither he could lead any substantial evidence in the form of documents nor the oral evidence led by the complainant witnesses CW1, CW2 and CW3 could stand the test of truthfulness. It is argued that the testimony of CW1, CW2 and CW3 are not reliable due to material infirmities and contradictions appearing in their testimonies. It is further argued that accused has not made any admission of the facts in his statement u/s 313 Cr.P.C. rather only gave an explanation qua his remarks. The onus lied upon the prosecution was never discharged. The onus did not shift upon the accused so his explanation cannot be treated as his admission and be made basis for conviction of the

accused u/s 500 IPC. Ld. Senior Counsel concluded her arguments by asseverating that accused has led sufficient evidence on record to show the pendency of several criminal cases against the complainant which he also admitted in the affidavit filed before election commission and thus the complainant cannot be said to have come before the court with clean hands. It is argued that the complainant has not brought on record the original CD containing the interview from the AajTak Channel nor he called the anchor Rajdeep Sardesai from the said TV channel to prove his case. Thus, in view of the evidence led on record it can be said that complainant has failed to prove his case beyond reasonable doubt and the accused is entitled to be acquitted. Ld. Senior Advocate for the accused relied upon the following judgments:-

1. Bilal Ahmed Kaloo v. State of AP, (1997) 7 SCC 431.
2. Sanjay v. Abhijit Misra and others, 2005 SCC Online P&H 600.
3. Anvar PV v. PK Basheer, (2014) 10 SCC 473.
4. Mahabir Prasad Verma v. Dr. Surender Kaur, (1982) 2 SCC 258.
5. Ram Singh v. Col. Ram Singh, 1985 (Supp) SCC 611.
6. State v. Ravi alias Munna [2000 (52) DRJ (DB)].
7. Raj Kumar Singh Alias Raju v. State of Rajasthan [(2013) 5 SCC 722].
8. Kajal Sen & Ors. v. State of Assam [(2002) 2 SCC 551].
9. Raj Bahadur v. State [(1991) 21 DRJ 340].
10. R.P. Goenka & ors v. State of UP [2019 SCC Online All 3815].
11. Harbhajan Singh v. State of Punjab [AIR 1966 SC 97].

12. Rafiq Ahmad @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].

**FINDINGS:-**

15. I have bestowed my thoughtful consideration to the rival submissions made before me. Accused is indicted for the offence U/s 499/500 IPC.

16. The offence of defamation consists of three essential ingredients, namely,

- (1). making or publishing an imputation concerning a person,
- (2). such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations and.
- (3). the said imputation must have been made with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned.

17. The onus to prove these ingredients was upon the complainant as it is the duty of the prosecution to stand on its own legs and prove the case against the accused beyond any reasonable doubt. The original onus never shifts unless exception is pleaded. This has been held by Hon'ble Apex Court in ***Harbhajan v. State of Punjab, AIR 1966 SC 97.***

18. The complainant was enjoined upon to prove on record the interview given by the accused to TV Anchor Rajdeep Sardesai on AajTak Channel and the basis of present complaint was the said interview in which alleged defamatory statement was made. Irrefragably, original CD containing the interview has not been obtained by the complainant from the AajTak Channel nor the Anchor Rajdeep Sardesai who was cited as witness in the list of witnesses have been called and examined by the complainant in his evidence. The said CD was the primary evidence for production of which the complainant even sought time from the court while recording his examination in chief but he failed to bring the same on record. During cross examination of CW-1 he fessed up that he did not write to the channel AajTak for providing the original version of CD. Complainant did not even place on record the transcript of the contents of CD, though mentioned in his complaint.

19. The complainant placed on record a downloaded version of the interview in a compact drive exhibited on record as Ex. CW1/1 which is a secondary evidence and the same was under pinned with a certificate u/s 65B of Indian Evidence Act exhibited as Ex. CW1/2. Bare perusal of the document Ex. CW1/2 discerns that though complainant has claimed that the interview given by the accused is available on the host server on news channel AajTak and YouTube but he did not specify as to from which server he has downloaded the interview. The certificate u/s 65B of Indian Evidence Act Ex. CW1/2, thus, cannot be said to be filed in accordance with law.

Moreover, merely downloading of the interview from any of the server supported with certificate u/s 65B of Indian Evidence Act is not sufficient to prove the document unless there is another certificate u/s 65B filed by the person who uploaded the interview on the said server which is missing in the present case. Some One from the AajTak Channel could have been called to establish the genuineness of the contents of the CD Ex. CW1/1 or to verify that the version uploaded on AajTak or YouTube website is the authenticated version of interview alleged here in.

20. The complainant CW1 during cross examination by the Ld. Counsel for the accused made a statement **“I am not aware the interview if available on YouTube or other websites is an edited version or not”**. This statement of the complainant clearly shows that even complainant is not satisfied and cannot say with conviction that the CD placed on record which has been downloaded from YouTube is an unedited or unadulterated version of the interview that actually took place on channel AajTak. A specific objection was raised by the Ld. Counsel for the accused at the time of exhibition of the CD during recording of examination in chief qua its mode of proof. The complainant had sufficient time and opportunity to call the witness from AajTak Channel to produce the original version of the interview in the form of CD supported with certificate u/s 65B of Indian Evidence Act or to call the Anchor himself as a witness for proving the interview in order to defeat the objection raised by

accused but the complainant failed to do so. In absence of any proper evidence on record the CD Ex. CW1/1 cannot be considered as proved. So as far documentary evidence is concerned, no such evidence can be said to have been proved on record to establish the contents of interview given by accused on 17.07.2015.

21. Now coming to grips with the oral evidence lead by complainant witnesses in this regard. Important aspect is that whether complainant himself has seen the interview or not. During the cross examination of CW1, the complainant admitted that he had not seen the alleged interview on 19.07.2015 when confronted with the contents of the complaint where he mentioned so whereas he became wiser when further cross examination was conducted on another date and he stated to have seen the interview on 19.07.2015. This improvement cannot be accepted in view of his earlier statement where he denied watching the interview when confronted by the accused. Infact, the re-telecast of the said interview on AajTak channel has not been otherwise proved on record. CW-1 in his cross examination stated that he mentioned the names of CW2 and CW3 in his complaint Ex. CW1/1 but when confronted with the complaint these names were found to be missing. Uttering of words that “complainant is wanted by police officials in Delhi or complainant is declared to be proclaimed offender” mentioned in complaint were stated to have been told by some persons as stated by complainant in his cross examination,



here also CW1 did not tell the names of persons. Meaning thereby, whatever CW-1 stated is an hearsay evidence. CW1 admitted during his cross examination that accused has not spoken words that complainant is proclaimed offender and wanted accused. CW1 during his cross examination was confronted with complaint to show where he mentioned the date of incident but he could not show the same as no date was mentioned in the complaint. Complainant also admitted during the cross examination that certain FIRs have been registered against him. This fact otherwise has been conceded by him in the complaint. When confronted with certain FIRs registered in various police stations during his cross examination, CW1 started giving evasive replies by saying that "I am not aware" and "I have no knowledge". CW1 also admitted that a complaint of land grabbing was filed against him in lokayukta. The above facts fortifies the plea of accused that there are serious charges against the complainant. In view of above discrepancies and material infirmities in the testimony of CW1, the testimony of CW1 does not found to be reliable.

22. CW-2 Deepak Jain and CW-3 Atif Rashid during their cross examination admitted that they have not viewed the entire interview so their oral testimony also does not prove the contents of the interview. Infact the time of watching the interview by both the witnesses is totally contrary as CW-2 Deepak Jain claimed to have viewed the interview at 10.15 A.M. whereas CW-3 Atif Rashid

claimed to have seen the interview at around 09.00 PM. Both the witnesses admitted that they have viewed the interview for a short duration and none of them seen the entire interview and they could not tell the exact duration of the interview. The timing of telecast of interview and the witnesses viewing the same is completely varied which throws a strong doubt on the claim of the witnesses. There cannot be any coincidence that both the witnesses saw only the part of the interview which pertains to the making of alleged defamatory statement against the complainant. Importantly both the witnesses claimed to have seen the interview on 17.07.2015 but they did not bother to inform the complainant immediately there and then about the said interview which was least expected from a well wisher of the affected person who wanted to express their feelings of shock. It is further pertinent to note that complainant has not mentioned the names of CW2 and CW3 in the complaint nor he mentioned the date and time when he was confronted with the contents of alleged interview by CW2 and CW3. Meaning thereby CW2 and CW3 have been introduced as witnesses as an afterthought. The material infirmities in the testimony of CW2 and CW3 pointed above makes their testimony highly doubtful and unreliable and therefore cannot be relied upon. Hence, it can be concluded that the making or publication of interview containing alleged defamatory statement itself has not been established by the complainant by even oral evidence lead on record.

23. Ld. Senior Advocate for the complainant argued that accused in his statement u/s 313 Cr.P.C. admitted the statement made by him to the AajTak channel during an interview, thus, proves the factum of interview and the defamatory statement made by him so the same can be made basis for recording the conviction of the accused. In support of his arguments, Ld. Counsel relied upon the following judgments :

1. Dharnidhar & ors. v. State of UP – Criminal Appeal No. 239/2005.
2. Paul v. State of Kerala – Criminal Appeal no. 38/2020.
3. Bihari Lal v. The state – 2009 SCC Online Del 759.
4. Manharan Rajwade v. State of Chhatisgarh – 2017 SCC Online Chh. 1117.
5. Brajendra Singh v. State of Madhya Pradesh.

On the other hand Ld. Senior Advocate for the accused raised the contention that the statement made by the accused while giving answer to question no. 7 is merely an explanation about the remarks and not the admission of the inculpatory facts. Further, it is contended that the complainant cannot take the advantage of the statement given by accused u/s 313 Cr.P.C. as the same cannot be considered as evidence. Ld. Counsel referred to the judgments Rajkumar Singh @ Raju v. State of Rajasthan [(2013) 5 SCC 722] and judgment Rafiq Ahmed @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].

24. The statement u/s 313 Cr.P.C. is recorded for giving an opportunity to the accused to furnish an explanation of incriminating material that had come against him in the trial, however, his statement cannot be made sole basis for his conviction. The statement u/s 313 Cr.P.C. is recorded without administration of oath, therefore, it cannot be treated as an evidence within the meaning of section 3 of the Evidence Act. It is a settled principle of law that statement u/s 313 Cr.P.C. simpliciter cannot be made the basis of conviction of the accused but where the statement of the accused is in the line with the case of the prosecution and have some inculpatory admission of the facts then suddenly it gives an impetus to the case of the prosecution if the prosecution has already led substantial evidence to prove its case and has been able to establish the chain of events. The same has been held in *Rafiq Ahmed @ Rafi v. State of Uttar Pradesh* [(2011) 8 SCC 300] as referred by accused and in *Paul v. State of Kerala – Criminal Appeal no. 38/2020* relied by Ld. Senior Counsel for complainant.

25. In the case in hand, the accused has not made any categorical admission of any incriminating circumstance appearing in evidence against him. Infact the accused has denied the existence of any incriminating circumstances while replying the questions put to him at the time of recording his statement u/s 313 Cr.P.C. In answer to the question no. 7 also he specifically denied making any intentional or deliberate remarks in nature of defamation or derogation against the complainant. Nowhere accused has admitted the contents of

interview given by him to AajTak Channel as claimed by the complainant. The answers given by accused herein cannot be used to fill up the gaps left by the prosecution witnesses in their deposition. Above all CD containing electronic evidence cannot be said to be proved by admission by accused as section u/s 65A is a special provision relating to electronic record that can only be proved in accordance with 65B and other provisions of act are excluded as section 65B starts with non-obstante clause. Moreover, it has already been observed and held above that the complainant has failed to lead any substantial evidence either in the form of documents such as CD or the oral evidence to prove the interview, therefore any explanation given by accused in his statement u/s 313 Cr.P.C. cannot help the complainant in discharging of initial burden of proof lying upon his shoulders. It is settled position of law that in case the prosecution evidence is not found sufficient to sustain conviction of accused, the inculpatory part of his statement u/s 313 Cr.P.C. cannot be made the sole basis of his conviction. The judgments relied upon by the Ld. Counsel for the complainant has discussed the relevance of statement u/s 313 Cr.P.C. and its evidentiary value in context of different set of facts and circumstances. In the instant case, the judgments relied upon by the complainant are based on distinguishable facts and circumstances which are different from the facts and circumstances of the present case, hence, do not support his case.

26. Ld. Senior Advocate for complainant argued that accused has not given any suggestion to the CW-1 denying the making of statement or the giving of interview as alleged in the complaint or in the testimony of CW-1. The fact which is not denied/disputed in cross examination is said to be admitted. While raising this contention Ld. Senior Counsel relied upon judgment *Gangabhavani v. Rayapati Venkat Reddy and ors* – Criminal Appeal No. 86 of 2011 and *Baby v. Thiagarjan* – 2004 (2) CTC 331.

Non disputing of a particular fact by accused during cross examination of CW-1, does not absolve the complainant from discharging his burden to prove the contents and publication of the interview which in the earlier paragraphs of this judgment court has already held that complainant has drastically failed to do so. When inherently there is lack of establishment of facts by the complainant in his evidence than non cross examination on a particular fact by the accused does not make any difference and prosecution cannot seek to prove its case on the said basis. Even if the accused did not cross examine the complainant, the case of complainant cannot be said to be proved unless his own testimony proves the essential ingredients of the offence as the onus lies upon him. The judgments relied upon by the complainant are distinguishable on the facts and circumstances of the present case as in the said cases the other circumstantial evidences have already been established by the prosecution but it is not the case herein, hence, the judgments referred by Ld. Senior Counsel for the complainant are not applicable in this case.

27. Although complainant has failed to establish the contents of alleged interview but even if the statement is taken to be true on the face of it then also complainant has failed to establish the intention of accused to defame the complainant or harm his reputation in public. No doubt the section 499 IPC also includes knowledge or reason to believe but even this aspect could not have been established by the complainant by leading any strong evidence. Admittedly the accused made impugned statement in a reply to the question put by the anchor confronting him about the involvement of MLAs belonging to his party in criminal cases which was spontaneous in nature so by no stretch of imagination intention or even knowledge of causing harm to reputation of complainant can be attributed to accused. The statement cannot be read in isolation and out of context. It was the entire interview which should have been seen and considered to draw inference that accused has intentionally targeted the complainant to harm his reputation but it is not the case here in. It has also come in cross examination of CW 1 that he was not the only one who was pointed out by accused as the accused took the name of other political figures also. The complainant has miserably failed to prove on record the intention or knowledge of accused to harm the reputation of complainant.

28. As far as the aspect of reputation of complainant is concerned, accused has led defence evidence in which 6 police officials have been examined who brought the record pertaining to FIRs as well as

charge sheet filed against the complainant in several cases. The defence witnesses proved on record the FIR no. 189/09 as Ex. DW1/A, FIR no. 26/2011 as Ex. DW2/A, FIR no. 53/13 as Ex. DW4/A, FIR no. 343/98 as Ex. DW5/A that shown the name of complainant Ramesh Bidhuri as an accused. The fact of pendency of criminal cases against the complainant has also been admitted by complainant himself in the document Ex. CW1/D1. The word ‘sangeen charges” is matter of perception of an individual. For complainant the sections mentioned in FIR lodged against him may not be seems be serious but for others they may be very serious. For example in FIR no. 26/11 Ex. DW2/A section 147/148 IPC pertains to rioting which is a very serious offence. In FIR no. 53/13 Ex. DW4/A section 509 IPC is also an offence against woman which is again of a serious nature especially with regard to a person who is a public representative and no immoral act can be expected from such a person holding constitutional post. Though the publication of alleged defamatory statement has not been proved by the complainant in the present matter, still if such publication could have been effected on the basis of the facts that has been proved on record by the accused could not have lowered the reputation of the complainant in the eyes of public as the FIR are already in public domain. The law on this point has already been held in ***Sanjay v. Abhijit Mishra and others [2005 SCC Online P& H 600]***.



29. A man's opinion of himself cannot be called his reputation. A man has no "reputation" to himself and therefore communication of defamatory matter to person defamed is no publication.

Explanation 4 of section 499 IPC says 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.

In the present case it has already been held that testimony of CW2 and CW3 is not reliable as they do not inspire confidence at all, hence, there is no public person in whose eyes/estimation the reputation of complainant has been lowered down. In the post notice testimony of CW-1 it is nowhere stated that his reputation has been lowered down in the eyes of CW-2 or CW-3, thus requirement of explanation 4 of section 499 IPC has not been complied with.

30. In judgment relied upon by the accused Bilal Ahmed Kaloo v. State of AP [(1997) 7 SCC 431] it was held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. A maker of imputation without publication is not liable to be punished u/s 500 IPC.

In view of the discussion above and the evidence led on record it can safely be concluded the none of the essential ingredient of section 499 IPC has been proved beyond any tinge of doubt. It is a settled proposition of criminal law that prosecution is supposed to prove its case on judicial file beyond reasonable doubt by leading reliable, cogent and convincing evidence. Also, it is a settled proposition of criminal law that accused is entitled to the benefit of doubt in the prosecution. The evidence lead on record by the complainant is absolutely insufficient to hold the accused guilty. Accordingly, accused Arvind Kejriwal stands acquitted for the offences he is charged with.

**ANNOUNCED IN THE OPEN  
COURT ON 28.10.2020**

**(VISHAL PAHUJA)  
ACMM-01 (RADCD)/DELHI**

Containing 26 pages all signed by the presiding officer.

**(VISHAL PAHUJA)  
ACMM-01 (RADCD)/DELHI**