

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Suit No.58 of 2024

Date of Decision : 24.12.2025

M/s Snow Flakes Resorts and Another

..... Plaintiffs/non-applicants

Versus

Gautam Thakur

.....Defendant/applicant

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹ No

For the Plaintiffs/non-applicants : Mr. Vikrant Thakur, Advocate.

For the Defendant/applicant : Mr. Maan Singh, Advocate.

Bipin Chander Negi, Judge (oral)

OMP No.102 of 2025

The present application has been filed under Order VII Rule 11 of the Civil Procedure Code seeking rejection of the plaint. The principal objection being that the plaint does not disclose any enforceable cause of action. It is contended that the alleged imputation in the plaint does not pertain to the plaintiffs. It is further contended that in the plaint an illusion of a cause of action by clever drafting has been tried to be created, hence, the same needs to be nipped in the bud. Besides, it is contended that two important considerations cannot be lost sight of: (a) the nature of the social media platform where the alleged imputation has been made which as compared to

a newspaper has far less seriousness attached and (b) the fact that a post made on a social media platform cannot be read in an isolation. Other than the aforesaid, it is contended that: (a) not availing of a statutory remedy under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 by the non-applicants/plaintiffs an aggrieved Social Media user against posts perceived to be defamatory; (b) delay on the part of the plaintiffs in approaching this Court after more than two months of posting of the alleged defamatory post and; (c) not seeking an injunction for an immediate take-down of the alleged defamatory post nor seeking a permanent prohibitory injunction in the prayer clause of the plaint collectively show that the plaintiffs did not perceive the impugned post at the contemporary time to have caused any legal injury to them or to their reputation.

2. Per contra, in the reply filed to the application, it is contended that the plaint and the documents placed on record along-with the same do disclose a cause of action for filing the suit, i.e., false imputation, publication thereof and substantial legal injury viewed in the context of the well set legal parameters with respect to defamation and, hence, the application deserves to be dismissed.

3. At the very outset, it would be appropriate to mention that the expression "cause of action" means every fact which would be necessary for the plaintiffs to prove, if traversed in order to entitle them to relief claimed in the suit. Whether the plaint discloses a cause of action or not is essentially a question of fact.

4. Other than the aforesaid, while considering an application under Order 7 Rule 11 of the Civil Procedure Code, only the averments made in the plaint, in their entirety in conjunction with the documents relied upon by the plaintiffs at the time of filing of the plaint are required to be looked at. The averments made in the plaint in their entirety are taken to be correct at the stage of considering an application under Order 7 Rule 11 of the Civil Procedure Code.

5. Civil defamation, though un-codified, in the Indian context is governed by common law principles derived from the English jurisprudence. It refers to a tortious wrong whereby a person makes a false imputation having the tendency to diminish another's reputation in the estimation of right-minded members of society. The essential constituents of civil defamation may be summarized as follows:

“(i) a false statement, whether written (libel) or spoken (slander); and defamatory in nature i.e., it must have the effect of lowering the reputation in the eyes of others (right-thinking members of the society);

(ii) publication of such statement to at least one person other than the plaintiff; and

(iii) identifiability, i.e., the statement must refer to the plaintiff either expressly or by implication

(iv) Absence of a valid defence such as justification, truth, or privilege.”

6. A man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. See *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221.

7. For something to be defamatory, injury to reputation is a basic ingredient. Something may be grossly offensive and may annoy or be inconvenient to somebody without at all affecting his reputation. *Collin's Dictionary* defines offensive, annoy and inconvenience, as follows:

"Offensive—

- (1) unpleasant or disgusting, as to the senses*
- (2) causing anger or annoyance; insulting*
- (3) for the purpose of attack rather than defence.*

Annoy.—

- (1) to irritate or displease*
- (2) to harass with repeated attacks.*

Inconvenience—

- (1) the state of quality of being inconvenient*
- (2) something inconvenient; a hindrance, trouble, or difficulty."*

See *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

8. In the case at hand, the alleged defamatory statement refers to one former Union Minister from the State of Himachal Pradesh (Mr. Anurag Thakur). In the alleged defamatory statement a false assertion qua ownership of plaintiff No.1 by Mr. Anurag Thakur is alleged to have been made. Other than the aforesaid, in the alleged defamatory statement, the inability of the former Union Minister from the State of Himachal Pradesh (Mr. Anurag Thakur) to contribute to the development of tourism in Manali has been commented upon. Besides the aforesaid, in the alleged defamatory post, it has been stated that expectations for the development of tourism in Manali have increased on account of the induction of Mr. Nadda in the Union Cabinet in Delhi. In the aforesaid facts and attending circumstances, it is Mr. Anurag Thakur who could have complained that the alleged defamatory statement tends to expose him to hatred, ridicule, or contempt, or to cause

him to be shunned or avoided by society, thereby lowering his moral or intellectual character in public estimation. The present suit qua defamation has not been filed by Mr. Anurag Thakur.

9. Had plaintiff No.1 in the concerned post been falsely described as engaging itself in nefarious activities or carrying on offensive trade, its impact would certainly have fallen on the business of plaintiff No.1 as the same would have adversely affected the reputation of plaintiff No.1. Besides, qua plaintiff No.1 had there been allegations of nefarious activities or carrying on offensive trade by plaintiff No.1, the pinch would have legitimately been felt by plaintiff No.2, the owner as the same would have adversely affected the reputation of plaintiff No.2. See *John Thomas v. K. Jagadeesan (Dr)*, (2001) 6 SCC 30, which is not the case at hand. Neither expressly or by necessary implication have allegations of any illegal activity by plaintiff No.1 been alleged nor has the plaintiff No.2 been referred to in the alleged defamatory statement. A false statement with respect to the ownership of plaintiff No.1 in the case at hand does not, in any manner, negatively impact the owner's character or standing in society neither does the same affect the economic value of plaintiff No.1.

10. In *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, the Apex Court in a three-Judge Bench noted/ruled, though in a different context, in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** (2012) 5 SCC 661, had stated that a company (juristic entity) has its own reputation. The publication of the alleged false imputation made on a whatsapp group "Manali Hoteliers Association" with about 700 members pertains to plaintiff No.1 which is not a juristic entity. Plaintiff No.1 is stated to be a four star hotel

located in Manali enjoying an outstanding reputation as a coveted destination consistently earning commendations, good reviews on platforms such as Trip Advisor etc. Reputation of plaintiff No.1 assessed in the plaint is based on the good opinion of others reflected on platforms such as Trip Advisor etc. The good opinion of others which is reflected on platforms such as Trip Advisor etc. is based on views expressed by customers who have come and stayed in plaintiff No.1's hotel. Moreover, "Manali Hoteliers Association" i.e the whatsapp group in the case at hand as the name suggests is a closed knit group comprising of "Manali Hoteliers" only. The same does not include tourists who visit Manali or tourists who visit Manali and stay with plaintiff No.1. Moreover, it is not the case of the plaintiffs that bad reviews on platforms such as Trip Advisor etc. with respect to plaintiff No.1 have happened subsequent to the alleged defamatory post in the case at hand.

11. Other than the aforesaid, the plaintiffs/non-applicants have not annexed any document with the plaint which evidences that any legal injury has been suffered by the plaintiffs/non-applicants on account of the alleged offending post. Evidence of loss of reputation of plaintiff No.1 is necessary.

12. Action must result in injury or harm or loss, it is only then that an action in tort will lie. See *Kaushal Kishor v. State of U.P.*, (2023) 4 SCC 1, at page 135 :Injury must be substantial capable of being assessed. Hence, no action would lie for words which have not inflicted any substantial injury as espoused in the "*de minimis*" principle.

In *Black's Law Dictionary* "*de minimis*" has been defined as follows:

*"The law does not care for, or take notice of, very small or trifling matters.
The law does not concern itself about trifles."*

To make words the basis of an action it is necessary to allege and prove that some substantial damage did actually follow post making of the same."

13. Subsequent to the alleged post made on whatsapp, significant decline in clientele, bookings, revenue of plaintiff No.1 is alleged to have taken place. However, conspicuous by absence is its impact on reviews on platforms such as Trip Advisor etc., on whose basis an outstanding reputation as a coveted hotel/destination was being claimed on behalf of plaintiff No.1 in the plaint nor have any documents to substantiate decline in clientele, bookings, revenue of plaintiff No.1 been filed alongwith the plaint. The alleged defamatory post, in the case at hand was made on 10.06.2024. A legal notice to the present applicant in this respect had been sent by registered post on 01.07.2024. The present suit was filed on 13.08.2024. Manali being a tourist destination has a peak season in the summers (May- June) the tourist influx ebbs during the monsoon season (July to August). Decline in tourist inflow at the time of issuance of legal notice and filing of the present suit in the case at hand is on account of low inflow of tourists in Manali during the monsoon season.

14. From a reading of the plaint, it is evident that the alleged defamatory post, in the case at hand was made on 10.06.2024 at approximately 09:54 a.m. (Paragraph-4 of the plaint). The alleged defamatory post has been reproduced in Paragraph-5 of the plaint. However, from a perusal of the documents appended along-with the plaint, especially Annexure-A, i.e., copy of the post, it is evident that what has been reproduced in the plaint is not the complete post. The entire conversation has not been placed on record, i.e., posts preceeding and posts succeeding the alleged defamatory post.

Subsequent to the alleged defamatory post, the plaintiffs had issued a legal notice to the present applicant. The same had been sent by registered post on 01.07.2024 (Paragraph-24 of the plaint).

15. A statutory remedy is available with an aggrieved Social Media user against posts perceived to be a harassment and/or defamatory. In this respect, there has been a significant legal development in the year 2021 whereby the users of social media platform have been empowered to seek immediate and efficacious relief against posts of users which in his/her opinion are defamatory or libelous. The aggrieved user has a statutory remedy under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('IT Rules 2021') to file its protest against an alleged defamatory/vulgar/abusive Tweet with the 'Grievance Officer' defined under Rule 2(k) of the IT Rules 2021, who is an officer appointed by the intermediary (i.e., social media platform in the present case) under Rule 3(2) and Rule 4(1)(c) of the IT Rules 2021. The said statutory regime has a mechanism of appeal against the decision of the Grievance Officer which is dealt with by a 'Grievance Appellate Committee' (defined under Rule 2(ka) of the IT Rules 2021) established by Central Government under Rule 3A of the IT Rules 2021. As per the scheme of the IT Rules 2021, the whole process of redressal of grievance raised by the user of an intermediary has been made time bound.

16. Upon accessing the website of a social media platform under the tab help center, the user has the option to file a report against an offending tweet to the Grievance Officer for India. The report has to be filled up online and under the listed reasons available to the users for protesting against the

offending tweet, abuse/harassment and defamation, are separately enlisted and recognized as grounds for filing a report.

17. In the facts of this case, the plaintiffs have not availed the said statutory remedy available to them under the IT Rules of 2021 immediately or any time thereafter and have in fact elected to file the present suit on 13.08.2024. The effect of non-availing of the statutory remedy and not even praying for an injunction for a take- down in the prayer clause of the plaint is significant.

18. The delay on the part of the plaintiffs in approaching this Court after more than two months of posting of the said impugned post further shows that plaintiffs did not perceive that the impugned post at the contemporary time had caused any legal injury to them or their reputation.

19. A social media platform like whatsapp is dynamic (fast moving medium) casual medium; it is in the nature of conversation rather than carefully chosen expression and interactive. People will tend to scroll through messages relatively quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. The said medium is not perceived by users of the said platform as a reliable and verified source of information. In contrast to a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. Great seriousness is attached to the content published in newspapers and magazines as they are read with the intent to collect and retain information.

20. Hence, when one is tasked with deciding how a whatsapp post would be interpreted by a social media user one must keep in mind the way in which such posts are made and read. Being a conversational medium, it would be wrong to engage in elaborate analysis of a single post. An impressionistic approach is much more fitting and appropriate to the medium. But, the impressionistic approach must take account of the whole post and the context in which the ordinary reasonable reader would read that post. A single impugned post should not be considered by Courts in isolation to ascribe meaning to what is said and also to decide whether such words are defamatory or not.

21. In this context, it would be appropriate to refer to the decision of the Hon'ble Delhi High Court dated 20.02.2025, passed in *CS(OS) 570 of 2024 and I.A. 34094-34098 of 2024*, titled as *Addictive Learning Technology Limited & Anr. vs. Aditya Garg & Ors.*. The relevant extracts are being reproduced here-in-below:-

"15. The alleged acts of defamation in the facts of the present case have been published on a conversational Social Media Platform ie., defendant no.3, therefore the longstanding jurisprudential understanding of defamation in the context of publications made in newspapers and magazines cannot be plainly applied to the facts of this case. In the case of newspapers and magazines, the readers presumably attach seriousness to the content published by the author/writer and rely upon it for information. The newspapers and magazines are read with the intent to collect and retain information and, therefore, it bears effect in forming of opinions. In contrast, the casual medium of a conversational social media platform such as 'X' is not perceived by the users of the said platform as a reliable verified source of information.

*15.1. In this context it would be apposite to refer to a judgment of United Kingdom, Supreme Court in *Stocker v. Stocker* [2020] A.C. 593, wherein the Court observed that while examining defamation claims emanating*

from social media content/tweets, Courts must consider the casual and fast-paced nature of the medium. It observed that this entails avoiding extensive analysis or too logical deductions of the tweets, and instead focusing on how a normal social media user would naturally read and react to the statement in its given context. The said Court further opined that the medium such as twitter (now known as 'X'), Facebook, Instagram etc., are all casual conversational mediums. The relevant paragraph of the judgment reads as under:

“39. The starting point is the sixth proposition in Jeynes-that the hypothetical reader should be considered to be a person who would read the publication-and, I would add, react to it in a way that reflected the circumstances in which it was made. It has been suggested that the judgment in Jeynes failed to acknowledge the importance of context see Bukovsky v. Crown Prosecution Service [2018] 4 WLR 13 where at para 13 Simon LJ said that the propositions which were made in that case omitted "an important principle [namely]..... the context and circumstances of the publication". 40. It may be that the significance of context could have been made more explicitly clear in Jeynes, but it is beyond question that this is a factor of considerable importance. And that the way in which the words are presented is relevant to the interpretation of their meaning- Waterson v. Lloyd [2013] EMLR 17, para 39.

41. The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.

42 In Monroe v. Hopkins [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:

“The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the

context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

43. I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.

44. That essential message was repeated in *Monir v. Wood* [2018] EWHC 3525 (QB) where at para 90, Nicklin J said: "Twitter is a fastmoving medium. People will tend to scroll through messages relatively quickly." Facebook is similar. People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. Some observations made by Nicklin J are telling. Again, at para 90 he said: "It is very important when assessing the meaning of a Tweet not to be over-analytical Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader.

... ..

(Emphasis supplied)"

22. It is apposite for the nature of issue which this Court is dealing with to refer to the judgment of Queen's Division Bench in *Monroe v. Hopkins* [2018] EWHC 433 (QB), wherein Warby J considered the approach and meaning

which is to be applied to the publications on platform X, which are alleged to be defamatory. Warby J was of the opinion that X as a social media platform is dynamic and interactive and a single impugned tweet should not be considered by Courts in isolation to ascribe meaning to what is said and also to decide whether such words are defamatory or not. The relevant paragraphs of the judgment read as under:-

“34. These well-established rules are perhaps easier to apply in the case of print publications of long standing such as books, newspapers, or magazines, or static online publications, than in the more dynamic and interactive world of Twitter, where short bursts of pithily expressed information are the norm, and a single tweet rarely exists in isolation from others. A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand, and which form part of what Mr. Price has called a "multi-dimensional conversation."

35. The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.”

23. Plaintiff No.2 alleges to be an entrepreneur and a prominent local political figure (Chairman of the Municipal Council). The defendant is also stated to be a political leader who harbours a grudge against plaintiff No.2

and therefore has sought to malign his integrity by linking his business with a prominent former Union Minister thereby implying improper financial benefits and impropriety in business dealings (See paras 7,11 and 14 of the plaint). The inferences drawn in the plaint are a mere figment of the imagination of plaintiff No.2. The business of plaintiff No.2 has not been linked to any notorious individual having criminal antecedents. Besides, keeping in view that whatsapp is dynamic casual conversational medium not perceived by users of the said platform as a reliable, verified source of information wherein it is wrong to engage in elaborate analysis of a single post in isolation, this Court is unable to persuade itself from a bare reading of the offending post that the same would lead a reasonable reader on the concerned whatsapp group to draw inferences as are set out in the plaint. The alleged post whereby it alleges Mr Anurag Thakur to be the owner of plaintiff No.1, the same is annoying in so far as plaintiff No.2 is concerned. It does not, in any manner, negatively impact the owner's character or standing in society. The same per-se is not defamatory. This Court for all the aforesaid reasons is, therefore, of the opinion that the plaint does not disclose any enforceable cause of action for filing the suit for defamation.

24. For the purpose of the present controversy, the first and the third aforementioned essential constituents of civil defamation are relevant. The first essential of civil defamation is the existence of false statement. The statement must be such that it tends to expose the plaintiffs to hatred, ridicule, or contempt, or to cause them to be shunned or avoided by society, thereby lowering their moral or Intellectual character in public estimation. It is not sufficient that the words are insulting or unkind; they must carry a false

and defamatory imputation when viewed through the lens of a reasonable person. Even Innuendo, where defamatory meaning is implied, not stated expressly, can satisfy this requirement, provided it would be so understood by those acquainted with the plaintiffs' background.

This extract is taken from *Manmohan Kalia v. Yash*, (1984) 3 SCC 499, at page 501 :

It is well-settled that where this doctrine is applied, it must be clearly proved that the defamatory allegation was made in respect of a person though not named yet so fully described that the allegation would refer to that person and that person alone. Innuendo cannot be proved merely by inferential evidence which may be capable of two possibilities.

This extract is taken from *M.J. Zakharia Sait v. T.M. Mohammed*, (1990) 3 SCC 396, at page 426 :

57. It is necessary, in this connection, to make a distinction between a purely libel action and an allegation of corrupt practice in an election petition. Both, for libel action as well as for an allegation of corrupt practice in an election petition, it is necessary to plead as well as to prove the extrinsic facts to spell out the innuendo meaning of the words complained of. However, whereas in a libel action it may further be necessary to prove that those with special knowledge of the extrinsic facts were likely to interpret or understand the words complained of in a defamatory sense, in an election action, it may not be necessary to do so and all that is necessary is to prove that the words complained of were reasonably calculated to prejudice the prospects of the defamed candidate's election. However, this latter distinction does not obliterate the similarity between the two actions, viz. that in each case in the first instance the defamation is to be spelt out by pleading the necessary extrinsic facts. In a libel action, the extrinsic facts constitute a cause of action whereas in the election action they constitute the corrupt practice. In other words, without them, there is no cause of action in the libel suit and no allegation of corrupt practice in an election petition.

25. The third essential is identifiability. The defamatory statement must refer to the plaintiffs expressly or by necessary implication, such that an ordinary, reasonable person acquainted with the plaintiffs would understand that the statement pertains to them. The aforementioned essential aligns with the maxim *certum est quod certum redid potest*, i.e., that is certain which can be made certain. It is not necessary that the plaintiffs be named; if the description is such that those hearing or reading it can reasonably infer the plaintiffs identity, the requirement is satisfied.

26. The Supreme Court in ***M.J. Zakharia Sait v. T.M. Mohammed (1990) 3 SCC 396*** held that where the plaintiffs allege that the defendant is guilty of publishing of false statement in relation to the personal character or conduct of the plaintiffs and such a statement is in innuendo; the meaning of the innuendo must be specifically pleaded in the plaint by stating the special or extrinsic facts which are in the knowledge of the plaintiffs. The relevant paragraphs 34 to 37 of the judgment read as under:-

"34. Duncan and Neil in their book on Defamation (1978 edn.) while referring to "innuendo" on page 17 onwards have stated that the law of defamation recognises that (a) some words have technical or slang meaning or meanings which depend on some special knowledge possessed not by the general public but by a limited number of persons and (b) that ordinary words may on occasions bear some special meaning other than their natural and ordinary meaning because of certain extrinsic facts and circumstances. The plaintiff who seeks to refer to an innuendo meaning has to plead and prove the facts and circumstances which give words a special meaning. He has also to prove that the words were published to one or more persons who knew these facts or circumstances or where appropriate, the meaning of the technical terms etc.

35. While referring to the test where identification depends on extrinsic facts, the learned authors have stated that where identification is in

issue, the matter can sometimes be decided by construing the words themselves in their context. More often, however, the plaintiff will be seeking to show that the words would be understood to refer to him because of some facts or circumstances which are extrinsic to the words themselves. In these cases the plaintiff is required to plead and prove the extrinsic facts on which he relies to establish identification and, if these facts are proved, the question becomes: would reasonable persons knowing these facts or some of them, reasonably believe that the words referred to the plaintiff.

36. Where identification depends on extrinsic facts these extrinsic facts must be pleaded because they form part of the cause of action.

37. The conspectus of the authorities thus shows that where the defamatory words complained of are not defamatory in the natural or ordinary meaning, or in other words, they are not defamatory per se but are defamatory because of certain special or extrinsic facts which are in the knowledge of particular persons to whom they are addressed, such innuendo meaning has to be pleaded and proved specifically by giving the particulars of the said extrinsic facts. It is immaterial in such cases as to whether the action is for defamation or for corrupt practice in an election matter, for in both cases it is the words complained of together with the extrinsic facts which constitute the cause of action. It is true that Section 123(4) of the Act states that the statement of fact in question must be "reasonably calculated to prejudice the prospects" of the complaining candidate's election. However, unless it is established that the words complained of were capable of being construed as referring to the personal character or conduct of the candidate because of some specific extrinsic facts or circumstances which are pleaded and proved, it is not possible to hold that they were reasonably calculated to prejudice his prospects in the elections. For, in the absence of the knowledge of the special facts on the part of the electorate, the words complained of cannot be held to be reasonably calculated to prejudice such prospects. Once, however, it is proved by laying the foundation of facts that the words in question were, by virtue of the knowledge of the special facts, likely to be construed by the electorate as referring to the personal character or conduct of the complaining candidate, it may not further be necessary to prove that in fact the electorate had understood them to be so. That is because all that Section 123(4) requires is that the person publishing the

complaining words must have intended and reasonably calculated to affect the prospects of the complaining candidate in the election."

27. In view of the foregoing discussion, the application filed under Order VII Rule 11 of the Civil Procedure Code is allowed and disposed of accordingly.

Civil Suit No.58 of 2024

In view of the order passed in OMP No.102 of 2025, filed under Order VII Rule 11 of the Civil Procedure Code, present Civil Suit/plaint is rejected, so also, the pending miscellaneous application(s), if any.

December 24, 2025 (KS)

(Bipin Chander Negi)
Judge