

## **R Srinivasan S/O Late G. Ramabadran vs K. Vaidyanath on 17 October, 2020**

IN THE COURT OF THE XIII ADDL.CITY CIVIL & SESSIONS JUDGE  
Mayohall unit: Bengaluru. (CCH:22)

Dated this the 17th day of October 2020

PRESENT: - Smt. Suvarna K. Mirji, B.Com., LL.B.[Spl]  
XIII Addl. City Civil and Sessions Judge,  
Bengaluru.

CRIMINAL APPEAL No. 25248/ 2018

Appellant :- R Srinivasan S/o Late G. Ramabadran,  
Aged about 67 years, R/at House No.6D,  
Gokulam, Arunachalam Road,  
Kotturpura, Chennai-600-085.

(Rep by M/s M.V. Devaraju Associates  
Advocates)

V/s.

Respondent :- K. Vaidyanath,  
R/at No.167, Fern City,  
Outer Ring Road,  
Oppo.Doddanekundi Village,  
Bengaluru-560037.

Rep by Sri.RMDR Chavan, Advocate)

### **JUDGMENT**

The appellant / accused has preferred this Criminal Appeal U/S 374(3) of Cr.P.C aggrieved by the Judgment of conviction and sentence passed by the XLIII Additional Judgment Crl. Appeal No.25248/2018 Chief Metropolitan Magistrate Bengaluru in CC No.55631/2015 on 01/12/2018 for an offence punishable U/S 500 IPC.

2) The appellant is the accused and respondent is the Complainant before the court below. The rank of both the parties are referred as referred before the court below.

3) The brief facts of complaint is as under:

The complainant was working with ITC Ltd, having its registered office at Kolkata and he served as a Director from 2001 till he retired in the year 2011. During his tenure as a Director of the Company the complainant was holding the Finance Portfolio also. The accused has been writing various mails making defamatory statements against the complainant and others out of which in the e mail dated

08/10/2012 he made false, malicious and defamatory allegations against the complainant and others which are punishable under various provisions of law and in respect of Judgment Crl. Appeal No.25248/2018 which the complainant has preferred complaint. The accused was originally employed with the company. The accused opted to retire prematurely and his retirement from the services of the company came into effect on 30/04/2010. At the time of his retirement the accused was occupying a flat belonging to the company at Chennai. The accused requested the company to permit him to continue to occupy the said flat till 30/08/2010 citing various reasons including reasons that he wanted to give adequate notice to his own tenant and that house shifting normally does not take place between 15th July - 15th August for sentimental reasons. The company consented to the said requests and permitted the accused to continue to use the said flat till 30/08/2010. The accused did not vacate the flat even after 30/08/2010 and the Company was constrained to file a complaint EOCC No.122/2010 before the Addl. Chief Metropolitan Magistrate [EOI] Egmore U/S 630 of the Companies Act 1956 seeking possession of the flat illegally occupied by the accused. In the said case the accused raised various Judgment Crl. Appeal No.25248/2018 untenable contentions and also sought to harass the directors and officers of the company, including the complainant. This was challenged before the High Court of Judicature at Madras which by its order dated 22/06/2011 held against the accused. The accused filed Special Leave Petition before the Hon'ble Supreme Court of India challenging the order dated 22/06/2011 passed by the High Court and by an order dated 22/07/2011, the Supreme Court dismissed the SLP filed by the accused. Thereafter by an order dated 28/07/2011 the Supreme Court dismissed the SLP filed by the accused. Thereafter by an order dated 28/07/2011 the Addl. Chief Metropolitan Magistrate, Egmore, Chennai held the accused guilty under section 630 of the Companies Act 1956 and directed him to vacate the flat within 30 days.

4) The complainant further submits that accused has been writing various letters to the officers and directors of the company making false, factually inaccurate and unsubstantiated allegations. On 08/10/2012 the accused Judgment Crl. Appeal No.25248/2018 wrote an email to various Directors of the company and the Company Secretary of the company. In the said mail the accused has made various false and unsubstantiated allegations. The accused has claimed that the '2009 Accounts' have been 'retrospectively manipulated' in 2010.

By this statement the accused seeks to create an impression that the company's accounts for the year 2009 were manipulated in the year 2010. The accused has falsely made this claim with full knowledge of the fact that the company's accounts for the year 2009 (Financial year 2008-09) were approved by the share holders of the company in July 2009. In 2010 only the accounts of the company for the year 2010 (financial year 2009-10) would come up for consideration and there was no question of retrospective manipulation of the accounts of the company for the year 2009. By making this false statement, the accused sought to give an impression and a false alarm to the recipients and readers of the said mail that the company and / or its directors are indulging in the

activity manipulating the accounts and that Judgment Crl. Appeal No.25248/2018 to retrospectively. The words 'manipulated' and 'retrospectively' have been used by the accused deliberately. While using the word 'manipulated' the accused sought to give the impression to the recipients and reader of the mail that the company's accounts do not reflect the true and correct picture. While using the word 'retrospectively', the accused meant that the accounts of the company for the year 2009 were not true or correct to begin with and that in the year 2010 they were manipulated and given retrospective effect. This is completely incorrect and false. The statement and claim that 2009 accounts have been 'manipulated retrospectively' is per se defamatory. The accused falsely claimed that such retrospective manipulation was made with no explanatory notes or reasons given in the schedules. The accused was a senior manager with the company and he knew the manner of reporting of the company's accounts and he sought to create an impression in the minds of the receipts and readers of his aforesaid mail that the company's accounts for the year 2009 were 'manipulated Judgment Crl. Appeal No.25248/2018 retrospectively' with no explanatory notes or reasons given in the schedules. The action of the accused in making these allegations is not in good faith and made with ulterior and malafide motives to tarnish the image of the complainant.

5) The complainant further submits that statutory auditor of the company was changed in the financial year 2009-10. The accused has described such a change as 'a year of unusual Auditor transition'. By terming such a change as 'unusual' the accused sought to create impression that the company had 'manipulated' its 2009 accounts 'retrospectively' and in order to achieve such manipulation, change of auditors was also done. The claim of the accused is false and untrue. The accused also stated in his mail that it was for the recipients of his said mail 'to cross check the facts as a part of supervisory oversight and gauge the lack of transparent disclosure and misleading impression given to the shareholders'. The accused has also stated in his mail that Y.C. Deveshwar and the complainant signed the Judgment Crl. Appeal No.25248/2018 accounts for both the years U/S 217 (2AA). By these statements, the accused deliberately sought to give an impression to the receipts of his aforesaid mail and its readers that the complainant and Deveshwar are guilty of manipulating the accounts of the company and that they lack professional ethics and/ or competency. The complainant was the Finance Director of the company during 2009 and 2010. The complainant had signed the 2009 and 2010 accounts of the company in his capacity as the Finance Director of the company. Presently the complainant is a non executive Director of the company. The compliant is recipient of the 'Best CFO' award given by Business Today Magazine in the year 2005 and other awards. The accused was reporting to the complainant at the time of his premature retirement from the services of the company. The accused was expecting some financial benefits over and above his entitlement at the time of his premature retirement from the company and he did not get the same. The accused was also found guilty U/S 630 of the Companies Act, in the Judgment Crl. Appeal No.25248/2018 case filed by the company. It is obvious that the accused is harbouring some grudge against the complainant and he is engaged in this campaign to malign, defame and harass the complainant and other officer and directors of the company. The accused has made statements and claims to various individuals with the sole intention of defaming the complainant in the minds of the recipients and readers of his aforesaid mail.

6) The Complainant further submits that the accused has addressed, published and communicated, false, malicious and defamatory statements vide his mail dated 08/10/2012 to various individuals

named in the said mail. He also requested Mr. B.B. Chatterjee, the company secretary of the company to confirm receipt of his said mail and circulate to all members of the Board of Directors. The intention of the accused in writing the said mail to various persons is to defame the complainant in the eyes of the recipients and readers of the said mail and portray him as a Judgment Crl. Appeal No.25248/2018 person of careless character and / or a person of unethical professional conduct / behaviors and to harm his reputation among the people known to the complainant and other professionals. The accused also addressed, published circulated and communicated scandalous, defamatory and malicious statements to various individuals who are on the Board of Directors of the Company during the year 2009 and 2010 with the object of making such individuals suspect the professional integrity and competence of the complainant and harm the reputation of the complainant. The statements, claims made by the accused in the aforesaid mail dated 08/10/2012 particularly portions concerning complainant are per se defamatory. The accused has not acted in good faith in making these reckless malicious and defamatory statements. The accused has chosen to make such false, malicious, mischievous and defamatory statements after a period of 2 years after his retirement without any basis or reason but with the objective of unjustly enriching himself. The accused know and has Judgment Crl. Appeal No.25248/2018 reason to know that the allegations made by him in the said mail are not true and they are false the accused has sent such an e mail from his email-id "RAMABADRANA SRINIVASAN" mridsrini@yahoo.com to the official email addresses as well as personal email addresses of various individuals for the purpose of causing annoyance, inconvenience, insult, intimidation, enmity, hatred and ill- will.

7) The complainant further submits that the statements made by the accused in the said email have caused incalculable harm to the complainant's reputation and that the complainant is aggrieved by the wild and reckless allegations made by the accused the said imputations have lowered the reputation of the complainant in the estimation of his colleagues and friends both inside and outside the organization. The complainant submits that the person who read the said mail contacted the complainant and wanted an explanation from the complainant since ITC Ltd., is a public Judgment Crl. Appeal No.25248/2018 limited company of international repute. The accused is liable to be punished for defamation for publishing and circulating such false imputations and thereby causing damage to the complainant. Hence the accused has committed an offence U/S 499 punishable U/S 500 of IPC by sending the said communication with offending contents by email the accused has also committed the offence punishable U/S 66A of the Information Technology Act. The complainant is resident of Bangalore and defamatory mail by the accused has been forwarded by the Company Secretary of the company to the complainant and received by the complainant in Bangalore. Various individuals to whom the said defamatory mail was addressed by the accused also called the complainant at Bangalore to enquire about the contents of the said mail. The complainant resides within the jurisdiction of the Mahadevaipura Police Station. Hence the complainant constrained to file the complaint. The complainant prays to take the cognizance for the offence Judgment Crl. Appeal No.25248/2018 punishable U/S 499 of IPC punishable U/S 500 of IPC and section 66A of the Information Technology Act and other offences as the court deems fit and proper against the accused and for prosecute the accused according to law.

8) That on 30/10/2012 I ACMM, Bangalore, taken cognizance of the offence punishable u/s. 499, 500 of IPC against the accused. Thereafter on 30/01/2013 the I ACMM, Bangalore ordered for

registration of criminal case against accused for the offence punishable u/s. 500 of IPC and U/s. 66A of IT Act. Again on 07/08/2015 I ACMM, Bangalore passed orders that the complainant counsel filed memo stating that since Hon'ble S.C. has struck down Section 66(A) of I.T. Act as unconstitutional and the remaining offence of defamation comes within the territorial jurisdiction of Mahadevapura P.S. and as such to transfer the above case to X ACMM, Bangalore. On the said memo I ACMM Bangalore passed ordered to send the entire records to X ACMM, Bangalore. The Magistrate Court recorded the accusation against the accused and accused has pleaded not guilty and claimed to be tried. The Magistrate court recorded the evidence of complainant PW.1 and one witness B.B. Chatterjee as PW.2 and ExP1 to ExP20 were marked.

Judgment Crl. Appeal No.25248/2018 Thereafter the Magistrate court recorded statement U/S 313 Cr.PC regarding incriminating evidence came against accused, he denied the same and in the statement U/S 313 Cr.PC the accused not stated about leading of defence/ evidence. Thereafter the lower court on hearing the arguments on both side after making note of the orders passed by I ACMM, Bangalore, relating to Section 66A of I.T. Act, in the judgment, proceeded to pronounce the judgment on 01/12/2018 convicting the accused for offence punishable U/S 500 of IPC sentencing him to pay fine of Rs.5,000/- for the offence U/S 500 of IPC and in default of payment of fine amount accused shall undergo simple imprisonment for 30 days. And out of the said fine amount of Rs.5,000/- Rs.4,000/- shall be paid to the complainant as compensation and remaining Rs.1,000/- shall be paid to the State towards expenses incurred in the prosecution as contemplated U/S 357 of Cr.PC. Aggrieved by the said judgment about conviction accused/appellant has preferred the present appeal on following grounds.

9) The appellant/accused submits that the impugned judgment and sentence passed by the learned Magistrate is opposed to law, facts and probabilities in the case and the same is liable to be set aside. The learned Magistrate has Judgment Crl. Appeal No.25248/2018 erred in not extending the benefit of provisions of Probation of Offenders Act 1958. Admittedly the appellant is a first time offender and he was not found to have been convicted earlier. Soon after the judgment the learned Magistrate without extending the benefit of U/S 360 Cr.P.C or the benefits of the provisions of Probation of Offenders Act goes to show that the learned Magistrate has passed the impugned judgment mechanically without application of mind. Admittedly the learned Magistrate has found the appellant guilty for offence punishable U/S 500 of IPC and has sentenced him to pay fine only. The appellant further submits that he is a person of no previous conviction against him, then it is prudent on the part of the learned Magistrate to have considered the circumstances and nature of offence and instead of sentencing him to pay fine ought to have released the accused / appellant on probation of good conduct under section 3 and 4 of the Probation of Offenders Act 1958. The learned Magistrate failed to see that the Judgment Crl. Appeal No.25248/2018 evidence of PW.1 and PW.2 contradicts on material points / issues. The accused appellant has himself conducted his case as 'Party in person' and such being the case/ fact, the learned Magistrate's observation that the accused has accepted major points / issues in U/S 313 Cr.PC statement is not correct. Mere admission in U/S 313 Cr.PC statement would not absolve the duty cast upon the complainant / PW.1 to prove his case beyond reasonable doubts. In a case of this type, a weakness in defence also would not absolve PW.1 to prove his case beyond reasonable doubt. The learned Magistrate grossly erred in not appreciating PW1 and PW.2's categorical admission that the "2009 accounts have been

retrospectively altered in 2010 i.e., in a year of 'Unusual Auditor Transition', and the same is without any kind of explanatory notes or reasons in the notes of the ITC Ltd., annual report" The learned Magistrate has further erred in not appreciating the clear admissions made by both PW1 and 2 that unlike in ExP7, ExP8 and ExP9 [Annual reports of Hindustan Uniliver Ltd., Britannia and Nestle, Judgment CrI. Appeal No.25248/2018 respectively], the word 'RESTATEMENT' or 'REGROUPED' is not shown / reflected in the ITC Ltd., annual reports. The learned Magistrate failed to acknowledge the appellant's contention that as per the generally accepted accounting principles [GAAP] which is commonly followed as accounting rules and standards for Financial Reporting, a 'Re-arrangement of Financial Figures' for purposes of presentation cannot extent to large change in Excise Duties or Taxation or Outward Freight and Handling or Net Income Manufacturing and selling expenses UNLESS such re-arrangement duly explained in the schedule and Notes to the annual reports. The learned Magistrate has not chosen to believe the accused version that apart from he being one of Sr. Management Member, he is also a share holder of ITC Ltd., and in his capacity as the share holder of the company he had sent email in question / ExP4 to the Board of Directors of ITC Ltd., who are entrusted with its governance for the benefit of all share holders. The appellant further submits that the excerpts of Judgment CrI. Appeal No.25248/2018 ExP4/E-mail dated 8/10/2012 reads that "It is for you to cross check the facts as a part of supervisory oversight and gauge the lack of transparent disclosure and the misleading impression given to share holders. I am not approaching any other forum as of now" which demonstrably shows that appellant / accused as a whistle-blower and in good faith had addresses ExP4/E-mail to the Board of Directors of the company without any intention to defame or harm PW1s reputation, but to bring matters to the attention of Board of Directors. Appellant further submits that PW1 during his cross examination has admitted that "in ExP4 my E-mail ID was not mentioned. The witness voluntaries that ExP4 was forwarded to me by the company secretary. It is true that in ExP4 at this stage no annexure is found place" From unequivocal admission of PW.1 that ExP4 does not contain the email ID of the complainant/ PW1 and it was sent by the company secretary / PW.2 to PW.1. Hence it cannot be considered that merely as held by the learned Magistrate that the accused / appellant has not disputed or accepted in Judgment CrI. Appeal No.25248/2018 his statement U/S 313 Cr.PC. Further PW2 has denied that ExP4 is the copy of the email forwarded by him to the complainant/PW.1. The PW.1 also admits that the complainant's email address is not found in ExP4. From the admission of PW.1 and PW.2 it cannot be said or proved that ExP4 is alleged to have been directly sent by the accused to PW.1 complainant. The appellant further submits that PW.1 and 2 admitted that ExP4 was sent through email and the same does not contain the email ID of the appellant / accused as sender of the said mail. On the other hand when PW.1 has not claimed the same, it cannot be said that the image / reputation of PW.1 is lowered in the estimation of others. Further PW.1 during cross examination has stated that the ITC Board of Directors satisfied with the explanation given by him in respect of ExP4. When such being the case, the learned Magistrate ought to have inferred that the PW.1's reputation was not harmed / hampered before the company's board of directors to whom the ExP4 was allegedly sent to by the appellant / accused. PW1 has Judgment CrI. Appeal No.25248/2018 categorically admitted that post the alleged email transaction, there being no loss of remuneration or status/ reputation suffered by him. The appellant submits that ExP4 email alleged to have been sent to him by appellant / accused a copy of which was in turn sent by PW.2 to PW.1 that too without any forward note (in the form of derogatory / suspicious character) in the body of PW2's E-mail. The PW.2 further admits that he has not forwarded ExP4 copy to any one else. Hence

it is PW.2 as a company Secretary of ITC Ltd., who has sent the same to PW.1, in which circumstances the onus could not have been fixed that Exp4 email was sent by appellant / accused to PW.1 / complainant to defame or to bring disrespect to him and on that account, the accused / appellant's mere acceptance of having sent an early warning email to the Board of Directors in statement U/S 313 Cr.PC statement cannot be held against him. The appellant further submits that Exp4/ email does not contain the indicated 'Attachments' and is truncated/ terminated abruptly. The PW.1 and PW.2 admits that Exp5 and 6 are Judgment Crl. Appeal No.25248/2018 copies without any specific page numbers and that the same are not the consolidated accounts of the company, this very admission shows that Exp5 and Exp6 are only loose pages without any specific page numbers. The PW.2 as Company Secretary has admitted in his cross examination that he has not signed Exp5 or Exp6 and the same did not have anything to do with them being sent to PW.1. Further in the absence of any evidence by Signatory [Deputy Secretary, ITC Ltd.] to Exp5 and Exp6 before the learned Magistrate, on a mere say of PW1 it cannot be accepted that Exp5 and Exp6 are genuine documents and believing the same basing the conviction is bad in law. The appellant further submits that if the evidence of PW.1 and PW.2 are weighed in its right, proper and perspective manner, the reasoning so given by the learned Magistrate holding the appellant guilty of the alleged offences, cannot be sustained. The appellant further submits that in order to convict a person for an offence U/S 500 of IPC one has to prove that accused / appellant with clear intention of malice / mar the reputation of PW1 had Judgment Crl. Appeal No.25248/2018 sent Exp4 / E-mail to PW.1. From the evidence on record it establishes that Exp4 was sent by PW.2 as a company secretary to PW.1, then how can it be drawn / held that the appellant / accused with the intention to defame / and to bring down the PW.1's reputation had sent Exp4. The Learned Magistrate has failed to appreciate that it is the handy work of PW.2 and not that of the appellant / accused. For this reason alone the email ID address of the accused / appellant is not appearing in Exp4 as its sender. The impugned judgment dated 1/12/2018 is silent with no figures although the subject matter of the alleged defamation concerns the accounts of the company. The appellant accused submits that PW.1 and PW.2 are highly interested and partisan witnesses. From their evidences it could easily be held that they were not in good terms with the appellant / accused and they were at longer-heads. Number of proceedings were initiated against accused / appellant apart from he being prematurely retired from the company's service. The learned Magistrate has erred in not discussing Judgment Crl. Appeal No.25248/2018 the evidence on record in its right, proper and prospective spirit. The learned Magistrate has not considered the question as to who has sent the email/ from where it was sent? By whom it was sent? By whom was it received, etc., with these lapses an adverse inference cannot have been drawn that the accused with the intention to defame / disrespect PW.1 had sent Exp4 to the complainant/ PW1. The appellant / accused submits that even if it is held that accused / appellant has sent Exp4, the same was sent to the Directors of the company in good faith and in the larger interest of the share holders of the public Limited company. Hence the appellant's case clearly and beyond any doubt falls within the first and eighth, ninth exception to section 499 IPC. The judgment of conviction and sentence passed by the Learned Magistrate is opposed to law, facts and probabilities of the case. The appellant / accused prays to allow the appeal setting aside the impugned judgment of conviction and sentence dated 01/12/2018 passed by the learned XLIII Additional Chief Metropolitan Magistrate, Judgment Crl. Appeal No.25248/2018 Bangalore in C.C.No.55631/2015 and acquit the appellant / accused for the offence punishable U/S 500 IPC.

10) The Points arise for my consideration are as under:

(1) Whether interference of this court in the judgment passed by the XLIII Additional Chief Metropolitan Magistrate, Bangalore in C.C No.55631/2015 on 01/12/2018 in convicting the appellant / accused for an offence punishable U/S 500 of IPC is needed?

(2) What order?

11) My findings on the above Points are as under:

Point No.1: In Negative Point No.2: See final order for following REASONS

12) Point No.1:-

The Complainant K. Vaidyanath lodged complaint U/S. 200 of Cr.P.C. against the accused for offence U/S 500 Judgment Crl. Appeal No.25248/2018 of IPC and U/S 66A of Information Technology Act alleging that he [complainant] was working with ITC Ltd, having its registered office at Kolkata and he served as a Director from 2001 till he retired in the year 2011. During his tenure as a Director of the Company the complainant was holding the Finance Portfolio also. The accused has been writing various mails making defamatory statements against the complainant and others out of which in the e mail dated 08/10/2012 he made false, malicious and defamatory allegations against the complainant and others which are punishable under various provisions of law and in respect of which the complainant has preferred complaint. The accused was originally employed with the company. The accused opted to retire prematurely and his retirement from the services of the company came into effect on 30/04/2010. At the time of his retirement the accused was occupying a flat belonging to the company at Chennai. The accused requested the company to permit him to continue to occupy the said flat till 30/08/2010 citing various reasons Judgment Crl. Appeal No.25248/2018 including reasons that he wanted to give adequate notice to his own tenant and that house shifting normally does not take place between 15th July - 15th August for sentimental reasons. The company consented to the said requests and permitted the accused to continue to use the said flat till 30/08/2010. The accused did not vacate the flat even after 30/08/2010 and the Company was constrained to file a complaint EOCC No.122/2010 before the Additional Chief Metropolitan Magistrate [EOI] Egmore U/S 630 of the Companies Act 1956 seeking possession of the flat illegally occupied by the accused. In the said case the accused raised various untenable contentions and also sought to harass the directors and officers of the company, including the complainant. This was challenged before the High Court of Judicature at Madras which by its order dated 22/06/2011 held against the accused. The accused filed Special Leave Petition before the Hon'ble Supreme Court of India challenging the order dated 22/06/2011 passed by the High Court and by an order dated 22/07/2011, the Supreme Court Judgment Crl. Appeal



No.25248/2018 dismissed the SLP filed by the accused. Thereafter by an order dated 22/07/2011 the Supreme Court dismissed the SLP filed by the accused. Thereafter by an order dated 28/07/2011 the Additional Chief Metropolitan Magistrate Egmore, Chennai held the accused guilty under section 630 of the Companies Act 1956 and directed him to vacate the flat within 30 days.

The complainant further submits that accused has been writing various letters to the officers and directors of the company making false, factually inaccurate and unsubstantiated allegations. On 08/10/2012 the accused wrote an email to various Directors of the company and the Company Secretary of the company. In the said mail the accused has made various false and unsubstantiated allegations. The accused has claimed that the '2009 Accounts' have been 'retrospectively manipulated' in 2010. By this statement the accused seeks to create an impression that the company's accounts for the year 2009 were Judgment Crl. Appeal No.25248/2018 manipulated in the year 2010. The accused has falsely made this claim with full knowledge of the fact that the company's accounts for the year 2009 (Financial year 2008-09) were approved by the share holders of the company in July 2009. In 2010 only the accounts of the company for the year 2010 (financial year 2009-10) would come up for consideration and there was no question of retrospective manipulation of the accounts of the company for the year 2009. By making this false statement, the accused sought to give an impression and a false alarm to the recipients and readers of the said mail that the company and / or its directors are indulging in the activity manipulating the accounts and that to retrospectively. The words 'manipulated' and 'retrospectively' have been used by the accused deliberately. While using the word 'manipulated' the accused sought to give the impression to the recipients and reader of the mail that the company's accounts do not reflect the true and correct picture. While using the word 'retrospectively', the accused meant that the accounts of the company for the year Judgment Crl. Appeal No.25248/2018 2009 were not true or correct to begin with and that in the year 2010 they were manipulated and given retrospective effect. This is completely incorrect and false. The statement and claim that 2009 accounts have been 'manipulated retrospectively' is per se defamatory. The accused falsely claimed that such retrospective manipulation was made with no explanatory notes or reasons given in the schedules. The accused was a senior manager with the company and he knew the manner of reporting of the company's accounts and he sought to create an impression in the minds of the recipients and readers of his aforesaid mail that the company's accounts for the year 2009 were 'manipulated retrospectively' with no explanatory notes or reasons given in the schedules. The action of the accused in making these allegations is not in good faith and made with ulterior and malafide motives to tarnish the image of the complainant. The complainant further submits that statutory auditor of the company was changed in the financial year 2009-10. The accused has described such a change as 'a year of unusual Judgment Crl. Appeal No.25248/2018 Auditor transition'. By terming such a change as 'unusual' the accused sought to create impression that the company had 'manipulated' its 2009 accounts 'retrospectively' and in order to

achieve such manipulation, change of auditors was also done. The claim of the accused is false and untrue. The accused also stated in his mail that it was for the recipients of his said mail 'to cross check the facts as a part of supervisory oversight and gauge the lack of transparent disclosure and misleading impression given to the shareholders'. The accused has also stated in his mail that Y.C.Deveshwar and the complainant signed the accounts for both the years U/S 217 (2AA). By these statements, the accused deliberately sought to give an impression to the receipts of his aforesaid mail and its readers that the complainant and Deveshwar are guilty of manipulating the accounts of the company and that they lack professional ethics and/or competency. The complainant was the Finance Director of the company during 2009 and 2010. The complainant had signed the 2009 and 2010 accounts of the Judgment Crl. Appeal No.25248/2018 company in his capacity as the Finance Director of the company. Presently the complainant is a non executive Director of the company. The complainant is recipient of the 'Best CFO' award given by Business Today Magazine in the year 2005 and other awards. The accused was reporting to the complainant at the time of his premature retirement from the services of the company. The accused was expecting some financial benefits over and above his entitlement at the time of his premature retirement from the company and he did not get the same. The accused was also found guilty U/S 630 of the Companies Act, in the case filed by the company.

It is obvious that the accused is harbouring some grudge against the complainant and he is engaged in this campaign to malign, defame and harass the complainant and other officer and directors of the company. The accused has made statements and claims to various individuals with the sole intention of defaming the complainant in the minds of the recipients and readers of his aforesaid mail. The Complainant further submits that the accused has addressed, Judgment Crl. Appeal No.25248/2018 published and communicated, false, malicious and defamatory statements vide his mail dated 08/10/2012 to various individuals named in the said mail. He also requested B.B. Chatterjee, the company secretary of the company to confirm receipt of his said mail and circulate to all members of the Board of Directors. The intention of the accused in writing the said mail to various persons is to defame the complainant in the eyes of the recipients and readers of the said mail and portray him as a person of careless character and / or a person of unethical professional conduct / behaviors and to harm his reputation among the people known to the complainant and other professionals. The accused also addressed, published circulated and communicated scandalous, defamatory and malicious statements to various individuals who are on the Board of Directors of the Company during the year 2009 and 2010 with the object of making such individuals suspect the professional integrity and competence of the complainant and harm the reputation of the complainant. The statements, Judgment Crl. Appeal No.25248/2018 claims made by the accused in the aforesaid mail dated 08/10/2012 particularly portions concerning complainant are per se defamatory. The accused has not acted in good faith in making these reckless malicious and defamatory statements. The accused has chosen to make such false, malicious, mischievous and defamatory statements after a period of 2 years after his retirement without any basis or reason but with the objective of unjustly enriching himself. He accused knows and has reason to know that the allegations made by him in the said mail are not true and they are false the accused has sent such an

e mail from his email-id "RAMABADRAN SRINIVASAN"

mridsrini@yahoo.com to the official email addresses as well as personal email addresses of various individuals for the purpose of causing annoyance, inconvenience, insult, intimidation, enmity, hatred and ill-will. The complainant further submits that the statements made by the accused in the said email have caused incalculable harm to the complainant's reputation and that the complainant is aggrieved Judgment CrI. Appeal No.25248/2018 by the wild and reckless allegations made by the accused the said imputations have lowered the reputation of the complainant in the estimation of his colleagues and friends both inside and outside the organization. The complainant submits that the person who read the said mail contacted the complainant and wanted an explanation from the complainant since ITC Ltd., is a public limited company of international repute. The accused is liable to be punished for defamation for publishing and circulating such false imputations and thereby causing damage to the complainant. Hence the accused has committed an offence U/S 499 punishable U/S

500 of IPC by sending the said communication with offending contents by email the accused has also committed the offence punishable U/S 66A of the Information Technology Act. Hence the complainant constrained to file the complaint. The complainant prays to take action against the accused for the offence punishable U/S 499 of IPC punishable U/S 500 of IPC and section 66A of the Information Technology Act.

Judgment

CrI. Appeal No.25248/2018

13) The Magistrate Court taken sworn statement of the

complainant and thereafter taken cognizance of the offence against the accused and issued summons to the accused. The accused appeared before the Magistrate Court and contested the matter. The Magistrate Court recorded plea of the accused and he has denied the allegations against him and claimed to be tried. The complainant examined as PW1 and also got examined PW2 witness in his favour and ExP1 to ExP20 were marked. Thereafter the Magistrate Court recorded statement of the accused u/s. 313 Cr.P.C. regarding incriminating evidence taken against the accused. The accused denied the same and he submitted in his statement U/S 313 Cr.P.C. that he is a share holder of the company. He has done his duty and he has not made any false allegations and the company has not given opportunity of hearing to him. But to support his contention the accused has not led any evidence before the Magistrate Court. The Magistrate Court on hearing arguments of both the sides convicted the accused for the offence punishable U/S 500 of Judgment CrI. Appeal No.25248/2018 IPC sentencing him to pay fine of Rs.5,000/- for the offence U/S 500 of IPC and in default of payment of fine amount accused shall undergo simple imprisonment for 30 days. And out of the said fine amount of Rs.5,000/- Rs.4,000/- shall be paid to the complainant as compensation and remaining Rs.1,000/- shall be paid to the State towards expenses incurred in the prosecution as contemplated u/s. 357 of Cr.P.C. Aggrieved by the said orders of conviction the accused/appellant has preferred the present appeal on grounds that the appellant is a first time offender and he was

not found to have been convicted earlier. Soon after the judgment the learned Magistrate without extending the benefit of Sec 360 Cr.PC or the benefits of the provisions of Probation of Offenders Act goes to show that the learned Magistrate has passed the impugned judgment mechanically without application of mind.

14) Further grounds of appeal is that on going through the evidence of PW1 and PW2's there is categorical Judgment Crl. Appeal No.25248/2018 admission that the "2009 accounts have been retrospectively altered in 2010 i.e., in a year of 'Unusual Auditor Transition', and the same is without any kind of explanatory notes or reasons in the notes of the ITC Ltd., annual report". The learned Magistrate has further erred in not appreciating the clear admissions made by both PW1 and 2 that unlike in ExP7, ExP8 and ExP9 [Annual reports of Hindustan Uniliver Ltd., Britannia and Nestle, respectively], the word 'RESTATEMENT' or 'REGROUPED' is not shown / reflected in the ITC Ltd., annual reports. The appellant further contention in the appeal grounds that PW1 and PW.2 are highly interested and partisan witnesses. From their evidences it could easily be held that they were not in good terms with the appellant / accused.

15) The appellant contends that PW.1 and PW.2 admitted that ExP4 was sent through E-mail and the same does not contain the email ID of the appellant / accused as sender of the said mail. Further PW.1 during cross Judgment Crl. Appeal No.25248/2018 examination has stated that the ITC Board of Directors satisfied with the explanation given by him in respect of ExP4. When such being the case, the learned Magistrate ought to have inferred that the PW.1's reputation was not harmed / hampered before the company's board of directors to whom the ExP4 was allegedly sent to by the appellant / accused. Hence the appellant / accused prays to set aside the impugned judgment of conviction and sentence and acquit the appellant / accused for the offence punishable U/S 500 IPC.

16) The complainant examined as PW.1 before the Magistrate Court. He has deposed evidence that he was working with ITC Ltd, as a Director. The complainant was Senior Manager in ITC Ltd. The accused opted to retire prematurely. At the time of his retirement the accused was occupying a flat belonging to the company at Chennai. The accused requested the company to permit him to continue to occupy the said flat citing various reasons. The company Judgment Crl. Appeal No.25248/2018 consented to the said requests and permitted the accused to continue to use the said flat till August 2010. The accused did not vacate the flat and the Company was constrained to file a complaint EOCC No.122/2010 before the Additional Chief Metropolitan Magistrate [EOI] Egmore and the Court passed orders on 28/07/2011. The said orders of the Court was challenged before the Hon'ble High Court of Judicature at Madras in Criminal Petition No.9462/2011 and the Hon'ble High Court by its order dated 22/06/2011 held against the accused. The accused filed Special Leave Petition before the Hon'ble Supreme Court of India challenging the order dated 22/06/2011 passed by the Hon'ble High Court of Madras and by an order dated 22/07/2011, the Hon'ble Supreme Court dismissed the SLP filed by the accused. The PW.1 further deposed that accused has been writing various letters to the officers and directors of the company making false allegations. On 08/10/2012 the accused wrote an email to various Directors of the company and the Company Secretary of the company. In the said Judgment Crl. Appeal No.25248/2018 mail the accused has made false and unsubstantiated allegations. The accused has claimed that the '2009 Accounts' have been 'retrospectively manipulated' in 2010. PW1 further deposed that company's accounts for the

year 2009 (Financial year 2008-09) were approved by the share holders of the company in July 2009. There was no retrospective manipulation of the accounts of the company.

17) The PW.1 further deposed evidence that the E-mail Dt.08/10/2012 sent by accused to the company and same in turn forwarded to him. He taken print out of the said E-mail, where in there is allegations that he and Y.C. Deveshwar and the complainant signed the accounts for both the years 2008-2009. The allegations of the accused are false. There is several operating business maintaining accounts. By these statements, the accused deliberately sought to give an impression to the receipts of his mail and its readers that the complainant and Deveshwar are guilty of manipulating the accounts of the company and that they lack professional Judgment Crl. Appeal No.25248/2018 ethics and/ or competency. PW1 further deposed that he was the Director of the company for the said period and he was recipient of the 'Best CFO' award given by Business Today Magazine in the year 2005 and other awards.

18) The PW.1 further deposed that the accused was found guilty U/S 630 of the Companies Act in the case filed by the company and was engaged in harbouring some grudge against him [PW1] to malign, defame and harass him. PW1 further deposed that the accused also requested B.B. Chatterjee, the Company Secretary to confirm receipt of email and circulate to all members of the Board of Directors. The intention of the accused is to defame him [complainant] in the eyes of the recipients and readers of the said mail. The PW1 further deposed that the allegations made by the accused lowered his reputation. Hence the accused has committed the offence. The PW.1 marked Exp1 to Exp18 in his evidence. The Exp1 is copy of the judgment passed in EOCC No.122/2010. The Exp2 is Judgment Crl. Appeal No.25248/2018 certified copy of the orders passed in Criminal Petition No.9462/2011. The Exp3 is certified copy of the order passed in SLP Criminal No.4849/2011. The Exp4 is copy of email dated 8/10/2012. The Exp5 is certified copy of audited balance sheet of ITC Limited Company dated 31/03/2009. The Exp6 is certified copy of the audited balance sheet of the company dated 31/03/2010, Exp7 is certified copy of profit and loss accounts and balance sheet of Hindustan Lever Limited pertaining to the year 2009- 2010 submitted to Registrar of Company, Exp8 is certified copy of profit and loss accounts and balance sheet of Britannia Industries Pertaining to the year 2009-10 submitted to Registrar, Exp9 is certified copy of profit and loss accounts and balance sheet of Nestle company pertaining to the year 2009-10 submitted to Registrar, Exp10 is copy of photo of best CFO award given to the complainant by India Today group, Exp11 is copy of photo of best CFO award given to the complainant by CMVC TV18, Exp12 is photo about appearance of the complainant in CMVC TV 18.

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19) Further PW.2 B.B. Chaterjee is examined and he

deposed evidence that on 08/10/2012 he was the Executive Vice President and Company Secretary ITC Ltd., The complainant was non Executive Director of ITC Ltd., Company. The accused was the senior manager and member of Corporate Management Committee. Every year the Audit of the company was done by the Auditor and it was approved by Board of Directors and thereafter it was approved by share holders in the Annual General Meeting. Even in the financial year of 2009 and

2010 same procedure in respect of audit was done. No irregularities were found during audit and the same was approved by Board of Directors and Share holders in Annual General Body Meeting in every financial years. The ExP5 and ExP6 are annual audited account pertaining to the year 2009 and 2010. PW2 further deposed that the accused has sent emails to complainant, various persons in the said company and also persons outside the company and to him[PW2] also. The PW.2 deposed that the said email originated from Judgment Crl. Appeal No.25248/2018 mridsrini@yahoo.com and extract of said email is at ExP13. After seeing the said email he was alarmed and upset and immediately he has forwarded the email to the complainant on 17/10/2012. He further deposed that in view of allegations made by the accused, he requested the complainant and concerned authorities of the company to re- verify the accounts of the particular year. The PW.2 further deposed that the Corporate Auditors informed him that there was no manipulation of the accounts. The copy of the said email is at ExP14 which bears date 17/10/2012. The PW.2 further deposed that due to said allegation made by the accused the image of the company and image of the complainant, senior managers and all employees of the company was tarnished. The allegation made by the accused is defamatory allegation. The PW.2 further deposed that accused was provided with accommodation when he was working in the company and even after his retirement he has not vacated it. Therefore the company filed case against the Judgment Crl. Appeal No.25248/2018 accused and ExP1 is the copy of the judgment passed in the said case.

20) The PW.2 marked documents ExP13 to ExP20 in his evidence. The ExP13 is E-mail extract received by him, ExP14 is copy of email forwarded to him by the complainant, ExP15 is copy of email dated 17/10/2012, ExP16 is report of accounts of ITC and subsidiary companies of the year 2007, ExP17 is report of accounts of ITC and subsidiary companies of the year 2008, ExP18 is report and accounts of ITC and subsidiary companies of the year 2009, ExP19 is report and accounts of ITC and subsidiary companies of the year 2010, ExP20 is copy of email dated 17/10/2012 sent to complainant by PW2.

21) The PW.2 B.B. Chatterjee in his examination in chief supported the evidence of complainant. Because of the said allegation made by accused he has requested the concerned authorities of the company to re verify the Judgment Crl. Appeal No.25248/2018 accounts of the particular year. The PW.2 further deposed that because of the allegation made by accused the reputation of the company as well as the complainant was tarnished. He has also stated that the said defamatory allegation made by the accused circulated within the company as well as outside the company.

22) The complainant mainly relied upon ExP4 email sent by the accused which has damaged the reputation of the complainant. The ExP4 E-mail dated 8/10/2012 discloses that it was forwarded from RAMABADRAN SRINIVASAN to B.B.CHATTERJEE who is the Company Secretary, wherein it is mentioned that "Subject: Re ITC Governance issues: AGENDA for Oct 2012 Board Meeting" "I have great respect for Board processes and have repeatedly sought a meeting with you over the last two years- Unfortunately for some reasons or the other this has not been allowed to happen and I am reiterating my request. I am raising some issues of governance for your consideration Judgment Crl. Appeal No.25248/2018 and decision at the October 2012 BOD. These go beyond quarterly results." Further in the E-mail it is mentioned that "The 2009 accounts have been retrospectively manipulated in 2010 in a year of unusual Auditor Transition, with no explanatory notes or reasons

given in the schedules."

23) The complainant/PW.1 marked certified copies of balance sheet of the company at ExP5 dt/31/03/2009 and ExP6 dt.31/03/2010. In ExP4 dated 08/10/2012 it is mentioned that "The 2009 Accents have been retrospectively manipulated in 2010 in a year of unusual Auditor transition, with no explanatory note or reasons given in the schedules." The accused cross examined the complainant PW1 and his witness PW2. A suggestion made by the accused to the said witnesses discloses that the accused admitted regarding sending of emails. In the entire cross examination of PW1 and PW2 the accused has not denied regarding issuance of said email to the PW2, who is he company secretary mentioning about the manipulation of Judgment Crl. Appeal No.25248/2018 the accounts of he company for the year 2009-10. At that time the complainant K. Vaidyanathan, was the Executive Director of the company. The ExP4 is the email addressed to PW.2 discloses regarding allegations made by the accused relating to the company where the complainant as working as Executive Director at that time. But as on 08/10/2012 when EP4 email was sent by the accused to complainant company, he was not employee in the said company and already the accused voluntarily retired from the company in the year 2010. That as per the complainant the accused was provided with residential flat belonging to the company at Chennai when the accused was working in their company which is at Boat Club Road, Chennai and after voluntary retirement of the accused, he has not vacated the said flat and the accused has taken time to vacate the premises and the company also permitted him to stay in the flat till August 2010. But Afterwards also the accused has not vacated the premises. Therefore the company has filed EOCC No.122/2010 before the Additional Chief Metropolitan Judgment Crl. Appeal No.25248/2018 Magistrate (EOI) Egmore, Chennai and in the said case the court pronounced judgment on 28/07/2011 directing the accused to hand over the possession of the property in question namely Flat 2B, Bouganvillae, 5Adyar Club Gate Road, Chennai 28 to the complainant company within 30 days from the date of judgment and in default the accused is ordered to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for 2 months. Before that the complainant ITC Limited filed Crl.O.P.No.9462 of 2011 before the High Court of Judicature at Madras for setting aside the orders passed by the Magistrate Court at Egmore, Chennai allowing a petition moved U/S 311 Cr.PC by the respondent / accused R. Srinivasan seeking examination of certain persons named therein as defence witnesses. Thereafter the High Court of Judicature at Madras vide orders dated 22/06/2011 set aside the orders of Chief Metropolitan Magistrate at Egmore, Chennai dated 09/04/2011 and directed the Magistrate Court to dispose off the proceedings within one month. The accused Srinivasan Judgment Crl. Appeal No.25248/2018 has preferred Special Leave to Appeal (Crl) No.4849/2011 before the Hon'ble Supreme Court of India against the impugned judgment and orders dated 22/06/2011 in Crl OP No.9462/2011 of the High Court of Madras and the Hon'ble Supreme Court upon hearing the counsels dismissed the Special Leave petition on 22/07/2011 filed by the accused R. Srinivasan. The complainant marked orders of the Magistrate Court, Orders of the Hon'ble High Court of Madras and Hon'ble Supreme Court as per ExP1 to ExP3.

24) The complainant also deposed evidence before the Magistrate Court wherein incriminating evidence came against the accused. The Magistrate Court during the course of recording statement of accused U/S 313 Cr.P.C, recorded the answers given by the accused Srinivasan to the questions put fourth before him, among which question No.3 reads that "even after extended time till 2010

August, you have not vacated the premises and hence the company filed case in EOCC No.122/10 against you and the said case decided Judgment Crl. Appeal No.25248/2018 against you and ultimately when the Hon'ble Apex Court dismissed SLP No.4849/11, you have vacated the premises. What do you say? For the said question the accused answered as 'True'. Therefore from the admission of accused in the statement U/S 313 Cr.P.C, it is clear that after he resigned the job as Senior Manager from the company, he has not vacated the flat of the complainant company and the complainant approached the court and thereafter as per the court orders the accused vacated premises belonging to the company. Therefore it shows that the accused had no good relationship with the complainant company. As on the date of sending the email dated 08/10/2012 the accused was not employee in the complainant company as he has already resigned to the job as Senior Manager, which is clear from the evidence of PW.1.

25) The respondent counsel while arguing has relied on the decisions reported in Judgment Crl. Appeal No.25248/2018 (2016) 7 Supreme Court Cases 221 [Subramanian Swamy V/s. Union of India, Ministry of Law and others] "Penal Code, 1860 - Sections 499 and 500

- Criminal defamation as offence under -

Constitutionality, upheld - Balancing of fundamental right to freedom of speech and expression with fundamental right to reputation -relevance of preambular objective of fraternity /social harmony and fundamental duties in respect thereof."

26) The appellant counsel while arguing relied decisions reported in AIR 1966 SUPREME COURT 97 [Harbhajan Singh V/s. State of Punjab and another] Criminal Appeal No.53/1961 dated 2/3/1965 (A)Penal Code (45 of 1860) S. 499 Ninth exception, S. 52 - Good faith - Proof of - It is question of fact - Concurrent finding as Judgment Crl. Appeal No.25248/2018 to good faith by lower courts - Supreme Court when will interfere in appeal.

(B)Penal Code (45 of 1860) S. 499 Ninth Exception - Good faith and public good have both to be satisfied.

(C)Penal code (45 of 1860) S. 499 Ninth exception - Evidence and proof - Evidence Act (1872) S. 105 - Charge of defamation -

Accused taking exception to charge under Except 9 - Degree of proof that has to be offered by accused. Evidence Act (1 of 1872), S. 105.

1970 Crl.L.J.83 [D. Rama Subba Reddy V/s. P.V.S. Rama Das and another] Criminal Revn. Case nO.878 of 1966 and Criminal Revn. Petn. No.786 of 1966 dt.4/11/1967 (A)Evidence Act (1 of 1872) S. 101, S. 105

-Criminal trial-Onus-Duty of prosecution- Onus to prove exception -



Judgment CrI. Appeal No.25248/2018 Nature and extent of - Prosecution for defamation - Held, on facts, accused had established that case fell within exceptions 8 and 9 of S. 499 Penal code.

AIR 1970 SUPREME COURT 1372 [Chaman Lal V/s. The State off Punjab] (A) Penal Code (45 of 1860) S. 499 -

Defamation - good faith and bonafide -

Proof.

In order to establish good faith and bonafide it has to be seen first the circumstances under which the letter was written or words were uttered;

secondly whether there was any malice;

thirdly, whether the accused made any enquiry before he made the allegations;

fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith"

Judgment CrI. Appeal No.25248/2018 B. Penal Code (45 of 1860) S. 499 First Exception - Defamation - Exception -

Imputation of truth of public good -

Truth of imputation and publication of imputation for public good must be proved by accused C. Penal code (45 of 1860) S. 499 Ninth exception - Defamation - Exception -

Imputation for protection of interest -

Interest of the person has to be real and legitimate when communication is made"

27) The appellant relying on the above said citations in his written argument at para 16 submitted that when PW.1 and PW.2 have categorically admitted in their evidence that there were some kind of rearrangement to the 2009 reported figures V/s. The figures depicted in the 2010 Annual Report, the 'Cautious Mail on such differential reporting' was brought to the attention / notice of the company's Board of Directors/ appropriate authority, in 'good faith' for the Judgment CrI. Appeal No.25248/2018 benefit of the long standing company's reputation and for the benefit of those who are minority share holders in the said company, thus the same was for protection of his [appellant] and other shareholders interests' which action clearly and beyond all reasonable doubt falls within the ambit of the first, eighth and ninth exception to section 499 of IPC and the appellant is entitled to the benefit of the said exceptions. The counsel for the appellant submits at para No.15 of written arguments that for sake of arguments even it is held the accused sent email Exp4, same is sent in good faith and in the larger interest of share holders of ITC Ltd., (a public limited company, wherein

the appellant is also a share holder in the said company) which communication cannot be justifiably regarded as 'Imputation'.

28) The appellant counsel mainly relied upon exception first, eighth and ninth to section 499 of IPC which reads thus:-

Judgment Crl. Appeal No.25248/2018 "499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. First Exception.--Imputation of truth which public good requires to be made or published.--It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact. Eighth Exception.--Accusation preferred in good faith to authorised person.--It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Judgment Crl. Appeal No.25248/2018 Ninth Exception.--Imputation made in good faith by person for protection of his or other's interests.--It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good."

But before the Magistrate Court the accused has not led his oral evidence and not marked any documents to prove his defence taken stating that he has sent email in good faith as stated above. Hence the contention of the appellant / accused has remained mere say, without proving the same by way of oral and documentary evidence and mere say of accused is not sufficient to accept. No doubt ExP4 E-mail discloses regarding allegations made against the complainant in respect of the financial matters of the company of 2009-2010 by the accused. As on the date of sending E-mail the accused / appellant was not employee in the complainant company. Further the accused / appellant Judgment Crl. Appeal No.25248/2018 has not produced any document to show that he is share holder in the complainant company. The appellant / accused has not led evidence to prove that he is share holder in the company by producing necessary documents. Hence the accused has failed to prove that as on the date of issuing E- mail dated 08/10/2012 he was share holder in the complainant company, but as on the date of sending E-mail dated 8/10/2012 he was not employee of the complainant company. Hence E-mail sent to PW.2 Secretary of the company as per ExP4 amounts to defamatory in nature. Hence the appellant has failed to prove his defence that in good faith E-mail sent by him. Hence the citations referred by the appellant are not applies to the stand taken by him. Further the Magistrate court ordered and sentenced directing accused to pay fine of Rs.5,000/- and in in default under go simple imprisonment of 30 days for offence punishable U/S 500 IPC. Hence giving benefit U/S 360 Cr.PC to the accused is not necessary. The Magistrate court in its judgment properly appreciated the oral and documentary Judgment Crl. Appeal No.25248/2018 evidence and properly came to conclusion in convicting the accused. Hence interference of this court in the judgment passed by the Magistrate court is not needed. Therefore I answer Point No.1 in Negative.

29) Point No.2:-

In view of above discussion I proceed to pass the following:

ORDER The Appeal filed U/S 374(3) of Cr.PC by the appellant/accused is hereby dismissed.

The Judgment of conviction and sentence passed by the XLIII Additional Chief Metropolitan Magistrate Bengaluru in CC No.55631/2015 on 01/12/2018 for an offence punishable U/S 500 IPC is hereby confirmed.

Judgment Crl. Appeal No.25248/2018 Send back the original records in C.C.No.55631/2015 to the XLIII Additional Chief Metropolitan Magistrate Bengaluru along with certified copy of Judgment of this appeal.

(Dictated to the Judgment Writer, typed by him, then taken printout and corrected, signed and pronounced by me in the open Court on this the 17th day of October 2020).

(Smt.Suvarna K. Mirji) XIII Addl.City Civil and Sessions Judge, Mayohall Unit: Bengaluru Judgment Crl. Appeal No.25248/2018 17/10/2020 A: MVD R: RMDR Orders Order pronounced in open court:

vide separate detailed order.

The Appeal filed U/S 374(3) of Cr.PC by the appellant/accused is hereby dismissed.

The Judgment of conviction and sentence passed by the XLIII Additional Chief Metropolitan Magistrate Bengaluru in CC No.55631/2015 on 01/12/2018 for an offence punishable U/S 500 IPC is hereby confirmed.

Send back the original records in C.C.No.55631/2015 to the XLIII Additional Chief Metropolitan Magistrate Bengaluru along with certified copy of Judgment of this appeal.

XIII Addl. City Civil and Sessions Judge, Mayohall Unit, Bengaluru