* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: 15.07.2025***
***Pronounced on: 29.07.2025***

\+ CRL.REV.P. 163/2025, CRL.M.B. 904/2025

MEDHA PATKAR .....Petitioner

Through: Mr. Sanjay Parikh, Sr. Adv. with Ms. Sridevi Panikkar, Mr. Abhimanue Shreshta, Mr. Satwik Parikh, Ms. Kritika, Advs.

versus

V.K. SAXENA .....Respondent

Through: Mr. Gajinder Kumar, Ms. Kiran Jai and Mr. Chandra Shekhar, Advs.

**CORAM:**
**HON'BLE MS. JUSTICE SHALINDER KAUR**

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

**SHALINDER KAUR, J.**

1. The petitioner has preferred the present Criminal Revision Petition under Section 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), assailing the Judgment dated 02.04.2025 and the Order on Sentence dated 08.04.2025, passed by the learned Additional Sessions Judge-05 (hereinafter referred to as "Appellate Court"), South-East District, Saket Courts, New Delhi, in Criminal Appeal No. 247/2024.

2. By the said Judgment, the learned Appellate Court affirmed the petitioner's conviction under Section 500 of the Indian Penal Code, 1860 ("IPC"), as recorded by the learned Judicial Magistrate First Class-06 (hereinafter referred to as "Trial Court"), South-East District, Saket Courts, *vide* the Judgment dated 24.05.2024 in the complaint instituted by the respondent. The learned Appellate Court further proceeded, by the Order dated 08.04.2025, to direct release of the petitioner on probation, albeit subject to specified conditions.

3. The learned Trial Court, by its Order on Sentence dated 01.07.2024, had awarded to the petitioner a sentence of simple imprisonment for a period of five months, along with a direction to pay ₹10,00,000/- to the complainant as compensation, with a further stipulation that in default of payment, she would undergo an additional term of simple imprisonment for three months.

**FACTUAL MATRIX**

4. The genesis of the controversy lies in events dating back to the year 2000. At the relevant time, the complainant (respondent herein) was the President of the National Council of Civil Liberties (NCCL), a registered society stated to be actively supporting the Sardar Sarovar Project in Gujarat and exposing purported malpractices in the public and private sectors.

5. In opposition to the said project, stood the Narmada Bachao Andolan (NBA), a movement led by the petitioner herein and the NBA voiced concerns on environmental and human rights grounds.

6. On 10.11.2000, the NCCL published an advertisement in *The Indian Express* titled "True face of Ms. Medha Patkar and her

Narmada Bachao Andolan" [Ex. CW1/D1], criticising the NBA's ideology and activities. According to the complainant/respondent, this advertisement prompted the petitioner to retaliate through a defamatory Press Note.

7. The complainant alleges that on 25.11.2000, the complainant/respondent received an email [Ex. CW1/A] from one Mr. Dilip Gohil (CW-2), a purported Rediff.com correspondent, enclosing a Press Note dated 24.11.2000 titled "True Face of a Patriot – Response to an Advertisement". The Press Note, bearing the petitioner's name, as per the complaint, was published in Gujarati on the Rediff.com website [Ex. CW1/B and CW1/D2].

8. The complainant/respondent categorically denied the veracity of these claims raised in the Press Note and deposed that he had neither visited Malegaon nor made any donations to Lok Samiti, nor ever praised the NBA. He issued a legal notice dated 09.12.2000 [Ex. CW1/C] to the petitioner, which remained unanswered.

9. The complainant/respondent alleged that the Press Note caused considerable damage to his reputation, particularly among the Gujarati-speaking populace and supporters of the Sardar Sarovar Project. He was confronted by several individuals after the publication, seeking clarification on the alleged support extended by him to the NBA.

10. In support of his case, the complainant/respondent examined himself as CW-1, along with three other witnesses: CW-2 (Dilip Gohil), CW-3 (Nilesh Sachdev), and CW-4 (Rajesh Kumar, Judicial Assistant) and closed the complainant's evidence.

11. The petitioner's statement under Section 313 of the CrPC was recorded on 18.05.2022, wherein she denied all allegations, asserting that she had no knowledge of the complainant's activities and that she had not issued the alleged Press Note, and had no connection with Rediff.com, the website narmada.org, or the publication in question. She, however, chose not to lead any evidence in defence.

12. On conclusion of the trial, the learned Trial Court proceeded to convict the petitioner under Section 500 of the IPC, holding that it had been proved beyond reasonable doubt that the petitioner had published the Press Note with the intent & knowledge that it would harm the reputation of the respondent. Thereupon, the learned Trial Court proceeded to pass the sentence *vide* Order dated 01.07.2024.

13. Dissatisfied with the Impugned Judgment and the Order on Sentence passed by the learned Trial Court, the petitioner preferred an Appeal before the learned Appellate Court. After hearing both the parties, the appeal was dismissed by the learned Appellate Court *vide* the Order dated 08.04.2025 and the sentence was modified, whereby the petitioner was to be released on probation, subject to the following conditions:

i. Deposit of ₹1,00,000/- as compensation, recoverable as fine;

ii. Execution of a probation bond in the sum of ₹25,000/- with one surety;

iii. Submission of quarterly supervision reports by the District Probation Officer; and

iv. Appearance before the Trial Court once every three months.

14. To lay a challenge to the Impugned Judgment and Order on Sentence passed by the learned Appellate Court, the petitioner preferred the present petition.

**SUBMISSIONS OF THE PETITIONER**

15. Mr. Sanjay Parikh, learned Senior Counsel appearing on behalf of the petitioner, assailed the Impugned Judgement and Order on Sentence on multiple grounds of legal infirmity and evidentiary insufficiency, raising two main questions for consideration i) whether findings of the appellate court *vis-à-vis* CW-3 are correct; and ii) whether the findings based on the alleged "Admission", both by the Trial Court and the Appellate Court, are factually and legally tenable.

16. At the outset, it was submitted that the petitioner's conviction is unsustainable in law, as it rests on material that fails to meet the threshold of proof required in criminal law, namely, the establishment of guilt beyond reasonable doubt.

17. He submitted that the conviction opposes the cardinal rules of criminal law, namely, that each link in the chain of circumstances has to be fully established, however, in the present case, the main link in the chain of evidence is missing so as to support the conclusion that the Press Note dated 24.11.2000 allegedly contained in the email dated 25.11.2000 (Ex.CW1/1A) was sent by the petitioner to CW2.

18. The learned Senior Counsel contended that both the respondent (CW-1) and Mr. Dilip Gohil (CW-2) tendered identical affidavits under Section 65B of the Indian Evidence Act, 1872 ("the Act")

which were exhibited as EX.CW1/X and Ex.CW2/X, in support of same documents exhibited as Ex. CW1/1A and Ex.CW1/D2. The cross examination of the said witnesses, he submitted, would show that the affidavit tendered by the witnesses does not qualify as a valid certification under Section 65B of the Act, as they do not satisfy the mandatory conditions laid down by the law and in fact, indicate that the same has been tendered as a mere formality.

19. The learned Senior Counsel submitted that CW2, in cross examination admitted that the affidavit does not state on which date he downloaded or took a printout of the said Exhibits. CW-2 also admitted that the affidavit does not provide any information as to who gave the print out. The learned Senior Counsel contended that CW-2 further admitted that in his previous statements dated 27.08.2018 and 26.11.2018, he did not even mention that he was the one, who took the printout or gave it to anyone. More so, CW-2 also admitted that there is nothing on record to show that he was employed with Rediff.com in the year 2000 or any point before or after.

20. To support this argument, the learned Senior Counsel relied on ***Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal*** (2020) 7 SCC 1 and ***Smriti Madan Kasangra vs. Perry Kasangra*** (2021) 12 SCC 289.

21. Inviting the Court's attention to the documents marked as Exhibits CW1/A and CW3/A, Mr. Parikh submitted that neither document bears any proof of authorship, nor does it establish any nexus with the petitioner. The purported email (Ex. CW1/A) lacks any identifiable sender address, and the web pages (Ex. CW3/A and

CW3/D2) relied upon by the learned Appellate Court were introduced into evidence without any certification under Section 65B of the Act, and in contravention of the safeguards required for admissibility of electronic records.

22. Moreover, CW3/A was produced by CW-3 to fill up the lacuna after examination of CW-1 and CW-2 and could not have been taken in evidence.

23. The learned Senior Counsel submitted that as regards the evidence of CW3, the brother-in-law of the respondent and a member of his organisation, who introduced Ex. CW3/A is clearly biased as he was incompetent to testify as to the authorship or authenticity of the said document. He impressed upon the submission that CW-3 was neither the author nor custodian of the said document and he did not contact the administrators or owners of the website *narmada.org* to confirm the provenance or authorship of the material therein. The document in question is stated to be sourced from the website "narmada.org", which itself carries a disclaimer that it is not affiliated with the petitioner or the NBA and further no administrator or custodian of the said website was examined by the respondent.

24. The respondent has also failed to prove that the website Narmada.org is owned by Narmada Bachao Andolan or the petitioner. Further, there is nothing on record to show that the petitioner is a convenor of the NAPM. The learned Senior Counsel submitted that even on appreciation of the evidence of CW-3 and the perusal of the Ex.CW3/A and Ex.CW3/D2, it cannot be said to have been proven that the Press Note was ever issued by the petitioner. The authenticity

and correctness of the material placed on the record, he submitted, has not been ascertained by anyone.

25. It was further urged that CW 3/A is beyond pleadings as the same does not find mention either in the complaint or in the evidence led by CW 1 and CW 2 and thus, could not be made basis for conviction.

26. He further submitted that the objection raised by the petitioner for taking on record Ex.CW3/A has not been dealt with either by the learned Trial Court or the learned Appellate Court.

27. Furthermore, the learned Senior Counsel assailed the reliance placed by the learned Trial Court on an entry in the "List of Dates" filed in Crl.M.C. No. 6026/2018 titled as "***Ms. Medha Patkar vs. The State***", a petition filed by the petitioner in this Court seeking quashing of the previous complaint filed by the respondent against her in the year 2018. He submitted that the petitioner filed an application in the said Crl. MC seeking its withdrawal on the ground of inadvertent mistake on the part of the office of the Advocate of the petitioner in filing a draft petition, pending approval of the petitioner. The said Crl. M.C. was permitted to be withdrawn by this Court.

28. It was submitted that the reliance placed on the averments made in the "List of Dates", particularly in a withdrawn petition, does not amount to an admission in law. The learned Senior Counsel contended that the reliance placed on ***Nagindas Ramdas v. Dalpatram Ichharam*** (1974) 1 SCC 242 and ***Basant Singh v. Janki Singh*** 1966 SCC OnLine SC 234 by the learned Trial Court and the respondent is entirely misplaced as both cases were civil suits, where admissions

stand on a materially different footing. In criminal jurisprudence, certain confessions recorded in accordance with the procedural and evidentiary safeguards mandated by law are admissible against an accused.

29. He further submitted that the law on admissions is well settled as contained between Section 17 to 31 of the Act. However, the "List of Dates" is for the convenience of the court and is neither a pleading nor a part of the formal record and is not verified by way of an affidavit, thus, any recital therein cannot qualify as an "Admission". The learned counsel submitted that law is clear that pleadings may be binding, but "lists of dates" cannot be equated with pleadings. Reliance was also placed on the decision in ***Alind Workers Congress (affiliated to INTUC) vs United Shippers Ltd.*** 2008 SCC OnLine AP 270 and ***Leo Ispat Ltd vs. Radlay Metal Products (P) Ltd.*** 2019 SCC OnLine Del 7579 to submit that same principle of law that "List of Dates" is not part of pleadings has been reiterated in these judgments.

30. Mr. Parikh submitted that in fact, the learned Trial Court itself, in paragraph 74 of its Judgment, acknowledges the withdrawal of Crl. M.C. along with all accompanying documents, pursuant to an application filed supported with an affidavit. In such circumstances, he submitted, it is wholly impermissible in law to treat any entry/averment in the said petition as a subsisting or binding admission. He emphasised, once a pleading is withdrawn no part thereof can be relied upon in subsequent proceedings to establish culpability. Reliance was placed upon ***Behari Lal Pal vs Baran Mai Dasi*** ILR (1895**)** 17 All 53, ***Bhimangouda vs Sangappa Irappa Patil***

AIR 1960 Mys 178 and ***Sukumar Banerjee vs Dilip Kumar Sarkar*** AIR 1982 Cal 17

31. On sentencing, the learned Senior Counsel raised an objection, without prejudice to rights of the petitioner and submitted that the Appellate Court's decision to release the petitioner on probation is primarily under Section 360 of the CrPC, although the Impugned Order ambiguously invokes concept akin to those under Sections 4 and 5 of the Probation of Offenders Act, 1958 (hereinafter referred to as "Probation Act"). The two statutory provisions, he submits, operate in different domains and cannot be invoked simultaneously. More so, the precondition as provided in Proviso to Section 4 and Sub-Section 3 of Section 4 of the Probation Act is mandatory for application of the said provision of the Act, which does not exist in the present case. Sustenance is drawn from ***State of M.P vs Man Singh (2019)*** 10 SCC 161 and ***Biswajit Chowdhury vs S.S Distributors*** 2002 SCC OnLine Cal 421.

32. While drawing the attention of this Court to the relevant provision of the two statues, he submitted, Section 360 of the CrPC applies where the Probation Act is not in force and is available only for first-time offenders, with provision limited to executing a bond for good conduct. The learned Senior Counsel submitted that petitioner being a woman, aged 70 years with social standing as noted in the order dated 08.04.2025 has been released on probation, being eligible for benefit but under Section 360 CrPC. However, directions such as filing supervision reports, to be monitored by Probation Officer and recovery of compensation as fine are traceable only to

Sections 4 and 5 of the Probation Act, and thus conflate the two statutes and not applicable in this case. To support his contention, the learned counsel further placed reliance on ***Chhanni v. State of U.P.*** (2006) 5 SCC 396, ***State of M.P vs Man Singh (2019)*** 10 SCC 161 and ***Biswajit Chowdhury vs S.S Distributors*** 2002 SCC OnLine Cal 421.

33. In any event, the applicability of the Probation Act, it was submitted, is limited by territorial constraints. The petitioner resides in Madhya Pradesh and no material was placed before the learned Appellate Court to indicate that a local probation officer had been appointed or was in a position to ensure compliance with the directions issued by the learned Appellate Court.

34. On the maintainability of the present revision petition, Mr. Parikh while drawing support from the decision in ***Amit Kapoor v. Ramesh Chander*** (2012) 9 SCC 460, submitted that this Court, in exercise of its revisional jurisdiction under Section 397 of the CrPC, is empowered to interfere where the findings in the Impugned Order are based on illegal admission of evidence and its appreciation, resulting in error and non-compliance with the provisions of law.

35. Lastly, it was pointed out that the respondent had previously filed a Public Interest Litigation (PIL) before the Supreme Court titled as ***National Council for Civil Liberties vs Union of India and Ors***. (2007) 6 SCC 506, which was dismissed with cost. This, it was submitted, underscores the background of hostility between the parties, and provides relevant context in which the allegations made by the respondent ought to be assessed.

**SUBMISSIONS OF THE RESPONDENT**

36. Mr. Gajinder Kumar, the learned counsel appearing on behalf of the respondent, submitted that the present petition is entirely devoid of merit and warrants dismissal. He submitted that the Impugned Judgment and the Order on Sentence have been passed after duly considering the entire evidence on record and are neither vitiated by any legal infirmity nor do they suffer from perversity of reasoning warranting interference in the exercise of revisional jurisdiction by this Court.

37. It was submitted that the scope of interference under Section 397 of the CrPC is narrow and well circumscribed. A revisional court is not vested with the jurisdiction to re-appreciate or reassess evidence as if sitting in appeal. In support of this submission, learned counsel also placed reliance on the decision in ***Amit*** (supra). This principle, it was urged, has been reiterated in ***Malkeet Singh Gill v. State of Chhattisgarh*** (2022) 8 SCC 204 and ***Chandra Babu alias Moses v. State*** (2015) 8 SCC 774, which categorically cautions the Revisional Courts from assuming the role of a fact-finding authority.

38. The learned counsel submitted that the learned Trial Court as well as the learned Appellate Court have concurrently returned findings of fact and law, holding that the respondent had succeeded in establishing, beyond reasonable doubt, that the petitioner had authored and disseminated the impugned defamatory Press Note dated 24.11.2000. The Appellate Court, while upholding the conviction, did not find it necessary to disturb the factual findings of the learned Trial Court. Much emphasis was laid on the submission that the petitioner's

challenge is, in effect, an attempt to seek reappreciation of evidence under the guise of a revision, a course wholly impermissible in law.

39. Mr. Gajinder Kumar placed reliance on the petitioner's admission in the "List of Dates" filed before this Court in earlier proceedings, submitting that such an Admission, being part of the judicial record attracts the rigour of Sections 17 and 58 of the Act. No attempt was made by the petitioner during trial to explain and/or qualify, the said admission at the relevant time. The admission, it was submitted, thus stands unrebutted on record. Accordingly, the admission stood conclusive. The learned counsel relied upon the desicion in ***Basant Singh v. Janki Singh & Ors./Kishundhari Singh & Ors.*** 1966 SCC OnLine SC 234.

40. He further submitted that the petitioner's attempt to now wriggle out of her own stand taken in prior judicial proceedings is legally impermissible. As per Sections 8 and 9 of the Act, Conduct and Admissions made by a party are relevant and admissible.

41. The learned counsel submitted that the High Court, being a Court of Record under Article 215 of the Constitution, accords sanctity to statements and material forming part of its judicial record. Merely withdrawing a petition, it was urged, does not efface the evidentiary value of admissions made therein. More so, no explanation was offered at the material time, and the petitioner's attempt to now disown the admission is an afterthought. The learned counsel relied on the decisions in ***Haripada Das & Ors. v. Ashok Das*** 2019 SCC OnLine Cal 6442, ***Ram Niranjan Kajaria v. Sheo Prakash Kajaria & Ors., Jugal Kishore Kajaria v. Sheo Prakash Kajaria & Ors.*** (2015)

10 SCC 20, ***Malla Reddy v. Future Builders Cooperative Housing Society & Ors., Jai Lakshmi v. Future Builders Cooperative Housing Society & Ors.*** and ***Raghava Reddy & Anr. v. Future Builders Cooperative Housing Society & Ors.*** (2013) 9 SCC 349, ***Mohd. Seraj v. Adibar Rahaman Sheikh & Ors.*** 1968 SCC OnLine Cal43 and ***Supreme Court Bar Association v. Union of India & Anr.*** (1998) 4 SCC 409

42. It was further submitted that CW-4, an official from the Registry of this Court, produced certified copies of the pleadings filed in Crl.M.C. No. 6026/2018, including the "List of Dates" bearing the petitioner's admission. No cross-examination was directed at CW-4, and no effort was made to challenge the provenance or authenticity of the said material. In law, therefore, the contents of Ex. CW4/A stand admitted and unrebutted.

43. On the petitioner's contention that the admission in the withdrawn petition ought to be disregarded, the learned counsel submitted that no judicial precedent supports the proposition that 'admissions' made in pleadings lose their evidentiary force merely upon withdrawal. Reliance was placed on the desicion in ***Nagindas Ramdas v. Dalpatram Ichharam Brijram & Ors*** (1974) 1 SCC 242.

44. The learned counsel submitted that the learned Trial Court rightly concluded that the Press Note dated 24.11.2000 was a retaliatory response to the respondent's advertisement published on 10.11.2000. The chronology, the advertisement on 10.11.2000, the email enclosing the Press Note dated 25.11.2000, and the Press Note

itself dated 24.11.2000, forms a corroborated chain of events indicative of authorship and deliberate publication by the petitioner.

45. It was further pointed out that the petitioner did not lead any evidence in defence. No steps were taken to rebut the respondent's case or to demonstrate that the Press Note was fabricated or authored by a third party. He submitted, in a case where the complainant had discharged its initial burden through a combination of oral and documentary evidence, the petitioner's silence assumes evidentiary relevance.

46. Moreover, the petitioner's statement under Section 313 of the CrPC, particularly to Question No. 4, was vague and non-committal. She neither specifically denied authorship nor offered any alternative explanation for the Press Note's widespread publication.

47. The learned counsel submitted that CW-1 and CW-2, both of whom tendered affidavits under Section 65B of the Act, provided mutually corroborative accounts. CW-2, a correspondent with Rediff.com at the relevant time, deposed that he had received the Press Note from the petitioner through an email, and had subsequently forwarded it to the complainant as recipient of the forwarded email, also deposed accordingly as CW-1.

48. As regards CW-3, it was submitted that his testimony, coupled with the documentary evidence marked as Ex. CW3/A, establishes that the Press Note dated 24.11.2000 was uploaded on the website www.narmada.org, which bore the petitioner's name and propagated the cause of the NBA. The petitioner, in cross-examination of CW-3, did not deny her association with the NBA or the NAPM.

More significantly, it was pointed out that the petitioner herself confronted CW-3 with Ex. CW3/D2, thereby accepting the authenticity of the document and precluding any valid challenge to its admissibility.

49. It was further submitted that CW-2, in his cross-examination, admitted that the Press Note dated 24.11.2000 appeared on multiple public platforms. The dissemination of the same content through various sources reinforces the inference that the Press Note was intentionally circulated by or on behalf of the petitioner, rather than being an isolated upload. Sustenance is drawn from the desicion in ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr.*** (2003) 8 SCC 752, ***Balu Sudam Khalde & Anr. v. State of Maharashtra*** 2023 LiveLaw (SC) 279 and ***Sonu Allias Amar vs State of Haryana*** (2017) 8 SCC 570

50. The electronic records, it was submitted, were duly proved in accordance with law, and no contemporaneous objection was raised regarding their admissibility or mode of proof. The learned counsel also submitted that a certificate under Section 65B of the Act is not required as both the parties are relying on the same document i.e. Ex. CW-3/A and Ex. CW-3/D2.

51. As for the website "narmada.org," it was submitted that despite its general disclaimer, it contains multiple references linking the NBA to the petitioner, including her address and contact information. The learned Appellate Court has rightly concluded that the website, while nominally unaffiliated, was substantively aligned with the NBA's objectives.

52. He submitted that as recorded in para 11(b) of the Impugned Judgment, the learned Appellate Court, with respect to the website *www.narmada.org*, observed it to be a website regularly used by the NBA for publishing their press releases. This further corroborates that the Press Note dated 24.11.2000 hosted thereon emanated from source associated with the petitioner.

53. With respect to the Order on Sentence dated 08.04.2025, Mr. Gajinder Kumar submitted that the same is traceable not to Section 360 of the CrPC, but to Sections 4 and 5 of the Probation Act. The imposition of compensation and conditions regarding supervision fall squarely within the statutory framework of the Probation Act. The direction to recover compensation "as fine" is merely a procedural mechanism for enforcement and does not alter the essential nature of the relief granted. Reliance is placed on ***Gulzar v. State of Madhya Pradesh*** (2007) 1 SCC 619 and ***Lakhanlal @ Lakhan Singh v. State of Madhya Pradesh*** (2021) 6 SCC 100

54. To conclude, the learned counsel submitted that the concurrent findings of the learned Trial Court and the learned Appellate Court are well-reasoned, legally sound, and supported by cogent evidence. The present petition, it is urged, is a disguised attempt to re-appreciate and argue the entire case on facts and therefore, deserves to be dismissed.

**SUBMISSION IN REBUTTAL**

55. In rejoinder, Mr. Parikh submitted that the contention of the respondent that the revisional jurisdiction does not permit examination of facts or evidence is overly restrictive and contrary to law. While drawing this Court's attention to paragraph 20 of the decision in ***Amit***

***Kapoor*** (supra), he submitted that the Supreme Court has clarified that where a legal error results in manifest miscarriage of justice, this Court is not precluded from interfering. He submitted that the petitioner is not seeking re-appreciation of evidence *per se*, but has pointed out fundamental evidentiary lapses and legal errors that have tainted the conviction. These fall squarely within the scope of Section 397 read with Section 401 of the CrPC.

56. The learned Senior Counsel further rebutted the claim of the respondent and submitted that the reliance on CW-3/A is misconceived and impermissible in law. He submitted that no original email was produced by CW-2, and the finding in paragraph 11 of the learned Appellate Court's judgment is based on assumptions drawn from typed names and alleged website addresses, which is speculative and vitiated by surmises and conjectures. The learned Senior Counsel placed reliance on the decision in ***Digamber Vaishnav and Anr. vs State of Chhattisgarh*** (2019) 4 SCC 522.

57. The learned Senior Counsel, at the cost of repetition submitted that the mandatory compliance of Section 65B of the Act has not been done in the present case and that the reliance placed on electronic records, including CW-3/A and CW-1/A, is incorrect in the absence of a valid certificate under Section 65B of the Act. Moreover, the 65B certificates furnished by CW-1 and CW-2 are perfunctory and fail to satisfy statutory conditions.

58. Reiterating his previous submission, the learned Senior Counsel submitted that no case has been made out beyond reasonable doubt. He submitted that the respondent has failed to establish guilt even on

the standard of preponderance of probabilities, let alone beyond a reasonable doubt. He submitted that the learned Trial Court's own findings acknowledge that there is no direct evidence linking the petitioner to the alleged Press Note, and yet a conviction has been returned by importing surmises into the factual matrix.

59. Further, the learned Senior Counsel submitted that as regards "List of Dates" (Ex. CW-4/A), the learned Trial Court and Appellate Court have misdirected themselves in treating such an entry as an unequivocal judicial admission. In ***Basant Singh*** (supra), he submitted, the admission arose from a plaint that was produced and accepted; it was not a withdrawn pleading, thus, the reliance on the said judgment is misplaced. The factual scenario, he submitted, is materially distinguishable. In the present case, the petition was withdrawn unconditionally along with its annexures and can no longer form the basis of an adverse inference.

60. The learned Senior Counsel submitted that even assuming without admitting that any such entry amounts to an admission, such admission must be clear, unambiguous, and conclusive. Reliance was placed upon ***Nagubai Ammal & Ors. vs B. Shama Rao & Ors.***1956 SCC OnLine SC 14. It was submitted that the present case does not satisfy any of those criteria. Thus, the reliance on ***Ram Niranjan*** (supra), is also inapposite as the Court in that case dealt with resiling from admissions made in formal pleadings after 15 years, which is clearly distinguishable on facts.

61. As regards ***Mohd. Seraj*** (supra), and other Judgments, the learned Senior Counsel submitted that these decisions run counter to

the broader and binding legal precedent of withdrawn pleadings and the evidentiary status of documents not forming part of the record.

62. The learned Senior Counsel further contended that the submission of the respondent that the learned Trial Court construed the entry in the "List of Dates" as a 'judicial admission' and not 'admission on pleadings' is not only wholly erroneous but also contrary to the law. He submitted that Section 58 of the Act, lays down three situations in which no proof of the admitted fact may be required:

i) In any proceeding in which parties or their agents agree to admit at the hearing; or,

ii) Before the hearing, they agree to admit by writing under their hands; or,

iii) Which by any pleadings in force at the time they are deemed to have admitted by their pleadings.

63. He submitted that the first two categories may fall within 'judicial admission', while the third would fall under the ambit of admission through pleadings. Such an admission should be as per the rules of pleading, like the Code of Civil Procedure, 1908. However, the case of the respondent does not essentially fall under any of the above three categories.

**ANALYSIS AND CONCLUSION**

64. This Court has carefully examined the record, the deposition of the witnesses, the statements and the reasoning adopted in the Impugned Judgments passed by the learned Trial Court and the

Appellate Court and the arguments and position of law put forth on behalf of the parties.

65. To begin with, it is to be noted that the scope of interference under Sections 397 (now Section 438 of the BNSS) and 401 (now Section 442 of BNSS) of the CrPC is indeed limited and circumscribed by well established legal principles. These provisions empower the High Court to call for and examine the records of the Trial Courts, to ensure the lawfulness, credibility and trueness of findings. However, this power is not meant to function as an appellate mechanism.

66. It is a settled position of law that the revisional jurisdiction under Section 438 of the BNSS (erstwhile 397 of the CrPC) is to be exercised sparingly and only on specific grounds, that is, when the decision under challenge is grossly erroneous; there is non-compliance with the provisions of law; the finding recorded is based on no evidence or material evidence is ignored or judicial discretion has been exercised arbitrarily or perversely. These grounds are indicative and not exhaustive, emphasising the need for a well-founded error to justify interference. Fundamentally, the High Court, while exercising revisional jurisdiction, is not to re-appreciate evidence or to arrive at a different conclusion, even if a different view is possible.

67. The Supreme Court has time and again laid down the limitations and contours of revisional jurisdiction in a catena of Judgments, just to note a few. In ***Amit Kapoor*** (supra) it was held as under:

*"**11.** Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.*

***12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.*

***xxxx xxxx xxxx***

***20.** The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where*

> *there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused"*

68. In ***State of Kerela vs Puttumana Illath Jathavedan***; (1999) 2 SCC 452 the Supreme Court, while examining the scope of revisional jurisdiction, held as under:-

> *"5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would*

> *otherwise tantamount to gross miscarriage of justice."*

69. The same principle of law has been stated in ***Malkeet Singh Gill*** (supra) and ***Chandra Babu*** (supra).

70. Keeping the scope of interference in mind while exercising revisional jurisdiction, this Court now proceeds to deal with the grounds of challenge to the Impugned Judgment and Order on Sentence passed by learned Appellate Court. As noticed above, the complaint pertains to the allegation of defamation made by the respondent against the petitioner.

71. On defamation, the Supreme Court has consistently upheld the constitutional validity of criminal defamation laws, emphasising the protection of an individual's reputation as a fundamental right under Article 21 of the Constitution of India.

72. In the decision in ***Om Prakash Chautala vs Kanwar Bhan & Ors.***; (2014) 5 SCC 417, the Supreme Court observed as under:-

> *"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 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 downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear*

> *to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity."*

73. This decision underscores the Apex Court's recognition of Reputation as an inseparable part of Article 21 of the Constitution.

74. In the landmark decision in ***Subramanian Swamy vs Union of India***; (2016) 7 SCC 221, the Supreme Court while upholding the constitutional validity of Section 499 and 500 of the IPC and Section 199 of the Cr.P.C, observed as under:-

> *"**207.** Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T. Ganguly, is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In Punjab National Bank v. Surendra Prasad Sinha it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and*

> *should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In Pepsi Foods Ltd. v. Special Judicial Magistrate, a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.*
>
> ***208**. We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in Section 202 CrPC which stipulates about the residence of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of Section 499 CrPC are satisfied. Application of mind in the case of complaint is imperative."*

75. From a perusal of the above decisions, what emerges is that the Supreme Court has clarified that Sections 499 and 500 of the IPC, which criminalise defamation, are not vague or ambiguous and serve a legitimate state interest in safeguarding an individual's dignity. The decisions collectively affirm that criminal defamation laws are constitutionally valid and protection of an individual's right to Reputation is a fundamental right.

76. Now reverting to the present case and to appreciate the submissions raised on behalf of the parties, it is apposite to refer to the

observations of the learned Appellate Court recorded in paragraph nos. 11(b) to 11(e) of the Impugned Judgment, wherein, the learned Appellate Court has observed as under:

> *"11.(b) In this regard, it is observed that the document Ex. CW3/A bearing URL www.narmada.org/nba-press-releases/press.releases .2000 .html#march2000 contains a complete catalog and hyper links to press releases issued by Narmada Bachao Andolan during several years including in the year 2000. In the section of press releases for November 2000, the press release for November 24, 2000, is titled as "True Face of A Patriot – Response to an Advertisement".*
>
> *11.(c) The hyper link of aforementioned press release dated November 24, 2000, leads to URL – www.narmada.org/nbapressreleases/november-2000/response.to.ad.html whose contents are completely same as the contents of e-mail Ex. CW1/A sent by CW2 to CW1. The said Press Note is written in first person by Medha Patkar and signed-off by her at its bottom. In the opening paragraph of said Press Note, Medha Patkar referred to advertisement dated November 10 & 11, 2000, in The Indian Express newspaper in following manner – "which is defamatory for both myself and my colleague Chittaroopa as well as a people's movement, Narmada Bachao Andolan (NBA) in more than one way". There is no doubt that the said NBA Press Note contained in URL – www.narmada.org/nba-pressreleases / november-2000/ response .to.ad.html was authored and issued personally by Medha Patkar.*
>
> *11.(d) The URL–www.narmada.org/about-us.html (Ex. CW3/D2) is titled as 'Friends of River Narmada'. Amongst other content, it contains the contact information of NBA, as per which the office of NBA is at Badwani,*

*Madhya Pradesh, at the address – Narmada Ashish, Off Kasravad Road, Navalpura, Badwani, Madhya Pradesh – 451551, which is the same as residence of appellant Medha Patkar as per her affidavit annexed with the appeal.*

*11.(e) It is observed that on one hand web portal www.narmada.org claimed that it was not run by Narmada Bachao Andolan (NBA), on the other hand, it actively advanced the propaganda of NBA through press releases issued by NBA and 'organized visits by Medha Patkar' as a tool for public outreach and education. The active involvement of Medha Patkar in authoring of the Press Note dated 24/11/2000 and its publication in document Ex. CW3/A bearing URL – www.narmada.org/nba-pressreleases /november-2000/ response .to ad.html is writ large on face of record. Conversely, the involvement of Medha Patkar is as hidden as an elephant behind an office table. It is only that Medha Patkar used smoke screen of virtual world of Internet to disseminate the Press Note in contention. Ld. Trial Court erroneously observed that it was not proved beyond reasonable doubt that Press Note was issued by accused Medha Patkar (appellant herein)."*

77. The learned Appellate Court, upon appreciation of the evidence and the submissions made before it on behalf of the parties, concluded as follows:-

*"12.(a) The obvious intention behind publication of Press Note dated 24/11/2000 through URL www.narmada.org/nba-press releases /november-2000/ response .to.ad.html was to widely disseminate it to largest audience possible. It got published by rediff.com as a Gujarati language article vide http://www.rediff.com/gujarati/2000/nov/24 nba.htm (Ex. CW1/B), and it was also referred*

*to in the e-mail Ex. CW1/A sent by CW2 Dilip Gohil to CW1/complainant V. K. Saxena.*

*12.(b) It is observed that rediff.com only published a Press Note that was already published by Medha Patkar through Narmada.org, with the only difference that rediff.com translated the Press Note of English language into news article of Gujarati language. Whether Press Note in contention was personally sent by Medha Patkar to rediff.com or it was sent by someone else on her behalf, was completely inconsequential.*

*13. There is no gainsaying that the contents of Press Note Ex. CW3/A (also Ex. CW1/B & Ex. CW1/D2) were factually false and defamatory to the complainant. The complainant never visited Malegaon, neither gave any cheque to Lok Samiti of NBA. In fact, complainant actively supported Sardar Sarovar Dam Project and actively raised voice against NBA that was spear-headed by Medha Patkar. By creating the false impression that complainant V. K. Saxena gave cheque to NBA and by calling him coward and not a patriot, the Press Note sought to discredit the complainant and to malign his reputation in the eyes of public at large. There is no force in argument that defamation could not be proved by CW3 Nilesh Sachdev, he being related to the complainant as their wife are sisters.*"

78. The moot question, thus, is whether the learned Trial Court and the learned Appellate Court acted beyond their jurisdiction in taking into consideration Ex CW 3/A, as it was being contended by the petitioner that Ex. CW-3/A is beyond pleadings and that the same is not referred to in the statements of CW-1 or CW-2, but was produced for the first time in the Court in the evidence of CW-3.

79. It was contended on behalf of the respondent that even though the petitioner took an objection to the tendering of Ex. CW-3/A while the statement of CW-3 was being recorded, however, the objection was vague and incoherent and did not clarify whether the objection was with respect to the mode of proof or to the admissibility of the document.

80. It is to be noted that the underlying theme of the complaint is that a Press Note dated 24.11.2000, Ex. CW-1/D2, titled "True Face of a Patriot – Response to an Advertisement" bearing the petitioner's name upon being translated from its English version, Ex. CW-2/D1, was published in Gujarati on Rediff.com website. The said Press Note caused considerable damage to the reputation of the respondent. The contents of Ex. CW-3/A which is stated to be also available on the website Narmada.org are same as that of Ex. CW-2/D1 published on Rediff.com website.

81. Since the entire case of the respondent rests on the aforementioned Press Note dated 24.11.2000, being in the public domain, sought to discredit the respondent and to diminish his reputation. As the contents of both the Press Notes, Ex. CW-2/D1 and Ex. CW-3/A are essentially the same, there is no merit in the argument raised on behalf of the petitioner that Ex. CW-3/A is beyond pleadings.

82. Ex. CW-3/A, in no manner sets up a new claim or is beyond the specific claim of defamation raised by the respondent in his complaint. In fact, it is within the defined scope of the averments raised in the complaint, the question to be determined in controversy pleaded in the

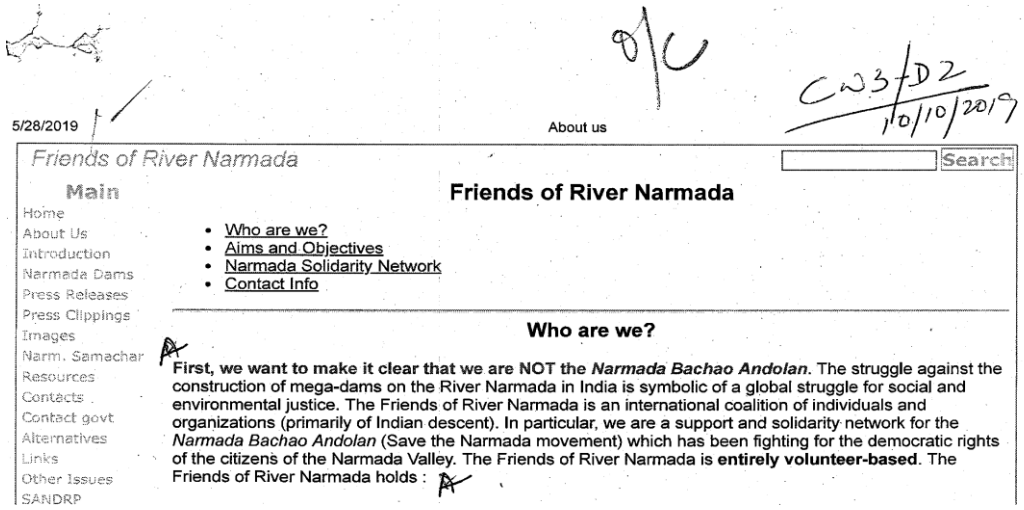
complaint and so deposed by CW-1 and CW-2. More so, even during the cross-examination of CW-3, the petitioner has not challenged the admissibility of Ex. CW-3/A, not being a part of the complaint. Thus, the evidence of CW-3 with respect to Ex. CW-3/A is in furtherance of the case set up by the respondent and Ex. CW-3/A, even if introduced at a later stage through the testimony of CW-3, does not change the nature of allegations or case set up against the petitioner.

83. Now, turning to the next plea raised on behalf of the petitioner with respect to the admissibility of Ex. CW-3/A. The learned Senior Counsel submitted that the said document originates from the website narmada.org. It was strongly contended that administrator of the said website was not examined by the respondent so as to verify the source of Ex. CW-3/A, having been posted on narmada.org, specifically when the website itself has clarified that they are not Narmada Bachao Andolan. More so, Ex. CW-3/A being an e-document is not supported with certificate under Section 65B of the Act, which is a mandatory condition and well settled by the Supreme Court in a catena of decisions.

84. On the other hand, on behalf of the respondent, it was urged that in the facts of the present case, certificate under Section 65B of the Act is not required as the existence of the website www.narmada.org is not denied and rather, the petitioner during the cross-examination of CW-3 herself produced the document, Ex. CW-3/A, now exhibited as Ex. CW-3/D2 and with petitioner's reliance on the same document, it does not require further proof.

85. While it is not in dispute that whenever an electronic record or its print out is produced before the court, the same must be authenticated with a certificate under Section 65B of the Act that identifies the electronic record, it is also a settled principle of evidence that a party who relies on a document during cross-examination cannot subsequently object to its admissibility.

86. As noticed above, the petitioner in the course of cross-examination of CW-3 referred/made use of Ex. CW-3/A and produced the same document, now exhibited as Ex. CW-3/D2. Thereby the petitioner is deemed to have accepted the document as part of the evidentiary record. It is noticed that the petitioner confronted the CW 3 with same document by putting the portion marked as "A" to "A" on Ex CW 3/D2, and by linking it to portion marked as "A" to "A" of document Ex CW 3/A. The relevant portion of the said document is reproduced herein below:-



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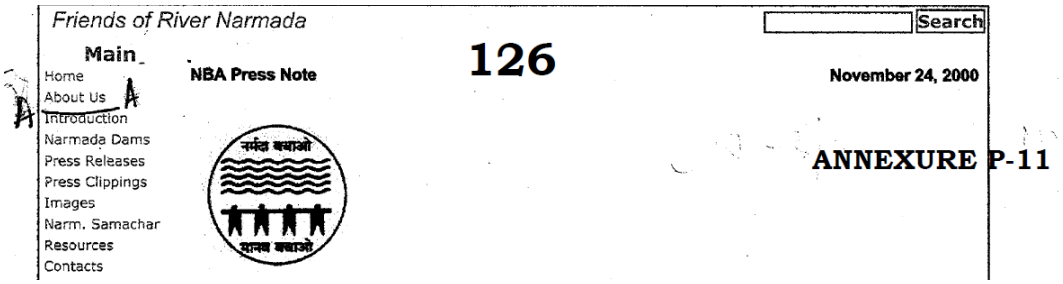
**Friends of River Narmada**

- Who are we?
- Aims and Objectives
- Narmada Solidarity Network
- Contact Info

**Who are we?**

**First, we want to make it clear that we are NOT the *Narmada Bachao Andolan*.** The struggle against the construction of mega-dams on the River Narmada in India is symbolic of a global struggle for social and environmental justice. The Friends of River Narmada is an international coalition of individuals and organizations (primarily of Indian descent). In particular, we are a support and solidarity network for the *Narmada Bachao Andolan* (Save the Narmada movement) which has been fighting for the democratic rights of the citizens of the Narmada Valley. The Friends of River Narmada is **entirely volunteer-based**. The Friends of River Narmada holds :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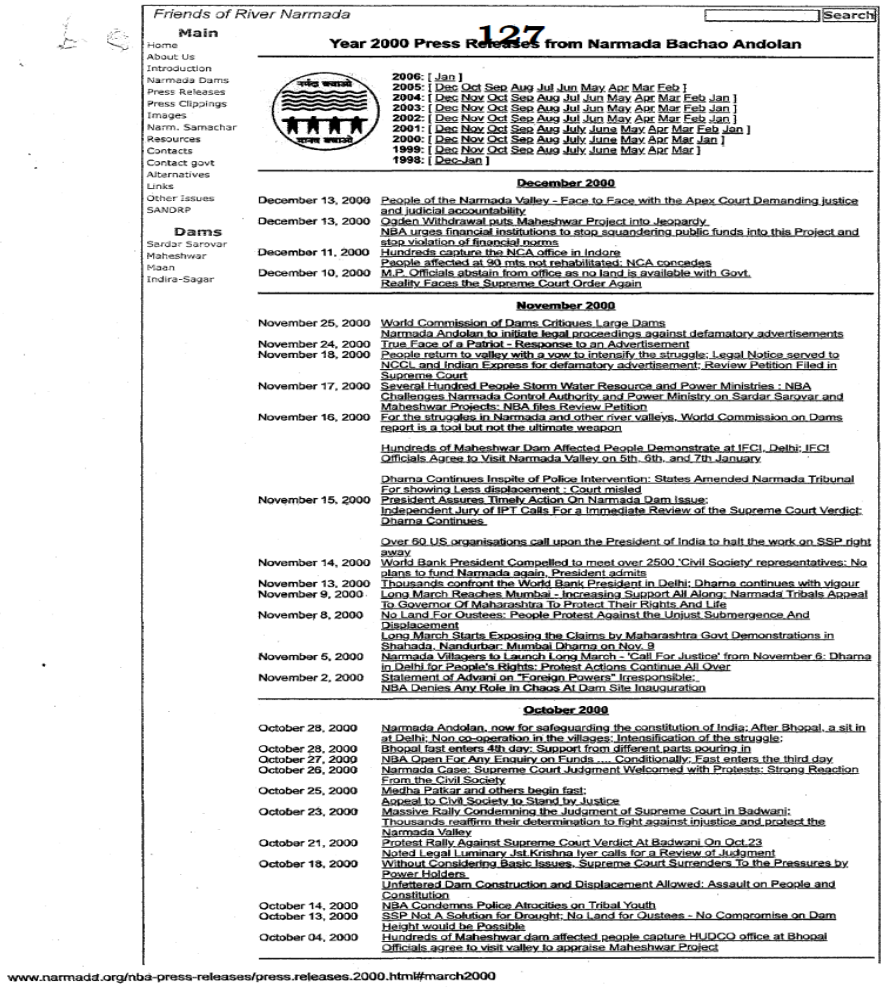
ANNEXURE P-11

87. Relevantly, the petitioner actually wanted to put it to CW 3 that the website *www.narmada.org* is not owned by the petitioner and she confronted CW 3 by producing the details of the "About us" mentioned on the website. In the process of doing so, the petitioner has admitted the document Ex CW 3/A. Accordingly, any objection to the admissibility of such document is misconceived. This position is supported by the doctrine of *approbate* and *reprobate*, which precludes a party from both affirming and denying the validity of the same document in the course of proceedings.

88. Much emphasis was placed by Mr. Parikh on the argument that the owner of the website *www.narmada.org* has themselves declared that they are not '*Narmada Bachao Andolan*', and that as such CW 3/A could not have been relied upon against the petitioner. While the argument appears attractive on first blush, however, a deeper inquiry shows that the contention here is not that the Press Note issued was by '*Friends of River Narmada*' or '*Friends of River Narmada*' is '*Narmada Bachao Andolan*' or not, or the website is being operated by the petitioner. The real issue is whether the Press Note dated 24.11.2000 is issued by the petitioner and that the said Press Note is available in public domain on the website www.narmada.org.

89. In addition to the observations made hereinabove, a perusal of the printout from the web page shows that on the website, many links with respect to press releases are being posted from October, 1998 to 2006. Further details of month of October, 2000, November, 2000 and December, 2000 are also shown. It is also noticed amongst others, there are posts on 25.10.2000, 27.10.2000 and 24.11.2000. The said document containing the press releases is reproduced hereinunder:-



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## Year 2000 Press Releases from Narmada Bachao Andolan

**2006:** [ Jan ]
**2005:** [ Dec Oct Sep Aug Jul Jun May Apr Mar Feb ]
**2004:** [ Dec Nov Oct Sep Aug Jul Jun May Apr Mar Feb Jan ]
**2003:** [ Dec Nov Oct Sep Aug Jul Jun May Apr Mar Feb Jan ]
**2002:** [ Dec Nov Oct Sep Aug Jul Jun May Apr Mar Feb Jan ]
**2001:** [ Dec Nov Oct Sep Aug July June May Apr Mar Feb Jan ]
**2000:** [ Dec Nov Oct Sep Aug July June May Apr Mar Jan ]
**1999:** [ Dec Nov Oct Sep Aug July June May Apr Mar ]
**1998:** [ Dec-Jan ]

### December 2000

December 13, 2000 — People of the Narmada Valley - Face to Face with the Apex Court Demanding justice and judicial accountability
December 13, 2000 — Ogden Withdrawal puts Maheshwar Project into Jeopardy
NBA urges financial institutions to stop squandering public funds into this Project and stop violation of financial norms
December 11, 2000 — Hundreds capture the NCA office in Indore
People affected at 90 mts not rehabilitated: NCA concedes
December 10, 2000 — M.P. Officials abstain from office as no land is available with Govt.
Reality Faces the Supreme Court Order Again

### November 2000

November 25, 2000 — World Commission of Dams Critiques Large Dams
Narmada Andolan to initiate legal proceedings against defamatory advertisements
November 24, 2000 — True Face of a Patriot - Response to an Advertisement
November 18, 2000 — People return to valley with a vow to intensify the struggle; Legal Notice served to NCCL and Indian Express for defamatory advertisement; Review Petition Filed in Supreme Court
November 17, 2000 — Several Hundred People Storm Water Resource and Power Ministries : NBA Challenges Narmada Control Authority and Power Ministry on Sardar Sarovar and Maheshwar Projects; NBA files Review Petition
November 16, 2000 — For the struggles in Narmada and other river valleys, World Commission on Dams report is a tool but not the ultimate weapon

Hundreds of Maheshwar Dam Affected People Demonstrate at IFCI, Delhi; IFCI Officials Agree to Visit Narmada Valley on 5th, 6th, and 7th January

Dharna Continues Inspite of Police Intervention: States Amended Narmada Tribunal For showing Less displacement : Court misled
November 15, 2000 — President Assures Timely Action On Narmada Dam Issue;
Independent Jury of IPT Calls For a Immediate Review of the Supreme Court Verdict; Dharna Continues.

Over 60 US organisations call upon the President of India to halt the work on SSP right away
November 14, 2000 — World Bank President Compelled to meet over 2500 'Civil Society' representatives; No plans to fund Narmada again, President admits
November 13, 2000 — Thousands confront the World Bank President in Delhi; Dharna continues with vigour
November 9, 2000 — Long March Reaches Mumbai - Increasing Support All Along; Narmada Tribals Appeal To Governor Of Maharashtra To Protect Their Rights And Life
November 8, 2000 — No Land For Oustees; People Protest Against the Unjust Submergence And Displacement
Long March Starts Exposing the Claims by Maharashtra Govt Demonstrations in Shahada, Nandurbar; Mumbai Dharna on Nov. 9
November 5, 2000 — Narmada Villagers to Launch Long March - 'Call For Justice' from November 6; Dharna in Delhi for People's Rights; Protest Actions Continue All Over
November 2, 2000 — Statement of Advani on "Foreign Powers" Irresponsible;
NBA Denies Any Role in Chaos At Dam Site Inauguration

### October 2000

October 28, 2000 — Narmada Andolan, now for safeguarding the constitution of India; After Bhopal, a sit in at Delhi; Non co-operation in the villages; Intensification of the struggle;
October 28, 2000 — Bhopal fast enters 4th day; Support from different parts pouring in
October 27, 2000 — NBA Open For Any Enquiry on Funds .... Conditionally; Fast enters the third day
October 26, 2000 — Narmada Case: Supreme Court Judgment Welcomed with Protests; Strong Reaction From the Civil Society
October 25, 2000 — Medha Patkar and others begin fast;
Appeal to Civil Society to Stand by Justice
October 23, 2000 — Massive Rally Condemning the Judgment of Supreme Court in Badwani;
Thousands reaffirm their determination to fight against injustice and protest the Narmada Valley
October 21, 2000 — Protest Rally Against Supreme Court Verdict At Badwani On Oct.23
October 18, 2000 — Noted Legal Luminary Jst Krishna Iyer calls for a Review of Judgment
Without Considering Basic Issues, Supreme Court Surrenders To the Pressures by Power Holders.
Unfettered Dam Construction and Displacement Allowed; Assault on People and Constitution
October 14, 2000 — NBA Condemns Police Atrocities on Tribal Youth
October 13, 2000 — SSP Not A Solution for Drought; No Land for Oustees - No Compromise on Dam Height would be Possible
October 04, 2000 — Hundreds of Maheshwar dam affected people capture HUDCO office at Bhopal
Officials agree to visit valley to appraise Maheshwar Project

www.narmadd.org/nba-press-releases/press.releases.2000.html#march2000 1/3

90. The petitioner has not challenged the veracity of other posts pertaining to NBA, or to the petitioner, as appearing on the website

*www.narmada.org*. Significantly, as observed in the Impugned Judgment passed by the Learned Appellate Court, the website *www.narmada.org* actively advanced the propaganda of NBA through press releases issued by NBA; and various visits of the petitioner, and, that the said Press Note was already published on the said website. Needless to say, the petitioner, has not invoked any action against the owners of the website www.narmada.org at any point of time in respect of other posts, muchless the Press Note in question.

91. Adverting to the next argument raised on behalf of the petitioner that the learned Trial Court and the learned Appellate Court wrongly relied upon the records of Crl. M.C. No. 6026/2018. It was contended that at an earlier point of time, petitioner had filed the said petition seeking quashing of another complaint case filed by the respondent against the petitioner. However, the said petition was withdrawn on 09.01.2019, in view of the averments made in the application for withdrawal. The records whereof, were produced by CW-4, exhibited as Ex. CW-4/A to Ex. CW-4/D.

92. The learned Senior Counsel submitted that the entire record of the said petition stands wiped out and cannot be relied upon. He submitted that both the learned Trial Court and the learned Appellate Court have erred in relying on the recitals in 'list of dates' as an 'admission' to the effect that it was detailed in the 'list of dates' to come to the conclusion that the Press Note contained in Ex. CW-1/A was published by the petitioner.

93. In this regard it is apposite to refer to the finding of the learned Appellate Court, who upon appreciation of evidence has concluded as under:-

> *"14.(e) It is observed that Crl. M. C. No. 6026 of 2018 (Ex. CW4/A) was filed alongwith accompanying affidavit of Medha Patkar through which she affirmed all the contents of the petition as correct. For her own reasons mentioned in the application, Medha Patkar sought permission to withdraw the petition, that was allowed. As per application seeking withdrawal, the petition was only a 'draft copy' that was inadvertently filed in haste by counsel instead of 'corrected draft' sent to him by Ms. Medha Patkar.*
> *14.(f) Notably, in the application for withdrawal it was not mentioned which part of Crl. M. C. No. 6026 of 2018 was not meant to be included in the 'corrected draft'. There is no ground to assume or be represented that a part of 'List of Dates', and especially the content attached with date 24/11/2000 was included in 'draft petition' but was meant to be omitted in the 'corrected draft' of petition. There is no escape from the conclusion that even if aforementioned petition was withdrawn by Medha Patkar, its content in 'List of Dates', for date 24/11/2000 could be read against her as an admission of fact as it directly touched the fact in issue in present case. There is no substance in argument that Ld. Trial Court wrongly relied upon the contents of petition Ex. CW4/A, since it was withdrawn by Medha Patkar."*

94. It is no doubt true that the petitioner did withdraw the Criminal M. C. No. 6026/2018. The ground for withdrawal, as stated by the petitioner was that the draft petition was inadvertently filed by the Advocate, although the said draft had not been finalised by the

petitioner before it could be filed in Court. Pending her approval, the Advocate, by mistake, filed the draft petition in the Court. Further challenging the admissibility of 'List of Dates', the learned Senior Counsel vehemently submitted that the contents of any 'List of Dates' accompanying the petition is merely for the convenience of the Court, however, is not part of the pleadings as it is not by an affidavit or the signatures of the petitioner, so as to fall within the provision of 'Admissions', that is, either a *judicial admission* or an *admission on pleadings*.

95. The learned Senior Counsel submitted that neither the learned Trial Court nor the learned Appellate Court applied their mind to the withdrawal application filed by the petitioner before this Court, which was supported by an affidavit and signed by both the petitioner and her Advocate, clearly mentioning that it was filed on account of a mistake on the part of an Advocate and was an inadvertent error. He contended that if an entry in the 'List of Dates' is stated to be an Admission, on the same analogy, the entire pleading containing statements, being a part of the pleading, should also be construed as Admission.

96. In the present case, the issue is with respect to the admissions made in the 'List of Dates', giving the chronology of the facts and events leading to filing of the Petition, and whether it could be relied upon in the subsequent proceedings or not.

97. The position of law has been correctly applied by the Learned Trial Court, as laid down by the Supreme Court in the matter of ***Basant Singh*** (Supra) to the following effect:

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

98. Thus, an admission made in previous pleading retain their evidentiary value, unless explicitly rebutted regardless of the status of such pleading and whether it has been withdrawn or is pending. In the present case, no doubt the petitioner withdrew Criminal M.C. No. 6026/2018 on the basis of an application made before this Court. The respondent got the said record produced through CW-4, who exhibited the entire record of Criminal M.C. No. 6026/2018 as Ex. CW-4/A. The testimony of the said witness is unrebutted, being a witness of record. It is seen that the entire record was put to the petitioner *vide* Question no. 5 in her statement under Section 313 of the CrPC before the learned Trial Court. To which the petitioner accepted the entire record as "matter of record". The petitioner chose not to rebut the

same or give an explanation to any portion of the record exhibited as Ex. CW-4/A, despite being well aware of the contention being raised by the respondent.

99. More so, the 'list of dates' though may not form part of the pleadings as stated on behalf of the petitioner, however, they will remain a part of Criminal M.C. No. 6026/2018. The Court will presume that correct facts are stated, even in the list of dates. Furthermore, in the application seeking withdrawal of Criminal M.C. No. 6026/2018, the entire thrust of the petitioner was that the petition filed before the Court was a 'draft' in which several factual changes were required to be made by the petitioner. However, the application is silent on anomaly, if any, in the 'List of Dates'. The learned Appellate Court has rightly observed that in the application for withdrawal, it was not mentioned which part of the Crl. M.C was not meant to be included in the corrected draft.

100. Noticeably, the three judgments relied upon by the petitioner are distinguishable on their own facts. In ***Bihari Lal Pal*** (supra), the Allahabad High Court considered the effect of withdrawal of a suit with permission to bring a fresh suit on same cause of action and held that "*it is most probable that the legislature intended that when a suit was withdrawn with permission under first paragraph of Section 373 of Act No. XIV of 1882, the effect should be to leave the parties in the same position in which they would have been if the suit had never been brought*". The same principle of law was reiterated by the Mysore High Court in the case of ***Bhimangouda*** (supra) and by Calcutta High Court in ***Sukumar Banerjee*** (supra).

101. In conclusion, the arguments advanced by the petitioner are more in the nature of hair splitting and hinge on technicalities. The petitioner has not even referred to the text and context of Press Note, not even a single submission is made on the same. The record suggests that the essential ingredients of Section 499 of the IPC are clearly made out. The imputations made were specific, published in the public domain and caused harm to the reputation of the respondent. It is cardinal principal of law in a criminal proceedings, the complainant is required to prove its case beyond reasonable doubt against the accused and not on the basis of preponderance of probabilities as in a civil case.

102. In the present case, a conspectus of all the facts, evidence, the reading of the reasoning by the learned Trial Court, as modified by the learned Appellate Court, establishes that the respondent has been able to prove beyond reasonable doubt that Press Note is defamatory in nature.

103. Upon careful perusal of the record, appreciation of the arguments advanced by both sides, and a thorough examination of the Impugned Judgment, this Court finds no illegality, perversity, or material irregularity in the findings recorded by the learned Trial/Appellate Court. The order under challenge appears to have been passed after due consideration of the evidence on record and the applicable law. The petitioner has failed to demonstrate glaring defect in following the procedure or a manifest error on the point of law resulting in a flagrant miscarriage of justice that would justify

interference by this Court while exercising revisional jurisdiction under Section 397/401 of the CrPC.

**CHALLENGE TO THE ORDER ON SENTENCE**

104. It was next contended on behalf of the petitioner, though, without prejudice to the rights of the petitioner, that Section 360 of the CrPC and Section 4 of Probation Act operate in their individual spheres and cannot be invoked simultaneously. Mr. Parikh submitted that from the tone and tenor of the Order on Sentence passed by the learned Appellate Court, it can be ascertained that the learned Appellate Court passed the order of probation under Section 360 of the CrPC and not under Section 4 of the Probation Act.

105. He submitted that Section 360(1) of the CrPC provides that "*the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into bond*". "*To appear and receive sentence when called upon*". The petitioner, being a woman aged about 70 years, thus, has been granted probation under Section 360 of the CrPC.

106. Therefore, the learned Senior Counsel submitted that in view of language of Section 357(3) of the CrPC, the Order granting Compensation of Rs. 1,00,000/- could not have been passed, more particularly, without there being any finding that the respondent "*suffered any loss or injury*" and thus, the same is passed without jurisdiction. Further directing deposit of Compensation as pre-condition to furnishing the probation bond is also illegal.

107. He submitted that the pre-conditions, as provided in the *Proviso* to Section 4 and Sub-Section (3) of Section 4 of the Probation Act are

to be followed, which has not been done in the present case, therefore, apparently, the learned Appellate Court never intended to invoke Section 4 or Section 5 of the Probation Act. Thus, the Order for supervision, that is, directing the petitioner to appear before the learned Trial Court every three months, during the consideration of supervision report are also unsustainable. More so, the supervisory orders can be passed specifically when the convict is within the territorial jurisdiction of the Court, however, in the present case, the petitioner is a resident of Madhya Pradesh and not Delhi. Similarly, the direction to pay Compensation is without jurisdiction and illegal. Therefore, the Order on Sentence has necessarily been passed under Section 360 of the CrPC.

108. To rebut the above submissions, the learned counsel for the respondent urged that from the bare reading of the Order on Sentence, it is clear that the Order is premised on Section 4 of the Probation Act and the learned Appellate Court never intended to pass an order under Section 360 of the CrPC.

109. He submitted that the learned Appellate Court rightly directed the petitioner to pay compensation under Section 5 of the Probation Act and has simultaneously called for the report of the Probationary Officer while directing the release of the petitioner on probation bond alongwith Order on supervision, as contemplated under Section 4(3) of the Probation Act. He also submitted that even though the petitioner may not be a local resident in Delhi, she can still furnish a surety bond by bringing a local surety and that the judicial discretion has been rightly exercised by the learned Appellate Court.

110. In so far as the sentence of the petitioner is concerned, the learned Appellate Court has already taken a lenient view keeping in mind the age and social standing of the petitioner. The learned Trial Court has evidently considered the character of the petitioner by observing that the petitioner herself is a person of repute and is 70 years of age, being satisfied, granted the benefit of probation. More so, it is the case of the petitioner herself that she is eligible for the benefit of being released on probation on account of her age and social standard although the benefit is being claimed under Section 360 CrPC.

111. Thus, keeping in view the peculiar facts and circumstances of this case, when the Appellate Court has satisfied itself about the character, antecedents and permanent place of abode, the Order on Sentence does not warrant any interference by this Court in its Revisional jurisdiction. More so, the report of District Probation Officer has already been summoned simultaneously by the learned Appellate Court.

112. However, the condition of the probation that the petitioner shall appear before the learned Trial Court every three months during consideration of the periodical supervision report, is modified to the extent that the petitioner is at liberty to either appear physically, through Video Conferencing or to be represented by an Advocate during such appearances before the learned Trial Court. Nonetheless, all the other conditions do not require any interference by this Court. The petitioner to appear before the learned Appellate Court to comply

with the directions *vide* Order on Sentence dated 08.04.2025 within three weeks from today.

113. In view of the above, the Criminal Revision Petition, along with pending application, stands disposed of.

**SHALINDER KAUR, J**

**JULY 29, 2025**/ss/FRK