

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.6794 of 2015

ORDER :

The petitioners 1 to 4 are accused 1 to 4 of Crime No.163 of 2015 registered by Central Crime Station, Hyderabad, based on the report of the 2nd respondent who is an I.P.S. Officer and husband of so called victim Smt.Smita Sabharwal, an I.A.S officer. The quash petition is filed by the petitioners/accused, on the report of the 2nd respondent supra by showing the 1st respondent-State represented by the Public Prosecutor of the crime registered for the offences punishable under Sections 509 I.P.C, Section 67 of the Information Technology Act and Section 3 read with 6 of Indecent Representation of Women (Prohibition) Act.

2) The report of the defacto-complainant, dated –nil- addressed to the Joint Commissioner, Detective Department of Hyderabad police with endorsement dated 04.07.2015 by said Joint Commissioner to the Sub-Inspector, Chain duty to register crime and hand over to A.C.P. Chandra Sekhar Goud for investigation, reads that:

“I, Dr.Akun Sabharwal, 38 years, S/o.Sh.D.P.Sabharwal, am a resident of PJ 32, Officers’ colony, Panjagutta, Hyderabad. I am a Government servant and am presently posted as Controller of Drugs, Government of Telangana.

I am married to Smt.Smita Sabharwal, a Government servant posted as Additional Secretary to the Chief Minister of Telangana. We were married on 10th November, 2003 and have two children.

I bring to your notice the following facts:

A weekly magazine "Outlook" in its July 6, 2015 issue, on Page 16, has printed an article under the column "Deep Throat" and title "No Boring babu". (A copy of the same is attached herewith).

This above mentioned article, by words and by the exhibition of a visible representation in the form of a cartoon, has intended to **insult the modesty** of my wife Smita Sabharwal.

The accused have by act of publishing and printing it intended that the same is seen by my wife Smita.

I submit the following to explain the above statement:

The term Modesty has not been defined in IPC. However, in the famous case of Major Singh Lachhman Singh V/s The State on 30 May, 1963, the Shorter Oxford English Dictionary (Third Edition) definition of the word "modest" in relation to woman has been taken. It says that modesty is "Decorous in manner and conduct; not forward or lewd; shame fast". Hence, in relation to woman, "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct".

Also, in the case of Swapna Barman Vs. Subir Das the Hon'ble Court has stated "Under Section 509 that the word 'modesty' does not lead only to the contemplation of sexual relationship. The section includes indecency."

The above mentioned story in Outlook India magazine along with the caricature, written & printed by the accused, are completely disrespectful, demeaning, distasteful and importantly extremely misogynist and sexist in nature. The same has been done with an intention to insult the modesty of my wife, Smita.

The article consist of 11 sentences. Of these, the following 8 are an insult to the modesty of a woman.

Sentence 1: “*The portfolio* of a junior bureaucrat, who is posted in the Telangana CM’s office, *is a mystery*.”

Sentence 4: “The lady is present at every meeting and seen in almost every official photograph sent out by the CMO”.

Sentence 5: “But what she does exactly is a puzzle.”

Sentence 6: “She makes fashion statement with her lovely saris and serves as ‘eye candy’ at meetings, admit leading party politicians”.

Sentence 8: “She knows exactly what time the CM will arrive and leave the office.”

Sentence 9: “The lovely lady, known for her ethnic style, recently stunned all by appearing in a trendy trouser and frilly top at a fashion show”.

Sentence 10: “And for once, she wasn’t sitting in an official meeting.”

Sentence 11: “But this appearance too made for a great photo op”.

The above sentences are accompanied by a cartoon showing a lady walking on a stage/ramp with the CM of Telangana Sh.K.Chandrasekhar Rao holding a camera and 2 other persons, dressed as politicians, jeering at her.

The article read as a whole along with the caricature is written, printed & published with an intention to insult the modesty of a woman, in this case my wife Smita Sabharwal.

I would also like to draw your attention to the fact that the cartoon (in the publication) accompanying the article is an **indecent representation** of women- depiction of a woman in such way as to have the effect of being indecent, or derogatory to, or denigrating women.

In addition to above, I would also like to state that the

above mentioned article and the accompanying caricature were on the internet website <http://www.outlookindia.com>. Thus, the accused, in this matter, have **published and transmitted** obscene material in **electronic form**. I request you to investigate on this front also.

The above article has been written by Ms.Madhavi Tata, W/o Arun Kumar, Occupation: Assistant Editor (Hyderabad), Outlook India, D.No.3-5-315, 2nd Floor, Street No.7, Vittalvadi, Narayanguda, Hyderabad-500 029.

The cartoon has been made by Sri Saahil, S/o.not known, C/o.Outlook India Pvt. Ltd., AB 10, SJ Enclave, New Delhi-29.

The editor of the above article and the caricature along with it, is Sri Krishna Prasad, Editor in Chief, Outlook India, C/o.Outlook India Pvt. Ltd., AB 10, SJ Enclave, New Delhi-29.

The above article, caricature etc. has been printed and published by Sri Indranil Roy, S/o.not known. The above has been printed at Rajhans Enterprises, 134, 4th main road, Industrial town, Rajaji Nagar, Bangalore – 560 044.

I believe that the above mentioned 4 accused may have been supported by others in the above offence. I humbly request you to investigate into this and whether the above alone conspired in the commission of the above crime or were assisted/helped by other individuals.

I request you to register the above complaint under relevant sections of law and investigate.”

3) Pursuant to which, the crime is registered on even date at 16.00 hours, for the offences referred in para No.1 supra.

4) Impugning the said crime registered and pending under

investigation, the quash petition is filed saying the allegations in the report of the defacto-complainant Dr.Akun Sabharwal (repeated in the quash petition between paras 1 to 6) with the contentions in the quash petition paras 7 to 13 that;

4(a) The aforesaid material no way attracts ingredients of any of the alleged offences for which the crime is registered and it is no way in the alleged offending publication named the defacto-complainant's wife and in fact it is complainant's wife who is chosen of her own from will and volition to identify herself not only by legal notice dated 30.06.2015 but also by way of public statements and other publications and she has placed her matter voluntarily in the public domain and such conduct on the part of her amounts to creating victims through publicity on one hand and on the other hand the complainant is making grievance against the petitioners in regard to the alleged publication and the report of the defacto-complainant to the police is not a bonafide one and it is intended only to intimate and harass the petitioners and the others associated with the publication of the 'outlook' magazine.

4(b) The further contention is that the complainant's wife on one hand cause issued to two of the petitioners legal notice dated 30.06.2015 making certain demands upon the petitioners and on the other hand she did not even wait for a single day before she went to the public with all her allegations against the alleged publication, without giving time to respond to the legal notice, and as a matter of fact on the date of notice issued by the complainant's wife, she cause to be published a detailed information to the press leading to the publication of several articles and reports in various newspapers including the one published in the Deccan Chronicle issue dated 01.07.2015, what is

worse the complainant's wife falsely informed the press that she had sued, 'outlook' magazine for slander viz., that she filed a defamation case against the magazine for the allegedly offending publication.

4(c). It is further averred that even the allegations contained in the notice dated 30.06.2015 were also different in tone and tenor from those contained in the report of the defacto-complainant resulting in registration of the crime, that the Petitioners only received legal notice dated 30.06.2015 on 06.07.2015 which is long after the complainant's wife had already gone public through various mediums in regard to the alleged offending publication, that consequent upon the actions of the complainant's wife, the petitioners are receiving threats of physical harm and in particular the 1st petitioner compelled her to leave Hyderabad for the sake of her safety, that the petitioners very well believe that the complainant and his wife cause giving the intimidating and threatening calls, text messages and e-mails to the petitioners by attempting to threaten and intimidate them for ulterior motives and the complainant is resorting to police machinery in registration of the crime is also a clear and evident case of misusing and abuse of the machinery of criminal law.

4(d). It is further contended that, immediately on 01.07.2015 the petitioners, in fact in accordance with their ethics and principles, as responsible journalists published on the 'outlook' magazine website <http://www.outlookindia.com>, setting out their stand and position in regard to the alleged offending publication and by expressing regret, if any offence has been unintentionally or inadvertently caused to anyone and in the very next issue of 'outlook' magazine dated 20.07.2015, the petitioners carried an

even more expanded version of clarification and regret that had been published on the 'outlook' website magazine and thereby showing contrition for any annoyance that may have been caused unintentionally or inadvertently by the publication of the alleged offending publication; however, the real aim and intent of the complainant's wife was not to raise any genuine grievance against the petitioners, the complainant's wife cause the police complaint in question to be made by her husband on 04.07.2015 and thereby further creating victimization and publicity.

4(e). From this, it is contended in the quash petition further that the complaint does not disclose or make out the ingredients of the offence under Section 509 I.P.C or Section 67 of the Information Technology Act, 2000 or Section 3 of Indecent Representation of Woman (Prohibition) Act, 1986 or for that matter under any other penal provision and mere repetition of words of various provisions in the police report by the defacto-complainant would not constitute the ingredients of any offence and the harm alleged to have been caused by the publication, if any, is too slight and does not warrant any action and thereby, the F.I.R. is liable to be quashed.

4(f). In the grounds for quashing besides the above and by even repeating the same contended that none of the offences made out from the allegations in the report (F.I.R) even taken at their face value, but for to seek vengeance against the petitioners at the behest of some other publishers or news channels or other persons who are inimical to the petitioners, the 2nd respondent/defacto-complainant has no locus standi to lodge the report on behalf of his wife since he is not the aggrieved party by such publication, nor there was any explanation as to how his wife

was prevented from giving a report to the police by herself and the report is nothing but attempt to curb the press freedom and to intimidate and harass the petitioner so as to prevent them from exercising their professional journalism freely and without fear that too when subject publication does not disclose name of Smita Sabharwal nor it is stated in the report as to how the publication was attracted against her and the lady shown on the stage in the caricature accompanied in the publication does not even remotely resemble to Smita Sabharwal to attribute and the publication carried in humour/satire section of the magazine was not intended to demean, malign or defame anybody nor the caricature or cartoon is obscene muchless indecent or derogatory or denigrating of woman in any manner as per the standards of a reasonable man and current norms and mores of society and thereby sought for quashing the F.I.R.

5) From the above and after appearance of the defacto-complainant, through Advocate including by change of Advocate and the State (R1) represented by Public Prosecutor and from the material placed by both sides including the propositions with reference to the respective contest, heard and perused the material on record.

6) The magazine 'Outlook' is a weekly magazine undisputedly. On the very and every printed and published weekly magazine cover page, it undisputedly incorporates its website 'www.outlook.com' on the left top. Coming to the relevant weekly magazine of July 1st and 2nd weeks, it was released on 4th July, 2015 with 76 pages including cover pages that was published for the week of July 7th to 13th as can be seen on left bottom of the 2nd page with full particulars of Editorial Board, registered office,

business office, head office and other offices and persons concerned with Photography and design etc, also including for website I.P address.

7) Undisputedly the defacto-complainant Dr.Akun Sabharwal and his wife Smt.Smita Sabharwal are staying in the same premises, it is as can be seen from the complaint address at Page No.32, Officers Colony, Punjagutta, Hyderabad is one of the earmarked Government quarters. The police report as referred supra of the defacto-complainant is undisputedly prepared and submitted to the Joint Commissioner of Police on 04.07.2015 as per the endorsement of the Joint Commissioner of Police. Admittedly there is nothing in the police report to say same is a view of the defacto-complainant's wife, the alleged victim if at all aggrieved. Admittedly, there is no reference to the notice dated 30.06.2015 issued by the defacto-complainant's wife to the petitioners seeking to tender apology in their next publication. Undisputedly said notice she cause issued not even reflected in the police report of the defacto-complainant with any little whisper about her seeking to tender apology by petitioners and if so, how he can still maintain the report to the police on his own or by stepping into the shoes of his wife though there are no any power of attorney for locus standi, to set the law in motion. Here it is the important requirement from the above for she already chosen not to set law in motion to take any criminal or civil recourse by calling for tender of apology.

8) It is quite an important fact supposed to mention in the police report by the defacto-complainant with all prudence of a common, about notice already issued by his wife seeking to tender apology and there is no explanation for the suppression of the

material fact as it got its own bearing for registration or not of the crime from the report, had it been mentioned of his wife already sought for tendering apology within the time stipulation or for a reasonable time pursuant to which to wait, before reporting for registering a crime. In fact, as can be seen from the relevant page of the caricature/cartoon and the contents of the publication, the 'Deep Throat' words used on the left top of the relevant page is not shown particularly for this page. 'Deep throat' as per **Collin's** English dictionary meaning an anonymous source of secret information. It is a sign to draw attention if at all and not with any significance otherwise. Even the Outlook publication weekly volume LV No.27 released on 04.07.2015 in the week of July 7-13 at 76 pages at page No.14 the words "Deep Throat" with some type of words and the symbol within which it is embossed is reflecting. That page No.14 of the weekly magazine 04.07.2015 reflects a cartoon relating to Chattisgarh with title favoured view. Now, coming to the cartoon in question at page No.16 of the magazine dated 06.07.2015, reflects in the State of Telangana with title of 'No Boring Babu'. The wording is "the portfolio of a junior bureaucrat, who is posted in the Telangana CM's office is a mystery. She used to be posted in a district earlier. But things changed all of a sudden after the elections. The lady is present at every meeting and seen in almost every official photograph sent out by the CMO. But what she does exactly is a puzzle. She makes a fashion statement with her lovely saris and serves as 'eye candy' at meetings, admit leading party politicians. In fact, it's this bureaucrat who calls up other officials in the CMO and asks them to come for meetings. She knows exactly what time the CM will arrive and leave the office. The lovely lady, known for her ethnic style, recently stunned all by appearing in a trendy

trouser and frilly top at a fashion show. And for once, she wasn't sitting in an official meeting. But this appearance too made for a great photo op."

9) The material papers and citations filed by the defacto-complainant through his counsel on 16.09.2015 running in 18 pages of which page No.18 is the 'outlook' weekly magazine dated 04.07.2015 referred supra and page No.17 is the relevant page of the title in red and white combination of words and background border – 'to fashion'. It reflects in the middle the photo of Smt.Smita Sabharwal and Dr.Akun Sabharwal together with his dress full hands sleeve and pant and her dress-trouser and top with half sleeve at a fashion show at the Park in the City, Hyderabad. That is in fact part of the so called offending publication and therefrom if a overall reading of the caricature/cartoon with the contents supra referring to her appearance in a fashion show appearing in a trendy trouser and prilly top that is reflecting in page No.17 of the material papers of the defacto-complainant, no doubt points out that the caricature/cartoon and the contents of the publication reflects on her though she was not named. The fact remains, she wore the trouser and top in the fashion show as can be seen from page No.17 placed very reliance by the defacto-complainant in the course of submission at the hearing of the quash petition. The publication mainly, if at all is she makes a fashion statement with her lovely sarees and serves as eye candy at meetings, admit leading party politicians. As per the new Oxfod Dictionary of English, Indian Edition, 4th impression of the year 2002 at page 654, eye candy mean a mass known, a informal visual image/s that is/are superficial, attractive and entertaining but intellectually undemanding. The informal noun as per encyclopedia (wikipedia)

speaks someone or something that is visually attracting or pleasing to look at.

10) Coming to the three sections under which the crime registered supra from the above as to how far it attracts the penal consequences; so far as the offence under Section 509 I.P.C and Sections 3 read with 6 of the Indecent Representation of the Women (Prohibition) Act, 1986 concerned, the three Judge bench expression of the Apex Court in ***S.Khushboo V.Kanniammal***^[1] speaks that in deciding any obscenity or not of a reference to sex, the context and purpose for which the reference was made and anything could state, held must be taken into consideration as norm for determination. Obscenity has to be determined in accordance with contemporary community standards reflecting sensibilities as well as tolerance level of average reasonable person and even publication of a statement calling for social acceptance of pre-marital sex made by the appellant Smt.S.Khushboo, held does not make out the offence under Section 509 I.P.C. The Apex Court held in this regard in this case while dealing with other aspects including whether a statement is defamatory or not within the meaning of Section 499 and 500 I.P.C, and the scope of Section 482 Cr.P.C inherent powers to quash the crime proceedings, at para No.23 that Section 509 I.P.C criminalizes a word, gesture or act intending to insult the modesty of a woman and in order to establish this offence, it is necessary to show that the modesty of a particular woman or a readily identifiable group of woman has been insulted by a spoken word, gesture or physical act.

11) From this, now coming to the publication in question of the caricature and coming to Indecent Representation of Woman

(prohibition) Act Sections 3 to 6 concerned in *Khushboo* supra, it is with reference to the facts of the appellant Smt. *Khushboo* expressed her opinion that is covered by the publication in a magazine fortnightly in *India Today* of September, 2005, as part of survey, wherein she has noted increasing incidence of pre-marital sex and called for social acceptance of the same and held that the object of Sections 3, 4 and 6 of the Act, 1986 is to punish publishers and advertisers who not only disseminate material portraying woman in indecent manner and it cannot be used against a person whose statement although published had merely referred to incidents of pre-marital sex and called for social acceptance and the Apex Court in this regard observed in ***Khushboo*** supra that morality and criminality cannot be treated to be co-extensive, for not co-extensive including for the offences under Section 509 I.P.C or 500 I.P.C or 292 I.P.C or Sections 3, 4 and 6 of the Indecent Representation of Woman (Prohibition) Act, 1986. It is observed that the obscenity or not is to determine with reference to sex, in accordance with contemporary community standards as well as tolerance level of average reasonable person and publication of any statement regarding pre-marital sex in news, magazines is not in the nature of obscene communication.

12) As referred supra in the material filed by the defacto-complainant page No.17 reflects with title resorting to fashion including the caricature/photo print of a model at the show in the right bottom item No.2 and of a model at the show left top leave about others in showing the contemporary community standards reflecting the sensibilities as well as tolerance levels of ordinary or average reasonable person as to the obscenity or not and in contrast to it, coming to the caricature in question covered by the

crime of the Outlook Magazine of the week ending by 6th July, 2015 from relevant page 16, the mere caricature no doubt may be said at the level of tolerance to an average reasonable man with no obscenity. However, from reading of it as a whole, the attention of other persons in the caricature is something more than mere tolerance level, leave about the same is obscene or not within the penal consequences of Section 3 r/w 4 of the Act, 1986 to decide further from the say of neither obscene nor intentional but only a satirical piece as also referred in the legal notice and not even as an advertisement to promote a product, service, rent or job or recommending something within the meaning of Section 2(a) of the Act, 1986 even to apply Sections 3 and 6 of the Act for which offence also the crime is registered.

13) In this context, coming to Section 67 of the Information Technology Act for its application it must be not only obscene material in electronic form but also with intend to deprive and corrupt persons without which the provision has no application. The Apex Court in other expression in ***Ajay Goswamy V. Union of India***^[2] at page No.165, para No.57 on the text of obscenity observed also referring to ***Veerendra V. State of Punjab***^[3] with reference to Article 19(1)(a) and (g) and 19(2) and 19(6) of the Constitution of India, that this Court has time and again dealt with the issue of obscenity and laid down law after considering the right to freedom of expression enshrined in Article 19(1)(a) of the Constitution of India, it's purport and intent and laid down the broad principles to determine and adjudge obscenity and at para No.58 observed in a recent judgment of ***Directorate General, Doordarshan V. Anand Patwar***^[4] referred to Hicklin test laid

down in ***R.V. Hicklin***^[5], at page No.446 para No.32 by the Apex Court that whether the average person applying contemporary community standards would find that the work taken as a whole appeals to the prurient interest- - - - -“. Whether the work depicts or describes in a patently offensive way, sexual contact specifically, defined by the applicable State Law and whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value. At para No.59 referring to the expression of the Apex Court in ***Chandrakant Kalyandas V. State of Maharashtra***^[6] at pages 693 and 694 para No.12 – that the standards of contemporary issue in India are also fast changing- - - -. The adults and adolescents have available to them a large number of classics involves stories and basis of illiteracy which have a context of sex, love and romance, as observed in ***Udeshi (Ranjit B.Udeshi V. State of Maharashtra)***^[7], if a reference to a sex by itself is considered obscene, no books can be sold except those which are purely religious. In the field of art and cinema also the adolescent is shown situations which even a Collector of a century ago would be considered derogatory to public morality, but having regard to the changed conditions or more taken for granted without in any way tending to B-base or debauch the mind. What we have to see is that whether a clause, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become deprived by reading it or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must therefore be judged from this aspect. At para No.60 of ***Ajaygoswami*** supra referring to ***Samresh Bose V. Amal Mitra***^[8] at para No.29 page No.313 observed- - - - - as laid down in both the decisions of this Court

earlier referred to, a question whether a particular article or story or book is obscene or not does not altogether depend on oral evidence, because it is the duty of the Court to ascertain whether the book or story or any passage therein offend the provisions of Section 292 I.P.C.- - - to adjudicate the question, may if the Court considers it necessary rely to an extent of on evidence or views of leading literary person is, if available, for its own appreciation and assessment and for satisfaction of its own consciousness.

14) Thus, the decision of the Court must necessarily be on an objective assessment of the book or story or article as a whole with reference to the passage complained of therein. The Court must take a overall view of the matter charged as obscene must also be considered by itself and separately to find out. Whether it is so cross and which is obscenity so pronounced that it is likely to deprave and corrupt those whose minds are open to influence of this sort and into whose hands the book is likely to fall. Though the Court must consider the question objectively with an open mind, yet in the matter of objective assessment the subjective attitude of the Judge hearing the matter is likely to influence, even though unconsciously, his mind and his decision on the question. A Judge with a puritan and prudish outlook may on the basis of an objective assessment of the book or story or article consider the same to be obscene. It is possible that another Judge with a different kind of outlook may not consider the same book to be obscene on his objective assessment of the very same book. The concept of obscenity is moulded to a very great extent by the social outlook of the people who are generally expected to read the book etc, it is beyond dispute that the concept of obscenity usually differs from country to country depending on the standards of

morality of contemporary society in different countries. In our opinion in judging the question of obscenity, the judge in the first place should try to place himself in the position of an author and from that view point of the author, the Judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary and artistic value. The Judge should thereafter placed himself in the position of a reader of every age group whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A Judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of Section 292 I.P.C by an objective assessment of a book as a whole and also of the passages complained of as obscene separately.

15) It is observed in para No.61 of ***Ajaygoswamy supra*** that the American Courts from time to time have dealt with the issues of obscenity and laid down parameters to just obscenity - - - while determining whether a picture is obscene or not; that it is essential to first determine as to quality and nature of material published and category of readers - - -. Nudity is not enough to make material legally obscene. The position in the home of obscene newspaper is constitutionally protected, except where such materials constitute child pornography. At para No.62 on contemporary society observed in order to shield the minors and children, the State should not forgot that same contents might not be offensive to the sensibilities of adult men and women. In para No.66, it is observed that where art and obscenity are mixed what must be seen is whether the artistic, literacy or social merit of the

work in question twice it is obscene contained as held in ***Ranjit D.Udeshi*** supra. In para No.67 regarding contemporary standards, it is observed in judging as to whether a particular work is obscene, regard must be had to contemporary mores and national standards. At para No.70 it is observed referring to the expression in ***S.Rangarajan V. P.J.Ram***^[9] at para No.45 that the commitment to freedom of expression demands that, it cannot be suppressed, unless the situation created by allowing the freedom of press, the community interest is endangered- - - -. The expression of thought should be intrinsically dangerous to the public interest likely, equivalent of a spark in a powder keg. At para No.71 on the test of ordinary man observed the test for judging a work should be that of an ordinary man of common sense and prudence and not an out of ordinary or hyper sensitive man as held by Justice Hidayatullah, Chief Justice in ***K.A.AbbasV. Union of India***^[10] para No.49 that if the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped.

16) At para No.80, the Apex Court in ***Ajaygoswamy*** supra, ultimately observed referring to the expressions in ***United States V. Play Boy Entertainment Group Inc.***^[11] of the year 2000, that in order for the state - - - - - to justify prohibition of a particular expression of opinion, it must be able to show that, it is akin was caused by something more than a mere desire to avoid the discomfort and unpleasantness, that always accompany an unpopular view point. Therefore, in our view in the present matter the petitioner has failed to establish his case. At para No.81 observed, therefore, we believe that fertile imagination of anybody,

especially of minors could not be a matter that should be agitated in the Court of law.

17) Thus, mere inconvenience or discomfort or even the caricature with the contents as well in the feeling or opinion formed by the complainant as affecting or intended to insult the modesty of a woman or obscene is not suffice to attract the penal consequences but for the duty of the Court by reading the material as a whole as to its obscene and while controlling the freedom of speech and expression under Article 19 of the Constitution of India to decide as to any clear and present danger to the society also for imposing any restriction or to make the act a penal consequence.

18) From this, coming back to the other factual background to decide how far the so called victim no other than wife of the defacto-complainant even felt from the said caricature with the contents of the publication in the magazine that is also one of the criterion as part of the duty of the Court from the two tests in sitting in the position of the person complained of and in sitting in the position of common man too; undisputedly the victim cause issued a legal notice through her counsel Mrs.B.Rachana Reddy, Advocate at Hyderabad dated 30.06.2015 to A-3, Krishna Prasad, Editor in Chief and A-1, Mrs.Madhavi Tata, Assistant Editor of Hyderabad of the Outlook Publishing (I) Private Limited magazine for the article referring to the Outlook issue dated 06.07.2015 to say for more clarity at the cost of repetition that the issue is ending of the week by 06.07.2015 commencing from 29/30.06.2015. The legal notice is of the even date i.e., 30.06.2015. The wording from the victim's reading of the publication covered by the contents of the caricature/cartoon and

the writings what she referred as the caricature and satirical article in the Outlook issue dated 06.07.2015 on the subject is a defamation and slander, at best her idea if at all for civil liability and if not also a criminal liability for defamation defined under Section 499 I.P.C and therefrom there is nothing to say she felt and suffice to say she did not even feel the cartoon-cum-caricature-cum-the contents in writing of the article in issue is with intent to outrage her modesty or obscene, but for at best affecting or lowering her reputation.

19) What the contents of the notice from the above reads are that it is under the explicit and specific instructions of the advocate's client Mrs.Smita Sabharwal, I.A.S of PJ-32, Officer's Colony, Panjagutta, Hyderabad (same address of the complainant in his police report), the Advocate issued the legal notice to the said Editor-in-Chief and Assistant Editor to the effect that, her client is a Government employee more specifically an I.A.S officer belonging to Telangana cadre and is presently functioning as an Additional Secretary to the Chief Minister's Office (CMO) holding several important administrative portfolios in her capacity as an Additional Secretary that her client is an acclaimed officer of the I.A.S, having an impeccable service record of 14 years during which time several important and noteworthy milestones as an I.A.S Officer have been achieved during the discharge of assigned administrative duties. Pursuant to this accomplished background and while her client has been dutifully and diligently discharging her duties pursuant to her designation as an I.A.S officer, who is designated as the Additional Secretary to the C.M.O, her client was utterly flabbergasted, shell shocked, angry and extremely disturbed by the completely baseless, slanderous, defamatory distasteful article and intentional vilification campaign that the

notice addressee through their magazine Outlook's July 6th, 2015 issue have unleashed against her by portraying her client in an unsightly, distasteful and extremely sexist light vis-à-vis a caricature representation and an equally distasteful, slanderous defamatory and importantly utterly baseless and falsified Article/write up about her in the notice addressees magazine column 'Deep Throat' at page 16-- -- -- -- --, that the notice addressees may try and take umbrage in the fact that the 'eye candy' that they so sarcastically referred to was not named in the impugned Article, in the column 'Deep Throat' page No.16 of July 6th, 2015 edition. However, it is amply clear from your innuendoes, satirical references of past service and importantly the alleged appearance at a fashion show, that is a foregone conclusion, that said satirical Article is clearly directed at her client, making her seem superfluous and irrelevant, in spite of all her hard work, which is inexcusable, that since the damage to her client's professional and personal image has already been done, her client demands the notice addressee to make a detailed public apology through 'Outlook' that is as visible and of the same dimensions and verbiage as the frivolous and vexatious article that the notice addressee to think is satirical, that their public apology cannot be a nondescript formal apology in a tiny section of their magazine, a detailed, apology that meets the outrage and hurt that her client has been subjected to, including addressing issues of female professionals and 'outlook's sexist attitude. Her client thereby cautions and warns the notice addressee if the public apology not delivered by them in their immediate next edition or within 15 days from the date of the notice, whichever is earlier, or does not meet her requirements or is to her satisfaction or if they deliberately choose to ignore the legal notice, she would have no

alternative but be constrained to take necessary and swift civil and criminal action against them, including but not limited to a defamation suit demanding exemplary damages and appropriate criminal action, the costs and legal consequences for which they alone shall be responsible, including the costs of the legal notice.

20) This notice contents referred supra only speaks mainly it is defamation and slander prone to criminal action for defamation and civil claim for damages for the defamation and nothing speaks of it outrages her modesty and intended to insult her modesty though used few words of the article with the caricature and contents of a whole as distasteful and baseless including in portrain that what she exactly does is a puzzle and her portfolio is a mystery or the same is extremely misogynist and sexiest in nature. There is nothing even to say the same is indecent representation within the provisions of I.R.W (P) Act or from the same in the electronic form to deprave and corrupt the persons to apply Section 67 of the Information Technology Act.

21) It is highly unbelievable of the defacto-complainant before reporting to the Joint Commissioner of Police (Detection) on 04.07.2015 is unknown of the said notice and even if at all known this vital and important fact, for not mentioning is nothing but suppression of a material fact and within the meaning of abuse of process by setting the law in motion vide decision ***Indu Dalmia V. State of A.P***^[12] para No.7 that parties cannot be allowed to make knowingly inaccurate statements or to conceal material facts with a design to gain some advantage, which is nothing but abuse of process. The expression of the Apex Court in ***S.J.S. Business Enterprises Pvt. Ltd. V. State of Bihar***^[13] at para

No.13, the apex Court observed categorically in this regard of what to mean an abuse of process that suppression of material facts tantamounts to abuse of process and it is further observed referring to several of expressions of the glove that as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.

22) On this aspect of abuse of process and its consequences; in ***State of Karnataka V. L.Muniswamy***^[14] it is observed that it allowing the proceeding to continue would be an abuse of process of the Court or the ends of Justice require that the proceedings are to be quashed the inherent power shall be invoked. A proceeding that not to be permitted to degenerate into a weapon and harassing or persecution. Ends of justice are higher than the things of mere law though justice must be administered according to the laws made by the legislature. Same followed by the Apex Court in ***Chandran Ratan Swamy V. K.C.Palani Swamy***^[15] by reiterating what is held in the guidelines of ***State of Haryana v. Bhajanlal***^[16] and also particularly from the expression in ***Jandu Pharmaceuticals V. Mohd.Shareful Haque***^[17] at para No.8 that it would be an abuse of process of the Court to allow any action which would result any injustice and prevent promotion of justice. In exercise of the inherent powers, Court would be justified to quash any proceeding if it finds that initiation or continuation of it amounts to abuse of process of the

Court or otherwise quashing of these proceedings would serve the ends of Justice and also followed ***Indermohan Goswamy V. State of Uttaranchal***^[18] para No.46 that, Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. It was ultimately observed in ***Chandran Ratan Swamy*** supra at para No.28 referring to the expression in ***Umasankar Gopalika V. State of Bihar***^[19] para No.20 that the doctrine of abuse of process of Court and the remedy of refusal to allow the trial to proceed is well established and recognized doctrine both of English Courts and Courts in India and for that conclusion referred Lord Morris in ***Connelly V. Director of Prosecutions***^[20] that the inherent power to prevent abuse of its process and control its own procedure must in a criminal Court including a power to safeguard that accused from oppression or prejudice.

23) It is because in the very notice 15 days time given from the date of notice and otherwise to publish in their immediate next edition whichever is earlier and the defacto-complainant not even filed the complaint as referred and detailed supra either by stepping into the shoes of the victim, his wife or filed on her behalf but of his own from his wording in the report and he is not even the person aggrieved and thereby not entitled to file police report when his wife from her notice supra not aggrieved to accuse for the offences supra but for to say same is defamatory to take civil and criminal recourse if no apology be tendered.

24) Thus, when the complainant's wife at best be the person aggrieved as defined by the Apex Court in ***S.Khushboo*** supra at

para No.13 referring to Section 199(1) Cr.P.C. for the offence under Section 499 read with 500 I.P.C of criminal defamation and equally for the offences under Section 3 read with 4 of the I.R.W (P) Act, 1986 and Section 509 I.P.C in saying that the complainants are not the persons aggrieved to institute and thereby not competent to institute the private complaints filed for any of the alleged offences supra.

25) At para No.38 of **Khushboo** supra, referring to the expression of the Apex Court in **M.S.Jayaraj V. Commissioner of Excise**^[21] it is observed that, the person aggrieved means a person who is wrongfully deprived of his entitlement which is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. Person aggrieved means a person who is injured or one who is adversely affected in legal sense. At para Nos.39 to 42, it is observed that we can also referred to an earlier decision of this Court in **G.Narasimha V. T.V.Chokkappa**^[22] - - - -. This section is mandatory and if a Magistrate was to take cognizance of the offence of defamation under Section 499, 500 and 501 I.P.C read with Section 199 (old Section 198) Cr.P.C. on a complaint filed by a person who is not aggrieved, the trial and conviction of an accused would be void and illegal.

26) In this context, it is also equally important to mention on the facts that even from the caricature and the other contents of the article as a whole complained off, it is in discharge of official administration of duties of Smt.Smita Sabharwal in the C.M.O as Additional Secretary and not in private capacity but for to a portion of it referring to appearance at a fashion show and as such, if at all

any complaint to be made pursuant to her legal notice for defamation, it must be with the permission/sanction of the Government concerned and through the Public Prosecutor concerned as contemplated by Section 194(4) Cr.P.C. The scope of law in this regard is considered in the recent expression of the Apex Court also reported in **Rajdeep Sardesai V. State of A.P.**^[23] and in fact, the learned counsel appearing for the defacto-complainant, by change of Vakalat, by name Sri Pappu Nageswara Rao is the counsel appeared therein on behalf of the defacto-complainant and his name is even referred in the expression particularly about his representation at para No.25, page No.246 of the Judgment for nothing to ignore the expression in not bringing to the notice of the Court or in raising the contention of it is premature to decide from the report what offences that or that not constitute including as to Sections 499 read with 500 I.P.C and what is required of sanction or bar of police report only to be decided at post final report and pre-cognizance stage. In **Rajdeep Sardesai** supra on facts, it was held on sufficiency of a sanction common to all the accused, with no need of individual sanctions against each of accused, by negating such a contention, at para No.32 of the expression. The scope of the law so far as defamation both civil and criminal is in fact dealt with in detail by this Court in answering several contentions raised in the recent expression of this Court in CrI.P.No.5448 of 2014 by judgment dated 27.11.2015 between **M/s.Bennett Coleman & Co. V. Dr.K.Sarat Chandra**.

27) When such is the case apart from the fact that the defacto-complainant is not an aggrieved person, as laid down by the expression in **Khushboo** supra for any of the offences as

observed therein where also the offences under Section 509 I.P.C and Sections 3, 4 and 6 of the I.R.W (P) Act, 1986 involved and the observation is clear to bind particularly from para No.13 of the judgment. Apart from it, it is not the complaint by the victim and it is not even on her behalf for the defacto-complainant to maintain, not by the waiting as required of the time stipulated in the notice issued by her to tender apology else to maintain civil and criminal proceedings for defamation. Here, in the complaint, there is no allegation about any of the offence made out against the petitioners under Section 499 of I.P.C to face the penal consequences of Section 500 I.P.C for which in fact the notice is given by wife of the defacto-complainant as so called victim and to that extent as aggrieved and indicated in the notice referred supra dated 30.06.2015 through her advocate.

28) It is important to note further that in the quash petition at para No.11, page No.7 it is categorically mentioned that on 01.07.2015 petitioners published on the 'Outlook' magazine website www.outlookindia.com expressing regret, if any offence has been unintentionally or inadvertently caused to any one and in the very next issue of Outlook magazine dated 20.07.2015 (for 14.07.2015 to 20.07.2015) they carried even more expanded version of the clarification and regret that had earlier been published on the Outlook magazine website showing contrition for any anonymous that may have caused un-intentionally or inadvertently by the publication of the alleged offending publication.

29) No doubt, it is the submission from the counsel for the defacto-complainant to quash petition-2nd respondent by filing material papers and particularly the electronic postal track and

courier receipt colour Photostat vide pages 14 and 15 as to courier service and page No.16 as to India Post online track record showing the postal 'item delivered' to Mr.Krishna Prasad at Sardar Jung Enclave, S.O, on 02.07.2015 at 17.29 hours and the courier service speak also the item delivered on 02.07.2015. The said courier service notice receipt shows from the advocate by name B.Rachana Reddy that was addressed to one G.Arun. The name in fact undisputedly not tallying to name of the petitioners Mrs.Madhavi Tata or Krishna Prasad, if at all to whom the notice is mentioned to issue or even Shahil Bhatia or Indranil Roy (the petitioners). Thus, the courier service is unrelated. No doubt, the postal track record from page No.16 of the material papers speaks that it was delivered on 02.07.2015 at 5.29 p.m to (A-3) Krishna Prasad i.e., Editor-in-chief, said legal notice is addressed among two addressees. The Outlook publication filed at page No.18 of the material papers of the defacto-complainant as referred supra was released on July 4th, published already before for the week of 7th July to 13th July with 76 pages. It no doubt no way covers any expressing of apology, but for in the next weekly published magazine for the week of 14th to 20th July as also stated in the grounds of quash petition page No.7, para No.11. In this regard it is the submission of the learned counsel for the quash petitioners with reference to the material on record that the next publication immediately after receiving of the notice though apparently is the one released on 04.07.2015 that is published for the week 7th to 13th July; it was already prepared compiled, printed and published by 02.07.2015 and thereby it was in the subsequent and next weekly magazine for the period from 14th to 20th July, 2015 and it is released before 11th July the apology covered as required in the

legal notice, which is within the 15 days time ending by 18th July (to count 15 days from 03.07.2015 as per Section 8 of the General Clauses Act by excluding date of service of notice) or release of the next immediate edition by 11th July published for 14th to 20th July whichever is earlier even from that notice date, whereas the report given is on 04.07.2015 to the police which is long before the notice waiting time. In this regard, it is the submission of the learned counsel for the defacto-complainant that it is not the criterion of when the news items be compiled and to be printed and published but must reflect in the immediate next edition. What the notice para No.14 contents speak relevant herein to say are “My client hereby cautions and warns you that if the ‘public apology’, is not delivered by you in your immediate next edition or within 15 days from the date of this notice, whichever is earlier, or does not meet her requirements or is to her satisfaction, or if you deliberately choose to ignore this legal notice, she would have no alternative but be constrained to take necessary and swift civil and criminal action against you, including but not limited to a defamation suit demanding exemplary damages and appropriate criminal action, the costs and legal consequences for which you alone shall be responsible, including the cost of this legal notice which is Rs.15,000/- so be warned and take notice”.

30) The notice when speaks immediate next edition or within 15 days whichever is earlier to say public apology in the next edition printed, to ignore the offending publication by not chosen for action further either for civil defamation or criminal defamation, else being constrained to take civil and criminal action for defamation it is a matter of common sense that cannot be asked to be kept in cold storage of next publication is the one to be

prepared compiled and published and to be released after receipt of the notice without which it is impossible to expect of the edition prepared, already to be released on 4th July for the week of 7th to 13th July, but for the next one for the week of 14th to 20th July, no doubt within 15 days after receipt of notice, even shown served by postal track record on 02.07.2015 the 15 days to count from 03.07.2015 to end by 17th July which day inclusive and the publication is when covered of the week for 14th to 20th July released by 10/11th July, it is within time and the report could not have been given without the notice waiting period and that too if no apology tendered to take any recourse of otherwise waived of any recourse by condoning with no action. Leave about the other fact that is with no need of repetition, the report is not even for criminal defamation, muchless by the defacto-complainant not an aggrieved and muchless even for criminal defamation to cause maintain at best through public prosecutor as referred supra, when the very so called victim no other than wife of the defacto-complainant sought for apology to excuse with no further action, how the complainant can maintain the complaint ignoring the said notice of his wife, even to set the criminal law in motion. For that the attempt in reply arguments of the defacto-complainant though not advanced earlier is the expression of the public apology is covered only in the Outlook magazine released on 11.07.2015 for the period from 14th to 20th July of that week and not covered in the Magazine released on 4th July for 7th to 13th July and the F.I.R dated 04.07.2015 is not a bar. Said argument of defacto-complainant is, as explained above, untenable and liable to be rejected for not even waited till release of publication and not even referred in the complaint as notice conditions not complied with, it

is even not the version of complaint that whatever published in the online publication dated 01.07.2015 is not verified or it is not a compliance. No doubt, it is the condition on the notice para No.14 is only to cover the apology in the print publication and not an online publication of the immediate next edition and the print publication in fact covered the apology. Thereby that is suffice to dislodge the report of the crime to quash the proceeding even taken the notice by registered post so far as A-3 concerned served on the evening of 02.07.2015 from the postal track record online of India Posts covered by page No.16 of the material papers, by then also once the magazine to be released on 04.07.2015 for the period from 06.07.2015 to 13.07.2015 is completed of preparation and compilation by the time the notice received on the evening of 02.07.2015 and it is there in the next weekly magazine prepared compiled, printed by made ready and released on 11.07.2015 for the week covering from 14.07.2015 to 20.07.2015. It is thus nothing but the immediate next publication to cause print in tendering the public apology.

31) Further, when the victim herself, wife of the defacto-complainant sought for tendering apology to publish and that is published and there is no response from her of the same is if not sufficient by so saying and that notice even not referred by the defacto-complainant in his report for not even his case in the report of compliance not made as per the notice sought for tendering apology and that too without waiting, that too not even by the victim who want to lay no claim if apology tendered, in her husband to lay a claim in his own ignoring her privilege to waive in criminal action or civil action, the police report and the crime registered therefrom liable to be quashed not only for non-disclosure of material facts and abuse of process therefrom, but

also on the principle of approbate and reprobate being not allowed in law enforcement.

32) Coming to the principle of approbate and reprobate as part of the equitable principle of estoppel, the Indian Evidence Act is not confined to civil recourse but equally to a criminal recourse. Leave about what is discussed supra of doubtfulness in making out the offence under Section 509 I.P.C and Sections 3 read with 6 of I.R.W (P) Act or Section 67 of Information Technology Act, offence under Section 509 I.P.C is a compoundable one with the permission of the victim woman and the offence under Section 500 I.P.C also a compoundable one with the permission of the Court, by the person defamed. The notice speaks by only civil and criminal defamation and not even of any offence under Section 509 I.P.C or Sections 3 read with 6 of I.R.W (P) Act or Section 67 of the Information Technology Act as said above time and again. The law of estoppel on the principles of equity as laid down in ***Union of India V. Wing Commander, R.R.Hingorani***^[24] held a person doing something with full knowledge of its adverse consequences must face the consequences and cannot claim equitable relief. It is the general principle of equity though the case is in dealing with a civil issue of a Rent Control matter. The Apex Court further in ***Sneh Gupta V. Devi Sarup***^[25] at para No.25, page No.208 observed that the Court has also a duty to prevent injustice to any of the parties to the litigation. It cannot exercise its jurisdiction to allow the proceedings to be used to work as substantial injustice and at para No.45 of the judgment on the principle of estoppel, acquiescence, waiver, legitimate expectation election, approbate and reprobate with reference to Section 115 of the Indian Evidence Act that, the question of estoppel and or election as also doctrine

of approbate and reprobate whereupon reliance has been placed, has exceptions, one of them being that there is no estoppel against a statute. Here, it is not a case of estoppel against a statute to say there is no estoppel to make a Statute contrary to any promise made.

33) It is needless to say law is like a medicine is in exact science and one cannot predict with certainty an outcome of many cases, as it all depends upon the facts and circumstances of each case and that is why particularly in criminal law, there are no precedents on facts, but for principle to cull out in its application if any. It is thereby well said, diverse logic from law is one thing but, to diverse ethics altogether from law is something quite different and dangerous. Thereby, the Court has to apply the principles by appreciation with reference to the facts on hand. The principle of estoppel as a rule of evidence to apply both in civil and criminal matters is based on the maxim ***Allegans contrasiam non est audiendus***, to mean a party is not to be heard and allowed to say contrary to what was stated earlier to act upon. The word estoppel as explained by Lord Denning means stopped. You will find it explained by Cogg in his commentaries on Little Ton 19th Edition 1832 Vol.II S 667, 352A, that it is brought over by the Normans, who used to rely on the French term *estoupail*, that means a Bung or Cork by which you stopped something from coming out. It was in common use by Norman Courts when they carried on their proceedings in Norman French. Little Ton writes in the Law French of the 15th Century using the words *purceo que le varvon est*. Estoppel a dire, meaning simply that the husband is estopped from saying something. Estoppel is a mechanism for enforcing consistency when I have said or done something that leads you

believe in a particular state of affairs I may be obliged to stand by whatever said or done, even though I am not otherwise bound to do so as put it rightly by Lord Elizabeth Coke in the Modern Law of Estoppel, Oxford University Press, 2000; as per Lord Denning in Moorgate ***Merchantile Company Limited V. Twitchings***^[26] at 241 that estoppel is a principle of Justice and equity. It comes to this: When a man by his words or conduct, has laid another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so. Lord Denning gives a long list of different varieties of estoppel and the Halsbury's laws of England 4th Edition, Lexis Nexis London, (2003-Reissue) refers the same as the modern law of estoppel and also by the modern law of estoppel (oxford-2000) viz., estoppel by representation or from a deed and its contents or by record or by confession or part of it. Coming to estoppel by representation, it is said a person who made a representation or assurance to another with the intention that the later should act on it to his detriment and he does so act on it, is estopped from denying the content of his representation or assurance like a promissory estoppel.

34) The defacto-complainant in fact referred the expressions of the Apex Court

(i) in ***Rupan Deol Bajaj V. Kanwar Pal Singh Gill***^[27] and

(ii) the Constitutional Bench in ***Behram Kurshid Pessikaka V. State of Bombay***^[28]. Later is a case under Bombay Prohibition Act for toilet preparation containing alcohol where accused were charged under Section 66B of the Act, 1949 in saying onus on accused under Section 105 of the Indian Evidence Act by interpretation of the provision and it mainly deals with

Interpretation of the Statutes. There is nothing to say it contains any principle on estoppel, muchless even to the say of estoppel has no application in criminal proceeding. What it stated in para No.31 referring to the American Principles laid down in ***Pearse V. Somerset Railway Company*** of 1898 and ***Pearse Oil Corporation V. Phoenix Refining Company*** of 1921, that there is nothing in the nature of such a constitutional right as is herein asserted to prevent it is being waived or the like right to claim it barred, as other rights may be, by deliberate election or by conduct in-consistence with the ascertainment of such right. Even this passage placed reliance could not be correlated as to how it is applicable to the facts with reference to the principle of estoppel or waiving the right by the victim-wife of the defacto-complainant in the notice dated 30.06.2015 in inviting an apology from the accused/petitioners, for not choosing to lay any civil or criminal action for defamation.

(iii) The other decision placed of the Constitutional bench is of ***Basheernath V. Commissioner of Income Tax***^[29] where, with reference to Section 115 of the Indian Evidence Act it was observed in para No.53 that the generally accepted connotation of waiver what constitutes is that there must be intentional relinquishment of a known right or the voluntary relinquishment or abundant of a known existing legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege. Waiver differs from estoppel in the sense that, it is contractual and is an agreement to release or not to assert a right. Estoppel is a rule of evidence. Even from this principle, there is nothing to say estoppel has no application to criminal cases or the party cannot waive to launch any criminal

prosecution or any right to file a civil suit. Thereby this decision and the principle therein also have no help to the defacto-complainant. At page No.73 of the Judgment it is the observation that even a right or privilege coordinated by the Constitution can be waived provided such waiver is not forbidden by law and does not contravene public policy or public morals. From this, now coming back to the facts with reference to the principle leave about the offence under Section 509 I.P.C is a compoundable one of the police report, equally the offence under Section 67 of the Information Technology Act if not also of Sections 3 to 6 of the Act, 1986; even from notice of complainant's wife not stated any offence made out while seeking apology for the contents constitute defamation, else to take legal recourse for defamation both civil and criminal, Section 500 I.P.C is also a compoundable offence. When those are compoundable offences and there is nothing forbidden by any law or by any provision of the constitution to waive a right or actionable claim or even a constitutional privilege, the principle of above decision also no way helpful to the complainant.

(iv) The other decision relied by complainant is of full bench of this Court in ***Pallapothu Narasimha Rao V. Kidambi Radha Krishnamacharyulu*** ^[30] a case under A.P. Rent Control Act, 1960 and Transfer of Property Act, Section 112; where on the questions whether a transferee from original landlord is a landlord within the meaning of the Act and from earlier relief claimed and dismissed for non-payment of batta would not constitute res-judicata, the points raised and decided were confined to it and nothing more decided muchless on the principle of estoppel or waiver or approbate and reprobate.

(v). The other decision placed reliance is ***M/s.Motilal Padampal Sugar Mills Co. Ltd V. State of U.P***^[31] where with reference to Section 115 of the Indian Evidence Act and Article 226 of the Constitution of India, the question as to a new plea of waiver whether can be raised for the first time in a writ petition, it was held that doctrine of promissory estoppel is a principle evolved by equity to avoid injustice; the true principle seems to be that, where one party has by his words or conduct made the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back on it, if it would be inequitable to allow him to do so. This principle also weighs in favour of quash petitioners and not in favour of continuation of the crime proceedings on the report of defacto-complainant. In this expression it is further observed that the equitable principle of promissory estoppel and waiver are evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence. What is necessary is only that, the promisee should have altered his position in reliance on the promise. But if by detriment to the promisee which would result, if the promisor were to recede from his promise, it would certainly gives him as a necessary ingredient and for that it is not necessary of some prejudice suffered by the promisee by acting on the promise. Even from this principle at para No.622 and 623 of the Judgment, there is nothing in favour of the defacto-complainant to maintain muchless to say the promissory estoppel or estoppel by representation from the legal notice or waiver or

approbate and reprobate as the case may be have no application.

(vi). Coming to the other division bench decision placed reliance of this Court in ***R.F.Charitable Trust V. Special Deputy Collector, GLA, Hyderabad***^[32] in relation to reference for enhanced compensation under Section 18 of the Land Acquisition Act for acquisition of the land of the trust, by the Housing Board, from the agreement between the parties under Housing Board Act Section 40, for payment of specific sum, waiving right to claim additional amount or for enhancement under Section 18 by reference, held the waiver is binding under the principles of estoppel by referring to Section 115 of the Indian Evidence Act for disentitlement to the claim of enhanced compensation including for any interest or the like.

35) Thus, none of the decisions referred in the material papers with memo of citations placed reliance by the defacto-complainant are applicable in his favour either to suppress the factum of the notice issued by his wife seeking apology from petitions, for its non mention in the report even it is a material and important fact or even to say said notice issued by the wife of the defacto-complainant is not binding or the defacto-complainant still got any locus standi to ignore what his wife stated in her notice waiving the right by calling for an apology for not to maintain any civil or criminal proceeding for defamation with no any say of said publication constitutes any other offences muchless of Section 509 I.P.C or Section 3 read with 6 of the I.R.W (P) Act or Section 67 of the Information Technology Act, leave about said report is not even on behalf of his wife with any authorization from her, apart from herself not aggrieved but for in saying the contents defamatory to tender apology within the specified time else to take

recourse for defamation; leave apart no offences for which the crime registered are made out as discussed already with reference to **Khushboo** and **Ajay Goswamy** among other expressions supra. From the above, coming to the scope of Section 482 Cr.P.C as laid down by the Apex Court in **Chandran Ratnaswami V. K.C.Palanisamy**^[33] as per para No.33 to 39 the inherent powers under Section 482 Cr.P.C entitles the High Court to quash the proceedings when it comes to the conclusion that allowing the proceeding to continue would be either abuse of the process of the Court or that ends of Justice require that the proceedings to be quashed, in saying the High Courts have been envisaged with inherent powers to achieve a salutary public purpose and for that ends of Justice is higher than the ends of mere law though Justice must be administered according to the laws made by the legislature. It referred the doctrines and maxims *Jure Naturae aequum est neminum cum alteris detrimento et injuri fieri locupletiolem*, to mean easy access to Justice not to be used as a licence to file misconceived or frivolous petitions. On facts held the launching of criminal prosecution for alleged breach of joint venture agreement by referring to Sections 420, 408, 409, 169 and 120-B I.P.C being an abuse of process of the Court in quashing the same. In that context it is further observed that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. Similar is the view expressed by the Apex Court to quash the proceeding where it is an abuse of process of law and on facts making a civil remedy by converting into criminal prosecution, in **Rajib Ranjan V. B.Vijay Kuamr**^[34] needless to say earlier similar expression in **Amit Kapoor V. Ramesh Chander**^[35].

36) The counsel for complainant though not referred in the said memo of citations and material papers placed reliance at the end on few more expressions viz.,

(i) of the Apex Court in ***Monekabedi V. State of A.P.***^[36], wherefrom, there is nothing to say it is in any way applicable of the facts or as answer to the legal issues involved in the case on hand, to sustain the police report culminated into registration of the crime pending investigation;

(ii) the other decision placed reliance of ***Akbaruddin Owaisi V. State of A.P.***^[37] which is only in dealing with the registration of a crime where cognizable offence is disclosing. In fact, this Court is not finding fault with the police in registering the crime from the report, but the manner and circumstances in which the report is given by the defacto-complainant even by non-disclosure of the notice already giving by his wife seeking apology for the publication as defamatory, without even waiting for the expiry notice time to tender apology besides he is neither aggrieved nor locus standi as held in ***kushboo*** (supra). The learned Public Prosecutor in the course of hearing placed reliance on the expression of the Sindh Court in ***Kair Mohd. V. Emperor***^[38] in dealing with a case under Section 509 I.P.C. In the short judgment what is observed is there must be some individual woman or women whose modesty has been outraged and though it is not necessary that individual woman herself making a complaint. It is no doubt on locus standi. However, when the Three Judge bench expression of the Apex Court in ***Khushboo*** in para No.13 including for the offence under Section 509 I.P.C, Sections 3 to 6 of I.R.W (P) Act 1986, Section 292 I.P.C and Sections 499 and 500 I.P.C

held but for the victim if at all suffered for others cannot be called as aggrieved and with no locus standi to maintain the police report to prosecute the accused, the Sindh Court's decision cannot serve as a precedent. Equally the case with **Rupan Deol Bajaj V. Kanwarpal Singh Gill**^[39] where there were the accused officer by physical acts of not only sat at ladies circle, but also asked the victim lady officer to come and sit near to him and even pulled her chair very close to him and not allowed to get her back with chair to distance, but even further after she left the place and went to other lady officers and sat, he came there and stood in front of her so close of 4" distance and crook of his finger asked her get up and come with him out and even for her objecting his behaviour he unheeded and repeated and when she tried to leave, he obstructed and when she turned her face back to him, he even slapped her on posterior that all held constitutes the offences under Section 354 and 509 I.P.C and overruled the contention of it is a trivial incident within the general exceptions under Section 95 I.P.C. No doubt observed at para No.17 that if intention or knowledge is one of ingredients that must be make out. Here the facts are different and here what to decide is from the publication what offence if any constitutes; when the three Judge bench expression in **Khushboo** supra and **Ajay Goswami** supra and by clarified by scanning the earlier expressions and by adopting hicklin test and contemporary social and the present day community standards and perception of a common man in the society and not what the victim felt or said even as the basis, but for some relevancy of co-relation and reference to the common man's perception for Court to arrive a conclusion therefrom and also with reference to the tolerance levels in society. Even the decision of three Judge bench in **State**

of Punjab V. Major Singh^[40] (referred in *Rupan Deol Bajaj* supra) is a case under Section 354 I.P.C, where it is held for the accused caused injury to the private parts of female child of 7½ months tantamounts to outrage the modesty within the meaning of Section 354 I.P.C in so holding it is observed as such a victim kid cannot lay a complaint in saying intention or knowledge is the ingredient of the offence and not the woman's feeling always for such a kid can have no feeling to express. Apart from the facts of the case on hand are entirely different for here the complainant's wife so called victim is an I.A.S officer and also as held in *Kushboo* supra, the Court has to assess from the changing conditions of the society and the feelings of the victim and also the assessment in the estimation of an ordinary prudent man of the society, as to the modesty intended to be insulted and whether the act or publication is obscene or not as the case may be. Having regard to the above, the continuation of the crime proceedings are nothing but abuse of process and hence liable to be quashed to subserve the ends of justice, which is without prejudice to any other available rights of the victim Smt.Smitha Sabharwal pursuant to her notice and the apology tendered and on its sufficiency or otherwise if any.

37) Accordingly and in the result, the petition is allowed and the proceedings in Crime No.163 of 2015 of C.C.S, Hyderabad are quashed. The bail bonds of all accused, if any, shall stand cancelled. As a sequel, miscellaneous petitions pending, if any, in the above criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.12.2015

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- [1] (2010)5 SCC 600
[2] (2007)1 SCC 143
[3] AIR 1957 SC 896
[4] (2008)6 SCC 433
[5] 1968 LR 3 QB 360
[6] (1969)2 SCC 687
[7] AIR 1965 SC 881
[8] (1985)4 SCC 289
[9] (1989)2 SCC 574
[10] (1970)2 SCC 780
[11] (529 US 803)
[12] 2015(3) LS 1
[13] (2004)7 SCC 166
[14] (1977)2 SCC 699
[15] (2013) 6 SCC 740
[16] 1992 Supp(1) SCC 335
[17] (2005)1 SCC 122
[18] (2007)12 SCC 1
[19] (2005)10 SCC
[20] (1964)2 All.E.R 401
[21] (2000)7 SCC 552
[22] (1972) 2 SCC 680
[23] 2015(2) ALT (CrI.) 234
[24] (1987)1 SCC 551
[25] (2009)6 SCC 194
[26] 1976(1) QB 22B
[27] AIR 1996 SC 309
[28] 1955 CrI.L.J 215
[29] AIR 1959 SC 149
[30] AIR 1978 AP 319 (FB)
[31] AIR 1979 SC 621
[32] AIR 1992 (AP) 130 (DB)
[33] (2013)6 SCC 740
[34] (2015)1 SCC 513
[35] (2012)9 SCC 460
[36] (2011)1 SCC 284

[\[37\]](#) (2013)2 ALD (CrI.) 855 (AP)

[\[38\]](#) AIR 1925 Sindh 271

[\[39\]](#) AIR 1996 SC 309

[\[40\]](#) AIR 1967 SC 63