



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

% ***Pronounced on: 21st July, 2023***

+ **CS (OS) 622/2002**

MAJOR GENERAL M.S. AHLUWALIA,

Son of Shri B.S. Ahluwalia,

R/o D-34, Defence Colony,

New Delhi

..... Plaintiff

Through: Mr. Chetan Anand and Mr. Akash
Srivastava, Advocates.

versus

1. **M/S TEHELKA.COM**

D-1 Soami Nagar,

New Delhi.

1-A **BUFFALO NETWORKS PVT. LTD.**

D/1, Soami Nagar,

New Delhi-110017

(also known as M/s Buffalo Communications)

2. **MR. TARUN TEJPAL**

S/o Mr. Inder J. Tejpal

R/o C-1 Soami Nagar

New Delhi.

3. **MR. ANIRUDDHA BAHAL**

S/o Mr. Kidar Nath Bahal

C/o Tehelka.Com

D-1 Saomi Nagar

New Delhi

4. **MR. MATHEW SAMUEL**

S/o Mr. A O Samuel Kutty

C/o Tehelka.Com



D-1 Saomi Nagar
New Delhi

5. **MR. SUBHASH CHANDRA**
CHAIRMAN, M/S ZEE TELEFILMS LTD.
135, Continental Building
Dr. Anne Besant Road
Worli, Mumbai

6. **MR. SANDEEP GOYAL**
CHIEF EXECUTIVE OFFICER
M/s Zee Telefilm Ltd.
135, Continental Building
Dr. Anne Besant Road
Worli, Mumbai

7. **M/S ZEE TELEFILM LTD..**
135, Continental Building
Dr. Anne Besant Road
Worli, Mumbai

Also having its branch
office at :
J-27, N.D.S.E. Part-I
New Delhi.

..... Defendants
Through: Mr. Meet Malhotra, Sr. Advocate
with Mr. Vivesh B. Saharya, Mr.
Akshat Agarwal, Ms. Palak,
advocates for D-1 to D-4 Mr.
Jayant Mehta, Sr. Advocate with
Mr. Petal Chandhok, Ms. Mimansi
Sethi, Advocates for D-5 to D-7.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J

1. Truth is considered to be the best vindication against slander as wisely quoted by Abraham Lincoln. Yet, truth lacks the potency to restore the reputation that one loses in eyes of a society which is always quick to judge. The disconsolate reality is that wealth lost can always be earned back; howbeit, the scar to one's repute once etched in the soul, yields nothing but forlorn even if millions are granted in reparation. Such is the predicament of the plaintiff who claims to have suffered from loss of reputation due to the reckless reporting by defendant Nos. 1 to 4, which has compelled him to file the present suit for damages to claim a compensation of Rs.2,00,00,000/- as a bow to fate.

2. The plaintiff a General Officer in Army with record of impeccable integrity for 36 years was working as Addl. Director General, Ordnance Services (Technical Stores) in Army Head Quarters since 16th April, 1999 and was responsible for overseeing the functioning of Central Depots for Technical Stores, ammunition and procurement of indigenous equipment primarily for ex Directorate General Ordnance Factory and Public Sector Undertakings. The plaintiff has claimed that he was involved in the processing of cases for import of main equipment or the selection which is neither handled by Additional Director General, Weapons and Equipment (ADG WE) nor has he got any specialized knowledge or any role in the introduction and import of new equipment.

3. The defendant no.2, Tarun Tejpal, the proprietor of defendant no.1 portal Tehelka.Com was responsible for managing the release of news items/ articles on the website of Tehelka.Com. A media blitz was



launched on 13.03.2001 carrying a story about the alleged corruption in the defence deals relating to import of new defence equipments. The story was done and recorded by two Reporters namely defendant Nos.3 and 4, allegedly working undercover by representing themselves on behalf of a fictitious defence equipment Firm based in London keen to introduce new defence equipments in the Indian Army. The defendant No.7, which is a news and entertainment channel available through Cable TV networks, allegedly telecasted selective video pictures of the Army officers, other civilian officers working in the Ministry of Defence and politicians allegedly involved in corruption in defence deals relating to the import of defence equipments along with selective transcript showing that all the persons referred above had taken money to do the work for the fictitious firm based in West End, London, which subsequently featured in various newspapers as well. It was shown that defendant No.3 and 4 using retired Defence Officers as middlemen approached serving Army Officers, civilians officers in the Ministry of Defence and politicians with the purpose to expose corruption in the import of defence equipments in the Indian Army. The conversations and the transcript of the conversations had been released selectively to highlight that the officers and politicians involved in the import of defence equipment and purchases were amenable to inducement, bribe and corruption to help the so called fictitious Firm in order to obtain the purchase orders and introduce them in the Indian Army.

4. One of the interstitial transcripts recorded in writing that a bribe of Rs.50,000/- was paid to the plaintiff by defendant No.4 in the presence of Lt. Col. Sayal. The exact words were to the following effect:



“Our next meeting with Gen Ahluwalia takes place 10 days later. Here he accepts a token bribe of Rs. 50,000/- which is never delivered to him.”

And it is further stated :

“Sayal goes near Ahluwalia and tried to hand Rs. 50,000/- which he accepts later.”

5. **It is submitted by the plaintiff** that in the video tape as well as in the transcript, an impression has been created that the plaintiff had asked and demanded “Blue Label Whisky” and ten lakhs from defendant No.4 when he and Lt. Col. Sayal met the plaintiff at his residence. The allegations that the plaintiff had demanded a bottle of Blue Label Whisky and Rs. 10,00,000/- was widely commented upon, ridiculing the plaintiff and thereby sully his image, casting aspersions on the character and reputation of the plaintiff whose plea of innocence went unheard. The plaintiff has asserted that the aforesaid allegations in the video news item are false, motivated, mischievous and have been made with a view to lower the esteem of the plaintiff in the eyes of general public and the viewers/readers of Zee TV and Tehelka.com i.e. defendant No.1 and 7.

6. The plaintiff has claimed that this was done deliberately without ascertaining the true facts. The allegations were false to the knowledge of the defendant and were intentionally made to destroy and malign the reputation and image of the plaintiff in general public. In fact, the alleged tape containing the conversation between the defendant No.4 and plaintiff has been tampered with and doctored to manipulate the recording and selective portions had been deleted and editorial comments had been added which were not substantiated by facts.



7. The plaintiff has further stated that the defendants had given wide publicity as the story released by them was picked up by various TV channels as well as the print media nationally and internationally. Following the release of the story based upon totally false and fabricated allegations, the defendants managed to arouse the public opinion and accordingly a national hue and cry was raised based upon the news item released by defendant Nos.7 and 1 on their visual platforms. In fact, a public demand had been made to act against the alleged defaulting officers including the plaintiff as is shown and depicted in the said news items. The vilification campaign carried out by all the defendants acting in cohort, has resulted in ruining the service career of the plaintiff and has harmed his military reputation and honour amongst his officers, colleagues besides the Jawans in the Indian Army. The plaintiff has been defamed by the defendants in the eyes of general public, his family and social circle, and has received calls from relatives and friends at his residence and office to register their protest. The plaintiff stood humiliated before them for no fault of his.

8. The Indian Army took a serious note of the telecasted video tape and ordered a Court of Inquiry in this issue. The plaintiff was summoned in the Court of Inquiry and his military reputation and honour had been tarnished and put under a cloud of suspicion. The allegations made against him by the defendants were false to their knowledge as same had been proved and the stand of the plaintiff was vindicated in the Court of Inquiry. In fact, a visit was made by the Defendant No.4 who was the alleged author of the said news concerning the plaintiff, to the house of plaintiff on the pretext of seeking his assistance in arranging a meeting



with ADG WE Maj. Gen. PSK Chaudhary which the plaintiff had refused point blank.

9. Defendant No.4 had admitted the Court of Inquiry that directly and indirectly he never got any impression that the plaintiff wanted money. In fact the plaintiff's refusal to accept any money was the reason why they decided not to pursue the matter with him or arrange further progress of the case.

10. Thus, defendant No.4 had given an exculpatory statement in the Court of Inquiry vis-a-vis the plaintiff. He admitted on Oath that neither any money was demanded nor was it paid to the plaintiff. It was also admitted that plaintiff had refused to attend the dinner to be hosted in a five star hotel or accept any other hospitality. The relevant portion of the statement to the effect "*I am only giving you a word of advice as a friend*" has been deleted as confirmed under oath by defendant No.4 during the Army Court of Inquiry proceedings.

11. It is claimed that the statements referred to above that were made by defendant No.4 in the Court of Inquiry proceedings, were clearly at variance and in contradiction to the transcript of the alleged video tapes shown and released on ZEE TV Network and Tehelka.com. The defendants had deliberately misrepresented the actual facts in the transcript and tape. Rather, all the defendants are guilty to attempt to bribe the serving army officer.

12. The defendants are guilty of misrepresenting the actual conversation and the context in which the plaintiff had met defendant No.4 and Lt. Col. Y.P. Sayal (Retd.). Lt. Col. Sayal, former colleague and a friend of plaintiff of over 20 years, had called up the plaintiff and



desired to visit him at his residence. He, without informing the plaintiff, brought defendant No.4 along with him and explained that he was looking for an opening and was considering taking up a job with defendant No.4 who allegedly was representing a Company based in London, which was interested to sell “*Hand held thermal imagers*” to the Indian Army.

13. It is submitted that the plaintiff had categorically informed Lt. Col. Sayal that he does not deal with imports and introduction of new equipments and vendors. It is apparent from the alleged conversation that the plaintiff had tried to dissuade Lt. Col. Sayal from pursuing such a career option. The plaintiff has asserted that in fact he deliberately resorted to negative views and was also contemptuous, sarcastic and non-serious in his remarks in order to discourage Lt. Col. Sayal from further venturing into the assignment.

14. The defendants further insinuated that the plaintiff gave them advice on how to proceed in the matter of obtaining an order of the item Hand Held Thermal Imager from the Army which is totally unsubstantiated by facts and is a deliberate distortion to discourage the plaintiff from dealing with the issue any further.

15. The plaintiff has failed to understand as to why his name has been dragged in the alleged exposé. The only comprehensible reason is to malign the reputation of the Indian Army by roping the Generals in senior position and to secure popularity for their website and commercial ventures with a profit motive in mind.

16. A reference was made to the judgement in Rustom Karanjia and Anr vs V. Krishnaraj M.D. Thackersey and ors, AIR 1970 Bom 424, wherein it was observed that journalists have the right to make “Fair



Comments” over any controversy that concerns the public interest. However, it is their duty to ensure that the facts asserted are accurate and truthful, regardless of how defamatory they may seem. Given the consequences of such an act by a journalist, the person or organization conducting the investigation must ensure that they are in a position to prove the facts if the same is challenged. Public interest is served only when there is integrity in the investigation. Further, the burden of proof is on the publication to prove that the assertions made by them are justified and is thus a “*fair comment*” as held in the case of The Editor, Rashtra Deepika Ltd and ors vs Vinaya N.A., ILR 2017 (3) Kerala 456.

17. The plaintiff has asserted that the defendants with ulterior motive of gaining pecuniary advantage and to demoralize the Indian Army had by deliberate distortion of facts and, without verification sensationalized the issue and made public statements to the effect that the plaintiff was given financial inducement knowing fully well that they were false.

18. Plaintiff sent a Legal Notice dated 27.08.2001 to the defendants seeking an apology in the platforms of defendant Nos.1 and 7 in the same manner at the peak time in their News hour section and the publication of an apology on the front page in bold print in a prominent newspaper and also demanded damages in the sum of Rs.2 Crores in lieu of defamation of the plaintiff. No reply was received from defendant No.1 to 4 to the Legal Notice. Only defendant Nos.5 and 6 had replied to the said Notice denying their complicity in the publication and release of video tape containing the alleged story. However, they cannot escape from their liability on legally untenable and frivolous pleas.

19. The plaintiff has asserted that he as Major General, was in line to



be picked up for the next rank of Lt. General on promotion. He hails from a respectable, well to do and well connected family which enjoys excellent social credentials. The prestige and reputation of the plaintiff amongst his family, well wishers, friends and relatives particularly in the Army circle has been irreparably damaged which cannot be fathomed in terms of money.

20. **The defendant Nos.1 and 4 in their written statement** have stated that defendant No.2, 3 and 4 are journalists by profession and are associated with defendant No.1 in various capacities. The defendant No.1 is a web portal owned and promoted by M/s Buffalo Communications. The avowed aim of the defendants is to investigate, research and publicise stories of general public interest.

21. One of the main issues concerning the country is the widespread corruption within and outside the Government. In bonafide exercise of a time honoured journalistic tradition seeking to expose the corruption in the system, the answering defendants set out on the task of empirically recording proclivities and instances of corruption in one of the most respected institution of the country i.e. the Indian Army. Be it the 'Bofors case' or 'Kargil Coffins case', it is in general knowledge that huge kick backs, slush funds and speed money are the order of the day when it comes to procuring and servicing orders from the Ministry of Defence and the Armed Forces. Successive governments have shamelessly claimed that the defence deals are above board and the mechanism of purchase of arms, ammunition and spares are such that it precludes middle men, bribery and kick backs.

22. In order to investigate and get to the truth of the matter, the



defendants undertook a journalistic operation which is in common parlance referred as the '*Tehelka exposé*'. Within Tehelka, the venture was codenamed as '*Operation West End*'. The limited and bonafide ambit of this venture was simply to record the murky methods and the role of power brokers involved in defence deals. It was to show to what extent and in what manner middle men, money and bribery have infiltrated and control the process of defence deals involving the armed forces and the political set up. Aside from this, the defendants had no ulterior motive or desire to gain any pecuniary advantage. The entire operation was undertaken for a just cause. The exercise undertaken by the defendants was with a fair objective, bona fide in public interest and in legitimate exercise of freedom of expression as available to the press in a democratic country like India. Very minor inaccuracies in transcriptions were immediately owned up by the answering defendants as and when they occurred.

23. The defendants have referred to the conversation of the plaintiff recorded on 02.11.2000, where he stated the following:

*"Maj. Gen. Ahluwalia: See it's a it's a massive bloody system, there is no place for friends. There is no place for singleton. It requires very deep pockets. Nobody talks small, I am being very honest with you. Every single person is... name dropping is the smallest part of the whole bloody transaction. And I also ended up with bottles of **Black Lable**, **Blue Lable** in this bloody business. Because it is easier to come and bloody talk: as I said, if you are going to talk about couple of crores, even to say " good evening", you have to present that bloody "good evening" properly...."*

24. The defendants have explained that this is how Blue Label Whisky



came into the conversations. The defendants never created any impression other than what the plaintiff said which has not been denied by him. Further, the plaintiff had said :

*“Maj. Gen. Ahluwalia : It's a 60 crores deal and it's a very important line I have to write there. My line is written today.... I take that line.... so it's a 60 crores deal, I am giving you a hypothetical figure, it's a 60 crores deal. How much will you say that you have to take now, tell me ? Or for what amount should I put my neck out to write that important line ? So it's not a Maurya Sheraton dinner (all of them laugh). Please understand... It can't happen as an individual with one item. It's just can't I am trying to tell you why it can't happen. **So you give me 10 Lakh rupees. I don't know whether you get the order** or not, I am not concerned. I have done my bit and there are 20 people in the chain like this. There is a man who has to go and do a certain evaluation. You have to feed him there. He does, he doesn't do it, he writes 'no'. He screws up the whole bloody deal. He screws up everything what has happened up till now.....”*

25. It is submitted that the above quoted lines make it clear that the plaintiff asked for a Blue Label Whisky or Rs.10 lakhs.

26. The plaintiff's claim of doctoring of the tapes made by the answering defendants is incorrect as the statements of the plaintiff were recorded correctly on film, the transcripts of which were published. The line in the transcript of the tape based on which such a claim has been made reads as under :

“Our next meeting with General Ahluwalia takes place 10 days later. Here he accepts a token bribe of Rs.50,000/-, which is never delivered to him.”



27. It is claimed by the defendants that this line is also unassailable. What happened and what also is shown in the tapes is that money was offered to the plaintiff, who said:

“theek hai baad mai” (O.K..... later) (supplied).”

28. It is averred that at no point did the answering defendants impute anything to the plaintiff. Defendant No. 4 has also admitted this in response to the suggestion put to him by the plaintiff in the Army Court of Inquiry. The impression if any, follows from the plaintiff’s own admitted statement recorded on tape and nothing can be imputed to the answering defendants in any manner.

29. The answering defendants have vehemently denied and repelled the insinuation that selective shots of the footage were shown with the motive of defaming the plaintiff or demoralising the Indian Army.

30. It is submitted that the answering defendants had no concern with the advertising or broadcasting policy of defendant No.5 to 7. It is claimed that in the aftermath of ‘Operation West End’, the entire Government machinery has been involved in prosecuting and pressuring the answering defendants with a view to coerce the defendants to renege from their stated objectives. There is no evidence of tampering, tailoring or manipulation of the footage tendered, till date. This suit is another attempt to pressurise the answering defendants into admitting a non existing motive so completely removed from what had impelled the defendants in the first place in their unrelenting and unshakable pursuit of the truth.

31. The answering defendants have denied that they have defamed the plaintiff in any manner as alleged or that they are liable to pay the



damages. It is stated that the suit of the plaintiff is liable to be dismissed.

32. **The defendant No. 5 in his Written Statement** has stated that he is not the Chairman of Zee TV as mentioned in the Plaint. He is the Chairman of M/s. Zee Telefilms Ltd., a Company registered under the Companies Act, 1956. It is asserted that the present Suit in the present form is not maintainable.

33. The defendant No. 5 has explained that he is not the person involved in day-to-day operations of the Company i.e., areas of news gathering, dissemination of news and broadcast etc. He further states that gathering, selecting, editing and analyzing the news reports and current events, these are the job of the professionals who are engaged and who responsible for production, releasing and broadcast of news items/articles and dissemination of the same. Defendant No. 5 also states that he only is responsible only for the policy and business decisions of the Company. He views the broadcast on various Zee Network channels just as any common viewer. He became aware of the contents of a television programme broadcast on Zee Network channel from the said broadcast.

34. It is claimed that various judgments have held that in the case of defamation, before issuing the process to a party, other than the printer, publisher or editor, the plaintiff must make out a *prima facie* case that other parties, which in the present case was the Chairman and Managing Director, had personal knowledge of the defamatory material. The Directors of the Company who are not in-charge of day-to-day publication of the newspaper, cannot be held responsible for any defamatory article if it is found to be so. Since due care and caution was exercised by the answering defendant while discharging his public duty,



no cause of action has arisen against him.

35. The defendant No. 5 has relied upon the Written Statement of the defendant No. 7 to state that the defendant No. 7 has exercised the Fundamental Right of Freedom of Speech and Expression guaranteed under Article 19(1) (a) of the Constitution of India to which it is entitled to fully exercise. Moreover, explanation as given by the defendant No. 7 in his Written Statement has been reiterated on behalf of the defendant No. 5. The exercise of such right of dissemination of news through newspaper or electronic medium is in larger public interest and thus, it becomes a duty, subject of course to the requirement of reasonable care and caution. In this context, the timing for dissemination of relevant information in the larger public interest becomes crucial and relevant. Any delay in dissemination may amount to failure on the part of the newspaper/electronic medium in discharge of its obligation towards the society.

36. It is claimed that M/s. Zee Telefilms Limited had in complete *bona fide* and good faith while keeping in mind its obligation for dissemination of information in larger public interest and after exercising due care and caution, had purchased the rights to telecast that said tapes that were recorded by the defendant No. 4 as the contents thereof were currently in the news and were of immense interest and knowledge to the general public. There was no intention whatsoever to vilify, malign, defame or denigrate the plaintiff.

37. **On merits**, the averments made by the plaintiff have been denied by the defendant No. 5 in his Written Statement.

38. **The defendant No. 6 in his Written Statement** has also taken the



preliminary objection that he is not the Chief Executive Officer of Zee TV, but he was the Chief Executive Officer of M/s. Zee Telefilms Limited. Moreover, he was not even an employee at the relevant time of defendant No. 5. The present Suit is, therefore, not maintainable. Defendant No. 6 has taken the similar defence as defendant No. 5.

39. **The defendant No. 7 in his Written Statement** has taken a preliminary objection that M/s. Zee TV is not a separate legal entity and does not exist. It is only the name of a channel to which M/s. Zee Telefilms Limited supplies programs for broadcasting. Therefore, the Suit of the plaintiff is not maintainable against the defendant No. 7. Similar defence has been taken by the defendant No. 7 as taken by the defendant Nos. 1 to 4 that he is fully entitled to exercise the Fundamental Right of Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India. The exercise of such right of dissemination of news through newspaper or electronic medium is in larger public interest and thus, it becomes a duty, subject of course to the requirement of reasonable care and caution.

40. The defendant No. 7 has placed reliance on the observations of Couch, J. in Howard E I vs. Mull M. (1866) 1 BHC (Apex) 8591, where the learned Judge has succinctly explained the role of the press which is more than in the nature of a duty, rather than a right. Reliance has also been placed on the similar observations made by the Apex Court in R. Rajagopal vs. State of T.N. (1994) 6 SCC 632.

41. Taking note of the difference in the degree of public awareness between the United States of America and India and between the First Amendment to the American Constitution *qua* the freedom of speech and



expression guaranteed under Article 19(1)(a) of the Constitution, it is asserted that in discharge of its obligation to exercise due care and caution before any news is telecast relating to them, it made enquiries from the defendant Nos. 1 to 4 for confirming that there is nothing defamatory in the telecast of the tapes supplied by them. The entire issue related to discharge of larger public duty to the society as it is only towards *bona fide* of duty of care and caution towards individual rights that the answering defendant was given a written declaration/assurance by the defendant Nos. 1 to 4 in form of Licence Agreement dated 21.03.2001. Further, Ms. Buffalo Networks Private Limited had entered into the Licence Agreement dated 21.03.2001, where M/s. Buffalo Networks Private Limited granted sole and exclusive licence to the licensee i.e., M/s. Zee Telefilms Limited of Satellite Broadcasting rights of the work titled "*Operation West End*" for valuable consideration for period of one year from the date of Agreement.

42. It is asserted that M/s. Buffalo Networks Private Limited had assured M/s. Zee Telefilms Limited that the cinematograph work "*Operation West End*" does not contain any defamatory or legally objectionable materials. As per Clause 4 of the said Agreement dated 21.03.2001, M/s. Zee Telefilms Limited had inserted a disclaimer before the telecast of the said work to the effect that M/s. Zee Telefilms Limited does not subscribe to the views stated in the said work.

43. Further, under Clause 10 of the said terms under Agreement dated 21.03.2001, M/s. Buffalo Networks Private Limited had represented to M/s. Zee Telefilms Limited that the contents of the said work i.e., "*Operation West End*" in the Master Digital Video tapes were not



fictitious, concocted or fabricated and whatever had been captured on the said tapes was factually true and correct and nothing had been stage managed.

44. As per Clause 11 of the said Agreement dated 21.03.2001, the licensor had to indemnify the licensee against all claims, proceedings, costs and expenses incurred or suffered or awarded or paid in respect of or arising out of the telecast of the said work. The Licence Agreement dated 21.03.2001 between the defendant No. 1 and M/s. Zee Telefilms Limited had expired on 20.03.2002.

45. It is submitted that in view of the aforementioned submissions, the Suit of the plaintiff is not maintainable against M/s. Zee TV.

46. The defendant No. 7 has further claimed that the plaintiff himself has stated that the tapes of the work "*Operation West End*" were widely televised by the different channels and publicized widely in the print media. Therefore, procurement of the impugned tapes by M/s. Zee Telefilms Limited which had already received wide publicity, did not amount to defamation by M/s. Zee Telefilms Limited.

47. M/s. Zee Telefilms Limited had complete good faith and kept in mind its obligation for dissemination of information in larger public interest. Only after exercising the due care and caution, the rights to telecast the said tapes that were recorded by defendant No. 1 were purchased. The contents thereof were in news then and was of immense interest and knowledge to the general public. The said tapes were broadcasted in public interest and there was no intention whatsoever to vilify, malign, defame or denigrate the plaintiff. Therefore, the Suit of the plaintiff is not maintainable as is evident from the subsequent



developments which were reported in the newspaper in some details.

48. As per the information now available to all, including the answering defendant through the newspaper report published in the daily edition of Hindustan Times dated 03.07.2002 under the caption “ *MoD: Panel Hearing Delaying Action Against Army Officers*”, it was reported that pursuant to the Court of Inquiry, the General Officer, Commanding-in-Chief Western Command, Lieutenant General S.K. Jain along with his Inquiry Report on 14.06.2001 had recommended the dismissal of the plaintiff from service. It is, therefore, claimed that the present Suit is liable to be dismissed.

49. **On merits**, all the averments made in the Plaint have been denied by the defendant No. 7. And it is stated that the Suit of the plaintiff is therefore liable to be dismissed.

50. **The plaintiff in his Replication** to the respective Written Statements of the defendants had reaffirmed the averments as contained in the Plaint while denying the allegations made in the Written Statements of the defendants.

51. On the basis of pleadings, the **following issues** were framed on 17.05.2004: -

- “1. *Whether the plaintiff has been defamed as a consequent of the actions of the defendants?*
OPP
2. *If the answer to the aforesaid is in the affirmative whether the plaintiff is entitled to the reliefs claimed?*
3. *Whether the defendant No. 7 has exceeded its right under Article 19(1)(a) of the Constitution of India? OPP*
4. *Whether the defendant No. 7 has acted with due*



care and caution? OPD
5. *Relief.*”

52. The plaintiff in support of its evidence examined himself as *PW1* and tendered his evidence by way of affidavit Ex.PW1/A.

53. *PW2, Lieutenant General Tejinderjit Singh Gill* tendered his evidence by way of affidavit Ex.PW2/A and deposed that he processed the extracts produced before the Court of Inquiry on behalf of the department as he was the Director General of Ordnance Services then.

54. The affidavit of evidence of Ravinder Singh Jhelum was filed on behalf of plaintiff, but neither the witness was examined nor was the affidavit tendered in evidence.

55. *PW4 Ex-Major General PSK Chaudhary* who had faced general Court Marshal proceedings for allegations made by defendant no.1, deposed in his affidavit of evidence Ex.PW4/A that defendant No.4 Mr. Mathew Samuel was summoned as the prosecution witness by the Army during the Court Marshal proceedings where he had admitted that on two occasions bribe was offered, but the same was declined by the plaintiff.

56. *DW1 Sh. Aniruddha Bahl* in his affidavit of evidence DW1/A deposed on behalf of defendant No.1 to 4 that the transcriptions as submitted on behalf of the defendant reflects accurate recordings of the proceedings in the Tape.

57. *DW2, Shri Gulshan Kumar Sachdev*, the authorised signatory of defendant No.7 in his affidavit of evidence Ex.DW2/A deposed that Licence Agreement dated 21.03.2001 was executed between defendant Nos.1 to 4 and defendant No.7 and that the present suit is not



maintainable.

58. **The plaintiff in his arguments** and written submissions has stated that the defendants have given a wrong explanation hiding from the general public the context of the meeting in order to target and tarnish the reputation of the plaintiff and gain monetary benefits and generate revenue from the sensationalization of the news item. Moreover, in the broadcast the defendants have malafidely and deliberately added into the transcripts a false comment that in the next meeting with General Ahluwalia which had taken place 10 days later, he accepted a token bribe of Rs.50,000/-, which was never delivered to him.

59. It is argued that defendant No.4 has admitted the anomalies in the recorded conversation and the transcript that was subsequently prepared. He has further justified the clause in the transcript that *“Sayal goes near Ahluwalia and tried to hand him Rs.50,000/-, which he accepts later”* by arguing that defendant No.4 in his cross-examination has admitted that the said comment was added by the defendants and that the amount was never delivered to the plaintiff. It is argued that it is the duty of the defendant to verify the authenticity of each and every news item before broadcasting and publishing the same. The defendant’s callous act led to the initiation of a Court of Inquiry against the plaintiff. The broadcasting of the story qua the plaintiff was per se defamatory and the defendants have drastically failed to justify the comments against the plaintiff. A false version has been projected malafidely before the public knowing the same to be false. The defendants have maliciously targeted the plaintiff with wild allegations knowing fully well that the same are false and have circulated and broadcasted the same at an international platform catering



to the entire world thereby causing defamation and harm to the reputation of the plaintiff to every possible extent. The defendants are therefore, liable for their defamatory acts against the plaintiff.

60. Reliance was placed on the judgements in Mr. Parshuram Bararam Sawant vs Time Global Broadcasting Co Ltd & Anr, Special Civil Suit No. 1984/2008, Pune; Sadasiba vs Bansidhar, AIR 1962 Orissa 115; The Editor, Rashtra Deepika Ltd and ors vs Vinaya N.A., ILR 2017 (3) Kerala 456; Ajay Agarwal vs Vinod Mehta and ors, 102 (2003) DLT 774.

61. **Learned counsel on behalf of defendant No.1 had argued** that during the deposition of PW1 the plaintiff, there was no corroborative evidence which attributes any cause of action against defendant No.1 to 4. The plaintiff has miserably failed to satisfy as to how the present suit for damages and that too for Rs.2 Crores is liable to be decreed in his favour. The plaintiff during his cross-examination admitted that an Inquiry was conducted against him by the Army Authorities based on the expose. Further, on the basis of the evidence that was brought on record in the Court of Inquiry, the plaintiff was awarded severe displeasure.

62. Lastly, it was argued that no certificate under section 65B of the Indian Evidence Act 1872 was provided by the plaintiff in support of the electronic evidence. Thus, the documents produced by the petitioner cannot be relied. Reliance was placed in the judgement of the Punjab and Haryana High Court in State of Haryana vs Naveen Kumar alias Monu and anr, 2018 SCC OnLine P&H 3248.

63. **Learned counsel on behalf of defendant No.7 argued** that Zee Telefilms Ltd was entitled to exercise the fundamental right of freedom of speech and expression under Article 19(1) (a) of the Constitution and to



report fairly the issues of national importance. The inquisitiveness and constant vigilance by media over government and public men is essential for good governance and it is asserted that the answering defendants had done fair reporting of the matter.

64. Further, telecast of the Tapes had led to setting up of Court of Inquiry wherein Court Martial/dimissals/administrative actions were meted out against several army officers involved in the entire episode. The Court of Inquiry had recommended dismissal of plaintiff from service. However, Chief of Army Staff in his discretion awarded “*Severe Displeasure (Recordable)*” against the plaintiff, a fact that has been admitted by the plaintiff in his replication.

65. It is further argued that no editorial comments whatsoever had been added by defendant No.7 and this has also not been substantiated by any evidence. The comments relied upon by the plaintiff were already part of the Tapes provided to defendant No.7. The plaintiff admittedly was offered the bribe despite which he failed to escalate the same to higher officers or raise any complaint against defendant No.4, which speaks volumes about the plaintiff’s conduct and intentions.

66. Moreover, the entire tape/recorded conversation of the plaintiff with defendant No.4, *sans* the disputed comments, is itself objectionable and illegal and unbecoming of an Army officer. Therefore, no case of defamation is made out.

67. Additional submissions have been made that the plaintiff has admitted in his cross-examination that the Tehelka tapes were referred to by almost all the news channels and newspapers including Times of India, Hindustan Times, Indian Express, DD News and NDTV24 in their



reporting. Once the telecast had already received wide publicity, it cannot by any stretch of imagination be termed as defamation by defendant No.7. It is thus, argued that plaintiff had miserably failed to discharge the onus of proving the defamation due to any act attributable to defendant No.7.

68. **Submissions heard. Issue-wise findings are as under:**

Issue No.1 : Whether the plaintiff has been defamed as a consequent of the actions of the defendants? OPP

69. The plaintiff has claimed defamation by two sets of defendants; namely, defendants no.1 to 4 who had conducted the *Operation West End* and recorded the interview of the plaintiff and other Army Officers, and the other set of defendants is Defendant No.5 to 7 to whom the Telecast rights were sold by defendant nos.1 to 4, who telecasted them on their news channels.

70. Before we consider on merit whether the plaintiff was defamed, it would be significant to first understand the concept of “defamation” and “reputation”.

Meaning of the term “Defamation”:

71. According to **Chambers Twentieth Century Dictionary**, Defamation means to take away or destroy *the good fame or reputation; to speak evil or; to charge falsely or to asperse.*

72. **Salmond & Heuston** on the Law of Torts, 20th Edn.7 define a defamatory statement as under:-

*“A defamatory statement is one which has a tendency to **injure the reputation** of the person to whom it refers; which tends, that is to say, to **lower him in the estimation of right thinking members of***



society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of any ordinary, right thinking member of society...”

73. **Halsburys Laws of England**, Fourth Edition, Vol.28, defines a ‘defamatory statement’ as under:-

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.”

74. **Justice Cave** in the case of Scott vs. Sampson QBD1882 defined it as a “false statement about a man to his discredit.” The same definition was applied in the judgements in Bata India Ltd. vs. A.M.. Turaz & Ors. 2013 (53) PTC 586 and Pandey Surindra Nath Sinha vs. Bageshwari Pd. AIR 1961 Pat. 164 (1882) QBD 491.

The concept of “Reputation”:

75. The intrinsic facet of “Defamation” is harm to “reputation” or lowering the estimation of a person in public domain. This makes it pertinent to understand what constitutes reputation. In Manisha Koirala vs. Shashi Lal Nair & Ors, 2003 (2) Bom CR 136, it was held that allusions would clearly exposit the innate universal value of “reputation” and how it is a cherished constituent of life and not limited or restricted by time.



76. The distinction between character and reputation needs to be emphasized as *it is reputation not character which the law aims to protect*. Character is what a person really is; reputation is what he seems to be. One is composed of the sum of the principles and motives which govern his conduct. The other is the result of observation of his conduct, the character imputed to him by others. The right to reputation in its vital aspect, is not concerned with fame or distinction. It has regard, not to intellectual or other special acquirements, but to that repute which is slowly built up by integrity, honorable conduct, and right living. One's good name is therefore as truly the product of one's efforts as any physical possession; indeed, it alone gives the value as sources of happiness to material possessions. *It is, therefore, reputation alone that is vulnerable; character needs no adventitious support.*

77. Character and reputation are thus not synonymous, rather they may be directly contrary to each other. A man may have a good character and a bad reputation, being unjustly judged by the public; or he may have a bad character and a good reputation, standing in a false light before the public. In most cases, reputation reflects actual character. Since the right is only to respect so far as it is well founded, it is obviously not infringed by a truthful imputation. *But the law justly deems any derogatory imputation false until it is shown to be true.* Moreover, while the law requires a certain degree of proof to overcome this presumption, it also recognizes the human mind's propensity to believe evil upon slight evidence; hence those representations which tend to influence public opinion in that respect are deemed to have done so. (*l Kinkead on Torts, i, 759*).



78. **Lord Denning** succinctly explained the distinction between character and reputation in Plato Films Ltd. vs. Spiedel (1961) 1 All. E.R. 876 as under :

“A man’s “character”, it is sometimes said, is what he in fact is, whereas his “reputation” is what other people think he is. If this be the sense in which you are using the words, then a libel action is concerned only with a man’s reputation, that is, with what people think of him: and it is for damage to his reputation, that is, to his esteem in the eyes of others, that he can sue, and not for damage to his own personality or disposition.”

79. In Om Prakash Chautala vs. Kanwar Bhan and others (2014) 5 SCC 417 Hon’ble Supreme Court succinctly explained that reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance for posterity. It is nobility in itself which a conscientious man would never barter with all the tea of China or for that matter all the pearls of the sea. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. No one would like to have his reputation dented, and it is perceived as an honour rather than popularity.

80. Similar observations were made by the Apex Court in the case of Vishwanath Agrawal vs. Saral Vishwanath Agrawal (2012) 7 SCC 288, wherein it observed that reputation which is not only the *sail of life*, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity.



81. In Umesh Kumar vs. State of Andhra Pradesh and Anr. (2013) 10 SCC 591, the Supreme Court observed that good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property and as such it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution.

Whether Malice is an essential ingredient for Defamation:

82. In essence, any statement which has a tendency to injure the reputation of the person or lower him in the estimation of members of the society results in loss of reputation and is consequently defamatory. The question which follows for consideration is whether **the existence of wrongful intention to cause harm** to the reputation of another may be termed as “*malice*”, and be considered as an essential ingredient to establish defamation. There has been much confusion in the law of defamation concerning *malice* as an ingredient of an offence. The use of the term may be traced to the ecclesiastical courts. By the canon of law, a bad intent called *malitia* was essential in *injuria*. These courts punished offences which were sinful because they were sinful, with the essential element being *malitia*. The matter was looked at from a moral, not from a legal point of view, to see if the speaking of a word was sinful. Thus, ‘*malice*’ was the ground of temporal redress, though the jurisdiction of the temporal courts was not based upon ‘*malice*’. In other words, the common law adopted the presumption of ‘*malice*’ as the gist of action.

83. What prevailed in the thirteenth century is true even today to the effect that a false imputation upon a man’s character is always or



necessarily malicious. ‘*Malice*’ from being considered a necessary ground of jurisdiction in the spiritual courts, it came to be applied even after the civil courts acquired jurisdiction.

84. ‘*Malice*’ means ‘*malevolence*’ or ill will; however, the law of defamation in the civil context provides that even the words spoken without ill will may be actionable and in such cases the malice is implied in the act of speaking or publication. This kind of malice which the law is said to imply is called “*legal malice*” or “*malice in law*” and is different from malevolence which is called “*malice in fact*”. The “*legal malice*” is said to exist in speaking defamatory matter without legal excuse, because such words are spoken wherein the law implies malice. It may thus be observed that “*legal malice*” is a fiction which is implied from the circumstances while “*actual malice*” is a question of fact which requires specific proof.

85. In the Indian context the distinction between “*malice in fact*” and “*malice in law*” is evident in the two branches of law i.e. civil and criminal. Section 499 of IPC which defines defamation speaks of proof of “*malice in fact*”.

86. ‘*Malice in Fact*’ is present when the ill intention translates into a deliberate act that injures another in an unlawful manner with the motive to cause such harm as explained in the case of West Bengal State Electricity Board vs Dilip Kumar Ray, (2007) 14 SCC 568. In Jeffrey J. Diermeier and Anr. Vs. State of West Bengal and Anr. (2010) 6 SCC 243, while deliberating on the aspect as to what constitutes defamation under Section 499 of Indian Penal Code, 1860 the court held that there must be an imputation and such imputation must have been made with the



intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would thus be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

87. However, the Apex Court in the case of S.R. Venkataraman vs. Union of India, (1979) 2 SCC 491, explained that actual malicious intention need not be established in civil proceedings as the ‘malice in law’ is assumed from the commission of a wrongful act. Reliance was placed on Viscount Haldane’s reasoning for the presumption of ‘malice in law’ in Shearer and another v. Shield, 1914 AC 808 which reads as under:

“A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.”

88. Thus, the malicious intention of a person making an imputation is immaterial when a statement is untrue and is defamatory by its very nature as there is a presumption of “Malice in Law.

89. In the light of discussion of contours of defamation and the available defences, the facts of this case may now be examined.

Defamation by Defendant Nos. 1 to 4:



90. The plaintiff has claimed that he has been defamed in “*Operation West End*”, wherein it had been wrongly broadcasted and reported that he being a senior officer of Indian Army had accepted a bribe.

91. Defendant No.3 Sh. Aniruddha Bahl as DW1 has deposed by way of his affidavit Ex.DW1/A that while working during March, 2000 to May, 2003 as Editor, Investigations Tehelka.Com i.e. defendant No.1, an undercover Operation regarding the corruption in Defence Procurement was undertaken under his supervision and directions. Sh. Mathew Samuel, defendant No.4 was the main Reporter of the story titled “*Operation West End*”, who was sent as a decoy for the interview with the plaintiff.

92. DW1, Sh. Aniruddha Bahal, in his cross-examination has admitted that he was one of the promoters of defendant No.1 and the other three promoters were Tarun Tejpal, Minty Tejpal and Shankar Sharma. It was his brain child to expose the corruption in defence procurements which included domestic as well as international procurements. Defendant No.4 Sh. Mathew Samuel was deputed who through one retired Army Officer Lt. Col. Sayal was able to fix an interview with the plaintiff. The entire conversation was recorded by a hidden camera device. To his knowledge, two meetings took place between defendant no. 4 and the plaintiff. Post the said meetings, defendant No.4 met the deposing witness on the same day or the next day. As and when the shot tapes came from the field, they were handed over to DW1 and were in his custody. The instructions to the field members were given by him and the Operation was conducted under his supervision.

93. Admittedly, Defendant No.4 was able to arrange for the interview



with the plaintiff who was a Major General and was in line to be picked up to the next rank of Lt. General on promotion, through Lt. Col. Sayal who happened to be the former colleague and a friend of over 20 years of the plaintiff. He desired to call upon him at his residence. the plaintiff has deposed that Lt. Col. Sayal without informing him, brought defendant No.4, Sh. Mathew Samuel along and sought to explain his presence by stating that he was looking for a job opening and was considering taking up a job with defendant No.4, who was allegedly representing a Company based in London under the cover name of Westend, London which was interested to sell an item "*Hand Held Thermal Imager*" to the Indian Army.

94. The plaintiff as PW-1 has deposed that he had categorically informed Lt. Col. Sayal that he does not deal with imports and introduction of new equipments and vendors. The plaintiff has asserted that during their conversation, he wanted to dissuade Lt. Col. Sayal from pursuing such a career option by venturing into this assignment and he deliberately resorted to negative views. He also made contemptuous, sarcastic and non serious remarks in order to discourage Lt. Col. Sayal. The plaintiff has further deposed that since he was not dealing with the procurement of equipments, he had given no advice as to how to proceed in obtaining an Order. However, the facts have been distorted and insinuations have been implied against the plaintiff. The plaintiff, in fact, had tried to discourage defendant no. 4 as well from dealing with the issue any further. The conversation in question was recorded by Sh. Mathew Samuel, defendant no.4, while he accompanied Lt. Col. Sayal to the house of the plaintiff on 02.11.2000.



95. DW1 Sh. Aniruddha Bahal has deposed in his affidavit of evidence Ex. DW-1/A that there was no doctoring of the Tapes and in fact the forensic analysis commissioned by Hon'ble Mr. Justice Phukan Commission revealed that the Tapes were genuine. Those Tapes are in the custody of CBI and have not been produced.

96. The transcript of conversation in the tapes though was relied upon by the plaintiff as Ex.PW1/A, but was de-exhibited as Mark A on the objection taken by the defendants. Further, DW1 Sh. Aniruddha Bahal has testified in his cross examination that Ex PW1/A was written by him and accurately reflect the proceedings which transpired. He has also admitted that PW1/D is the print out of the story from his web site. The transcripts were thus admitted by DW-1 making them admissible in evidence.

97. The basic challenge is not to the recording/ preparation of the CD of the interview held between the plaintiff, Lt. Col. Sayal and defendant No.4, Shri Mathew Samuel, and the same has also not been produced before this court. Neither the interview is denied nor the correctness of video recording has been challenged. Rather, the challenge has been made to the transcript of the interview which was prepared under the supervision of defendant No.3 as admitted by him in his cross examination and are available on their website.

98. The admitted case of both plaintiff and defendant is that there was a conversation between the parties regarding the systemic corruption, which was recorded as under :

“Maj. Gen. Ahluwalia: See it's a massive bloody system, there is no place for friends. There is no place



*for singleton. It requires very deep pockets. Nobody talks small, I am being very honest with you. Every single person is... name dropping is the smallest part of the whole bloody transaction. **And I also ended up with bottles of Black Lable, Blue Lable in this bloody business.** Because it is easier to come and bloody talk: as I said, if you are going to talk about couple of crores, even to say " good evening", you have to present that bloody "good evening" properly...."*

*“**Maj. Gen. Ahluwalia** : It's a 60 crores deal and it's a very important line I have to write there. My line is written today.... I take that line.... so it's a 60 crores deal, I am giving you a hypothetical figure, it's a 60 crores deal. How much will you say that you have to take now, tell me ? Or for what amount should I put my neck out to write that important line ? So it's not a Maurya Sheraton dinner (all of them laugh). Please understand... It can't happen as an individual with one item. It's just can't I am trying to tell you why it can't happen. So you give me 10 Lakh rupees. I don't know whether you get the order or not, I am not concerned. I have done my bit and there are 20 people in the chain like this. There is a man who has to go and do a certain evaluation. You have to feed him there. He does, he doesn't do it, he writes 'no'. He screws up the whole bloody deal. He screws up everything what has happened up till now.....”*

99. Comments had been added by defendant No.3 as admitted by him at point A to A1 in the transcript Mark A, which read as under :

“Sayal goes near Ahluwalia and tries to hand him Rs.50,000/-, which he accepts later. ”

100. Pertinently, DW1, Sh. Aniruddha Bahal, has clarified that portion from point A to A1 in Ex.PW1/A was his explanation of what happened



during the interview.

101. The other comment added by defendant No.3, Sh. Aniruddha Bahl appeared at point B to B1. DW1 has admitted that comment from point B to B1 in the transcript was written by him based on his conversation with Sh. Mathew Samuel. It reads as under :

“Our next meeting with General Ahluwalia takes place 10 days later. Here he accepts a token bribe of Rs.50,000, which is never delivered to him.”

102. DW1 Sh. Anirudhha Bahl has explained in his cross-examination that he had given the equipment as well as Rs.50,000/- to defendant No.4 Sh. Mathew Samuel as Lt. Col. Sayal had informed defendant No.4 that plaintiff had demanded the same. He has admitted that no such demand of Rs.50,000/- was made from him personally. Once, no demand was made from him being the Supervisor and the person In-charge and responsible for conducting this Operation West End, it was the bounden duty of defendant No.1 to ascertain the authenticity and genuineness of the alleged demand of Rs.50,000/- by the plaintiff.

103. He has further admitted in his cross-examination that the impression was created from the recorded conversation that the demand was made, yet at the same time he has admitted that this amount of Rs.50,000/- was never accepted by the plaintiff.

104. These admissions of the DW1 in his cross-examination establish that no demand whatsoever was made by the plaintiff during his conversation which was recorded in the tapes by defendant No.4 Mathew Samuel, at which time Defendant no. 3 was not even present. It was merely an inference drawn by DW1 on the basis *of his conversation with*



defendant No.4. Blatantly from the admissions in the cross-examination, it is evident that there was neither any demand made by the plaintiff nor any money was paid despite which the transcript contains the comments to this effect from defendant No.3 which are proved to be not authentic and genuine, but a figment of imagination/ impression of defendant No.3.

105. The plaintiff was a man holding the position of Major General in the Army and was a man of repute. There cannot be worse defamation and disrepute to a person of integrity and honour than a false imputation of him having demanded and then accepted bribe of Rs. 50,000. There was wide publicity of this transcript which was admittedly put on the website of Tehelka.com, Defendant No. 1. and it continues to remain on their website.

106. The defendant No.3 himself has admitted that the story was covered in various news, magazines and media. Once, defendant No.3 on behalf of defendant No.1 had admitted that he had prepared and published the transcripts in public domain containing defamatory statements, the inference drawn by him is so manifestly cognitive that the defendants at their peril should be able to justify them in the sense in which the public understands them.

107. Having concluded that defamatory statements were made against the plaintiff what needs to be further considered is whether the defendants have any permissible defence under law. In Ram Jethmalani vs. Subramaniam Swamy, 126 (2006) DLT 535 while defining defamation as public communication which tends to injure the reputation of another, the Court explained that *the defences available in a suit for defamation are*



of truth, fair comment and privilege. It states as under :

“Traditional defences to an action for defamation have now become fairly crystallized and can be compartmentalized in 3 compartments: truth, fair comment and privilege. Truth, or justification, is a complete defence. The standard of proof of truth is not absolute but is limited to establishing that what was spoken was ‘substantially correct’. Fair comment offers protection for the expression of opinions. Standard of proof is not that the Court has to agree with the opinion, but is limited to determine whether the views could honestly have been held by a fair-minded person on facts known at the time. Unlike defence of truth, defence based on fair comment can be defeated if the plaintiff proves that the defamer acted with malice. Similar is the situation where the defence is of qualified privilege. Privilege is designed to protect expression made for the public good. Protection of qualified privilege is lost if actual malice is established. In public interest, absolute privilege is a complete defence. Rationale of absolute privilege being restricted to Court proceedings or proceedings before Tribunals which have all the trappings of a Civil Court and Parliamentary proceedings is that if threat of defamation suits loom large over the heads of lawyers, litigants, witnesses, Judges and Parliamentarians it would prohibit them from speaking freely and public interest would suffer.”

108. A possible defence that could have been taken by the defendants was that the statement was **truthful**. However, as discussed above in detail, these statements were complete figment of imagination of defendants and were never stated by the plaintiff nor such impressions could have been gathered from the conversations that were recorded in



the CDs. It was a blatant falsehood recorded in the transcripts that the plaintiff had accepted bribe of Rs.50,000/- to his knowledge.

109. The second defence taken by the defendants is that the *Operation West End* was undertaken with **public good** in mind to expose the rampant corruption in defence procurement, whether done nationally or internationally. The aim and objective may have been *in public good*, but it does not give any right to any agency to create or attribute false statements to the plaintiff merely to create sensationalization amongst the general public. The defendants have relied upon the Howard EL vs Mull M. (supra) and R. Rajagopal vs State of Tamil Nadu (supra) to argue that there must be constant vigilance over the exercise of governmental power by the press and media. When a “Fair Comment” is made on a public servant which is for the public good, it is sufficient if the writer or publisher honestly believes the facts that are stated as true and have not made any willful misrepresentation of any fact.

110. In Silkin v. Beaverbrook Newspapers Ltd. and another, (1958) 2 All ER 516, of the Queens Bench Division, following observations of Diplock J are significant:-

“I have been referring, and counsel in their speeches to you have been referring, to fair comment, because that is the technical name which is given to this defense, or, as I should prefer to say, which is given to the right of every citizen to comment on matters of public interest. The expression “fair comment” is a little misleading. It may give the impression that you, the jury, have to decide whether you agree with the comment, whether you think that it is fair. If that were the question which you had to decide, you realise that the limits of freedom which the



*law allows would be greatly curtailed. People are entitled to hold and to express freely on matters of public interest strong views, views which some of you, or indeed all of you, may think are exaggerated, obstinate, or prejudiced, provided- and this is the important thing-they are views which they honestly hold. The basis of our public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury, and it would be a sad day for freedom of speech in this country if a jury were to apply the test of whether it agrees with the comment instead of applying the true test: **was this an opinion, however exaggerated, obstinate or prejudiced, which was honestly held by the writer?**"*

111. The question to be thus, addressed is not whether the comments made were '*fair*' but whether the opinion as expressed was ***honestly held by the writer***. The focus is not on the readers or the third parties but on the writer and his belief and intent; what has been defined as '***Good Faith***'.

112. It is pertinent to broach upon the judgment of the Apex Court in Chaman Lal vs State of Punjab, (1970) 1 SCC 590 wherein it was expounded that '***Public Good***' is a question of fact, while '***Good Faith***' has to be established as a fact. '***Good Faith***' requires the exercise of care, caution and prudence. When the imputations or insinuations against a person are not proved, they cannot be considered as a statement made in ***good faith*** as they are baseless in the absence of proof.

113. In Arnold vs King Emperor, 1914 AC 644, the responsibility of a journalist was expressed by Lord Shaw as under:



“The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than that of any other subject. No privilege attaches to his position.”

114. In Sewakram Sobhani vs R.K. Karanjia, Chief Editor, Weekly Blitz & ors, (1981) 3 SCC 208, it was observed that the imputations made in the publication were of such a nature that it would lower the reputation of the appellant and, would per se be defamatory if not made *in good faith* for the cause of public good. It was held that journalists do not have any greater freedom or special privilege in society. When an assertion of fact is made by a journalist, which is not a fair comment, the journalist must be in a position to justify such assertions.

115. Further, in The Editor, Rashtra Deepika Ltd and ors vs Vinaya N.A (supra), it was found that a *fair comment* cannot justify a statement which is untrue. The defence of good faith is applicable only when there is some truth to the comment or there is a genuine effort to tell the truth. Thus, any comment made without any reasonable grounds cannot be protected under ‘*Good Faith*.’

116. The comments recorded by defendant no. 3 in Ex PW1/A cannot be regarded as a ‘Fair Comment’ as the same has been asserted as a fact by defendant Nos. 1 to 4. Conspicuously, the said defendants have been unable to establish their ‘*Good Faith*’ while making imputations against



the plaintiff in points A to A1 and B to B1 in Ex.PW1/A, due to their inability to prove the same. The objective may have been public good, but from the manner in which the publication has been made by defendant No.1 to 4, it is abundantly clear that it was not a true reporting of the incident. The comments have been added by defendant No.3, which is complete falsehood to his very own knowledge as can be discerned from the cross examination of DW1. It does not require any imagination to understand the wide ramifications of alleging corruption against a senior Army Officer and also the consequences thereto.

117. It is not in dispute that the consequence of such reporting was that a Court of Inquiry was initiated against the plaintiff and other Army Officers. While the fate of others may not be relevant for the case of the plaintiff, but admittedly, in the case of the plaintiff the Court of Inquiry was of the opinion that further retention of service of the plaintiff is not desirable. However, the Chief of Army Staff found that no misconduct was proved against the plaintiff and thus issued a *serious displeasure*.

118. A defence has also been set up by the defendants that the very fact that he was held guilty and awarded the punishment of *severe displeasure* corroborates the involvement of the plaintiff and the position of the defendants stands vindicated. Again, this argument of the defendants is specious and a desperate attempt by the defendants to cover their follies. In the Final Report of the Court of Inquiry Ex.PW1//D1 it was observed as under :

“8. AND WHEREAS, The reply submitted by the said Maj Gen MS Alhuwalia and the issues raised therein have been duly considered by the undersigned. It is considered



*that under the circumstances the General Officer should have avoided this second meeting firmly and was duty bound to report the matter to his superior officer when he was induced with and offer of bribe. To that extent the lapses on the part of the General Officer stand established. However, the meetings apparently had not been planned by the general officer in advance. It mitigates the misconduct on the part of the General Officer. **The general officer should have been extra cautious while interacting with persons of doubtful credentials for the second time. However, since he was dissuasive in accepting any illegal gratification the gravity of his offence is considerably reduced.***

*9. AND WHEREAS, The undersigned is satisfied that the said Maj Gen MS Alhuwalia is partly blameworthy for the lapse is mentioned in the SCN but the lapses are not brave enough to justify termination of service of the said Maj Gen MS Alhuwalia and awarding ‘**Severe Displeasure**’ (Recordable) Be conveyed to the said Maj Gen MS Alhuwalia.”*

119. The Court of Inquiry gave a clean chit to the plaintiff and *severe displeasure* was awarded only because of his conduct of agreeing to meet with people of doubtful credentials. It is a service discipline which was questioned and not the integrity or character of the plaintiff. To borrow the triple test expounded by **Carter-Ruck on Libel and Slander, Fifth Edition; i.e.** this *false statement* about the plaintiff *to his discredit, exposed him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade and consequently tended to lower the plaintiff in the estimation of right thinking members of society.*



120. The comments added by defendant no. 3 are *per se* false and defamatory to the knowledge of defendants No.1 to 4. There cannot be any more blatant case of causing serious harm and injury to the reputation of an honest Army Officer, who despite all the endeavours of defendant, had refused to accept any bribe.

121. Thus, the evidence on record and in fact the admissions made on behalf of defendant No.1 to 4, establish a case of defamation against the plaintiff, entitling him to damages.

Defamation by Defendants No. 5 to 7:

122. The DW1, Aniruddha Bahl, has admitted in his cross-examination that a contract Ex. DW1/D5-7(1) dated 21.03.2001 was entered into between Buffalo Network Pvt. Ltd./ defendant No.1A owner of defendant No.1 and M/s Zee Telefilm defendant No.7. Pursuant to this Agreement, the owner of defendant No.1 had supplied transcripts and tapes of “Operation West End” to defendant No.7. In the affidavit Ex.DW1/A, Mr. Aniruddha Bahal, defendant No.3 the tapes have been referred to as being genuine. DW-1 has further admitted that the transcripts of Operation West End were available on the web site Tehelka.com for public viewing. He has also admitted that several newspapers covered the investigation titled “Operation West End”.

123. DW2 Sh. Gulshan Kumar Sachdev, who appeared on behalf of defendant No.7, in his affidavit of evidence DW2/A has explained that defendant No.7 is in the business of broadcasting various TV channels and Zee TV is also one such channel. He deposed that defendant No.7



only telecasted the programme *Operation West End* provided to it by way of tapes by defendant No.1A on an assurance that there was nothing defamatory in the tapes and they do not contain any legally objectionable material. As per the terms of licence Agreement, the tapes were provided, which were four hour long and were telecasted by defendant No.7 on its channel. No objection whatsoever was taken to the telecast by defendant No.1 to 4.

124. DW2 has further deposed that they relied upon the assertions of defendant No.1 to 4 that the tapes were genuine and personally did not authenticate the tapes given by defendant No.1A. As already discussed above, the plaintiff has not challenged the contents of Video Tapes as derogatory or defamatory. So much so, the Tapes which contained the interview which were handed over to defendant No.5 to 7, have not even been produced or exhibited in the evidence. Even if the tapes were played on the channels of defendant No.7 including Zee TV, there is nothing brought on record either by way of Tapes or any other evidence that the contents of the cassettes were defamatory in any manner. Neither the tapes nor the recording of the telecast has been produced before this court and hence it cannot be determined if it contained any defamatory material.

125. The entire case of the plaintiff has been that it is only the comments inserted by defendant No.3 the Supervising Agency which were defamatory and created wrong impression of corruption against the plaintiff. There being no cogent evidence produced against defendant No.5 to 7 of the telecast made by them being derogatory or defamatory in any manner causing loss of reputation to the plaintiff. It is neither the case of the plaintiff nor has been proved by way of evidence that the



comments which were admittedly inserted by defendant No.3 Aniruddha Bahal in the transcripts was published in any manner by defendant No.5 to 7 as their own editorial comments.

126. The plaintiff has not been able to prove any act of defamation on the part of defendant No.5 to 7.

127. The issue is answered accordingly, and Defendant No.1 to 4 are held to have committed an act of defamation against plaintiff.

Issue No.2 : *If the answer to the aforesaid is in the affirmative whether the plaintiff is entitled to the reliefs claimed?*

128. Having concluded that the act of defamation has been shown to have been committed by defendant No.1 to 4, the other question which arises is the quantum of damages payable to the plaintiff.

Nature and Extent of Injury.

129. What needs to be considered now is the nature and extent of injury to invite an action for defamation. Fundamentally, injury to the reputation being the gist of the action; evidence of loss of reputation is necessary only where without some evidence, it would not be clear that reputation had in fact been injured. But the injury must be appreciable, that is, capable of being assessed by the Court. Hence no action lies for mere vulgar abuse, or for words which have inflicted no substantial injury as espoused in the maxim: *de minimis non curat lex* (*the law does not concern itself trifles or with insignificant or minor matters.*).

130. The application of this maxim was explained in Chaddock v. Briggs, (1816) 13 Mass. 248:



“Some words, however, although spoken falsely and maliciously, are not of a nature to produce actual injury, because, being common terms of reproach, more indicative of the temper of the speaker than of any specific defect of character in him of whom they are spoken, it cannot be presumed that they have produced any injurious effect; and therefore to make such words the basis of an action it is necessary to allege and prove that some damage did actually follow the speaking of the words.”

131. Whenever words are per se defamatory and on invasion of a right (as of reputation) on their face, no inquiry is allowed into the character of actual harm suffered and no further proof of damages is required. This class of defamation is actionable per se; i.e. they invade a simple or absolute right. On proof of publication of such words and in the absence of any defence, the plaintiff must recover at least nominal damages for the injury to his reputation caused by the defendant, whether such injury was malicious or accidental, although malice may be shown to entitle him to increased damages.

132. The plaintiff in his testimony has deposed that he had served a Legal Notice Ex.PW1/P dated 27.08.2001 to the defendants seeking an apology but it met only with refusal. The apology as on day has become irrelevant as the plaintiff has already suffered the Court of Inquiry and has already been punished with *severe displeasure* qua his conduct which was held to be unbecoming of an Army Officer. The reputation of the plaintiff has suffered as he not only faced lowering of estimation in the eyes of public but his character also got maligned with serious allegations of corruption which no subsequent refutation can redress or



heal. Much time has passed and plaintiff has already lived with ill fame for more than 23 years. Considering the enormity of the nature of defamation, apology at this stage is not only inadequate but is meaningless.

133. Considering the entire scenario and the loss of reputation of the plaintiff which got publicised through the web sites of Tehelka.com, Rs.1,00,00,000/- (one crore) is awarded as damages payable by defendant No.1 to 4 (considering the rights to the Tapes had been assigned to defendant No.5 to 7 for Rs.50 lakhs by defendant No.1 to 4 in the year 2000).

134. The issue is decided accordingly.

Issue No.3: *Whether the defendant No. 7 has exceeded its right under Article 19(1)(a) of the Constitution of India? OPP*

AND

Issue No.4: *Whether the defendant No. 7 has acted with due care and caution? OPD*

135. Since the plaintiff has not been able to prove any evidence against defendant No.7, these issues do not merit any discussion. They are accordingly decided.

Relief

136. In view of the findings on issue No.1 and 2, the suit is dismissed against the defendant Nos. 5 to 7, and the damages in the sum of Rs.2,00,00,000/- (Rupees Two Crores) is awarded to the plaintiff to be paid by defendant No.1 to 4 for having caused defamation, along with



costs of the suit.

137. Decree sheet be drawn.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 21, 2023/VA/ Ek

