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EXHIBIT : 01

**IN THE COURT OF AAKAR LALITKUMAR TRIVEDI,
PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE,
FIRST CLASS, VALLABHIPUR, DISTRICT BHAVNAGAR**

**CRIMINAL CASE NO. 474 OF 2019
(PRE-CHARGE)**

**COMPLAINANT : RAJESHBHAI BABUBHAI VAGHASIYA
AGED : 44 YEARS (AS PER COMPLAINT),
OCCUPATION : AGRICULTURE,
RESIDING AT : BEHIND OLD COURT,
VALLABHIPUR, DISTRICT BHAVNAGAR.**

VERSUS

**ACCUSED : (1) GHUGHABHAI ODHABHAI DABHI
AGED : ADULT,
OCCUPATION: EX-PRESIDENT,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : PATIVADA AREA,
AT VALLABHIPUR.**

**(2) NITINBHAI JIVRAJBHAI GUJARATI
AGED : ADULT,
OCCUPATION: EX-VICE PRESIDENT,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BARPARA AREA,
AT VALLABHIPUR.**

**(3) MAYABA RAJENDRASINH GOHIL
AGED : ADULT,
OCCUPATION: EX-EXECUTIVE CHAIRMAN,
VALLABHIPUR NAGARPALIKA,**

**RESIDING AT : PIPLA SHERI,
AT VALLABHIPUR.**

**PRESENTLY RESIDING AT :
ASHTVINAYAK COMPLEX,
3RD FLOOR, BLOCK NO.D/307,
BESIDES TELEPHONE EXCHANGE,
PANVADI, AT BHAVNAGAR.**

- (4) MANJULABEN LABHUBHAI SOLANKI
AGED : ADULT,
OCCUPATION: EX-BUILDING COMMITTEE
CHAIRMAN,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : RAJPUT SHERI,
AT VALLABHIPUR.**
- (5) MAHESHBHAI LAKSHMANBHAI VASANI
AGED : ADULT,
OCCUPATION: EX-WATER SUPPLY CHAIRMAN,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : FULVADI AREA,
AT VALLABHIPUR.**
- (6) NAGJIBHAI DAMJIBHAI GADHESARA
AGED : ADULT,
OCCUPATION: EX-LIGHT COMMITTEE
CHAIRMAN,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : KUMBHAR SHERI,
AT VALLABHIPUR.**
- (7) BHIKHABHAI NATHUBHAI SOLANKI
AGED : ADULT,
OCCUPATION: EX-HOUSE KEEPING
COMMITTEE CHAIRMAN,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : PIPLA SHERI,
AT VALLABHIPUR.**
- (8) JORSHANGBHAI BAVSHANGBHAI CHAVDA
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BESIDE MANAS GIRLS SCHOOL,
AT VALLABHIPUR.**

- (9) **DEVKUNVARBEN CHITHARBHAI CHAUHAN**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BEHIND PWD OFFICE,
VADA AREA, AT VALLABHIPUR.
- (10) **PRATAPSIKH JIVABHAI PARMAR**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : FULVADI AREA,
AT VALLABHIPUR.
- (11) **MAVUBEN PANCHABHAI CHAVDA**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BHARVAD SHERI,
NEAR VETERINARY HOSPITAL,
AT VALLABHIPUR.
- (12) **PARVINBANU ISUBKHAN BALOCH**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : NEAR RAJPUT SHERI,
BESIDE BHARVAD AREA,
AT VALLABHIPUR.
- (13) **RAJENDRASINH VAGHJIBHAI SOLANKI**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR AND LEADER
OF OPPOSITION,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BEHIND DARBAR GADH,
BHAGAT BAPU'S TEMPLE,
AT VALLABHIPUR.
- (14) **DILIPBHAI KALUBHAI MAKVANA**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : RAJPUT SHERI,
AT VALLABHIPUR.

- (15) **NAGJIBHAI THAKARSHIBHAI BHALANI**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : GABANI CHOK,
AT VALLABHIPUR.
- (16) **JASHIBEN PRAVINBHAI RATHOD**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : NEAR RAJPUT SHERI,
BESIDE BHARVAD AREA,
AT VALLABHIPUR.
- (17) **VINUBHAI KUNVARJIBHAI VAGHASIYA**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : NEAR CHAMARDI DARWAJA,
AT VALLABHIPUR.
- (18) **ARIFKHAN RASULKHAN PATHAN**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : PATEL SHERI, BESIDE MOSQUE,
AT VALLABHIPUR.
- (19) **PUNIBEN BHURABHAI CHAD**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : BHATT SHERI,
AT VALLABHIPUR.
- (20) **MUKESHBHAI VELJIBHAI MAKWANA**
AGED : ADULT,
OCCUPATION: EX-CORPORATOR,
VALLABHIPUR NAGARPALIKA,
RESIDING AT : PATIVADA AREA,
AT VALLABHIPUR.
- (21) **LABHUBHAI DIPSANGBHAI SOLANKI**
AGED : ADULT,

OCCUPATION: BUSINESS,
RESIDING AT : RAJPUT SHERI,
AT VALLABHIPUR.

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APPEARANCE :

SHRI H.K. BADHEKA, LEARNED COUNSEL FOR THE COMPLAINANT.
SHRI K.H. BHALANI, LEARNED COUNSEL FOR THE ACCUSED.

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**SUBJECT: COMPLAINT UNDER SECTION 190 READ WITH SECTION
200 OF THE CODE OF CRIMINAL PROCEDURE, 1973.**

: : ORDER BELOW COMPLAINT AT EXHIBIT 1 : :
(PRE-CHARGE ORDER)

: : RELIEFS : :

1. By way of present complaint preferred under section 190 of the Code of Criminal Procedure, 1973, the complainant has prayed for issuance of process against the accused for the offences punishable under sections 211, 499, 500, 504, 506(2), 120(B), 34 and 114 of the Indian Penal Code.
- 1.1 After filing of the complaint, it was registered as Criminal Enquiry by learned Predecessor Presiding Officer and the report of the Police qua the present complaint was called for. Later on, the verification of the complainant was recorded on 06.09.2019 as per the Rojkam.
- 1.2 After recording the verification of the complainant and considering the police report, the learned Predecessor Presiding Officer has passed an order dated 10.10.2019 **issuing process under section 204 of the Code of Criminal Procedure against the accused only for the offences punishable under sections 499, 500, 114 of the Indian Penal Code and rejected the complaint under section 203 of the Code of Criminal Procedure qua the**

offences punishable under sections 211, 504 and 506(2) of the Indian Penal Code and it was ordered to register the complaint as Criminal Case for the offences punishable under sections 499, 500 and 114 of the Indian Penal Code.

:: AVERMENTS IN THE COMPLAINT AT EXHIBIT 01 ::

2. It is the say of the complainant in **the complaint at Exhibit 01** that the complainant is the resident of Vallabhipur Town and since his forefathers they have been staying at Vallabhipur and earns livelihood for his family by doing agriculture work.
- 2.1 It is further the say of the complainant in **the complaint at Exhibit 01** that the complainant and his witnesses live at Vallabhipur in the manner which befits a reputed community person. They have their very good reputation at Vallabhipur Town and even the parents of the complainant and witnesses have very good reputation in the community and Vallabhipur Town.
- 2.2 It is further the say of the complainant in **the complaint at Exhibit 01** that the accused herein are the elected public representatives of the Vallabhipur Nagarpalika for the period from the year 2011 to 2016.
- 2.3 It is further the say of the complainant in **the complaint at Exhibit 01** that the complainant and his witnesses had called for certain information qua the public works done by the aforesaid accused persons being the public representatives under the Right to Information Act, whereby the information qua irregularities and corruption were received and, therefore, the complainant had given an application to the Gujarat Vigilance Department, Gandhinagar and District Collector, Bhavnagar and, therefore, with a view to see

that such information is not disclosed, the accused in connivance with one another and by misusing their public position being the public representatives, they had given one written representation dated 15.04.2015 to the District Collector, Bhavnagar, in person alleging against the complainant and his witnesses that they are mentally distorted persons and further alleged that in the name of "Vallabhi Hit Rakshak Samiti" the complainant and his witnesses are involved in the activities of spreading mental harassment and fear in the public of Vallabhipur Town and they are involved in illegal activities.

2.4 It is further the say of the complainant in **the complaint at Exhibit 01** that in the very representation dated 15.04.2015, the accused have alleged that the complainant has been obtaining the water for his fields by leaking the Mahi Pariej Line and has been doing cultivation by encroaching upon the Government land and he has been misdirecting the people of Vallabhipur Town.

2.5 It is further the say of the complainant in **the complaint at Exhibit 01** that in the very representation the accused have alleged that the witness Dharamshibhai Nadoliya has been doing the illegal activity of constructing Sardar Awas in his own name and thereafter, selling the same illegally.

2.6 It is further the say of the complainant in **the complaint at Exhibit 01** that in the very representation the accused have alleged that the witness Ashok Balabhai Vegad has been extorting money from the public under the different schemes of the Government and has also done certain offences of getting S.T.Bus passes illegally and earlier, he had made his family members to eat DDT and attempted to siege the Chairman, House Keeping Chairman and Members of

the Nagarpalika illegally and therefore, they are frightened of the said witness.

2.7 It is further the say of the complainant in **the complaint at Exhibit 01** that in the very representation the accused have alleged that the witness Bhargavbhai Harshadbhai Maheta has been threatening the Nagarpalika employees saying that he is the report of Gujarat Samachar and his brother has been doing the business of illegal liquor and as the said Bhargavbhai is the reporter of Gujarat Samachar, the police and other officers are frightened.

2.8 It is further the say of the complainant in **the complaint at Exhibit 01** that in the very representation the accused have alleged that the complainant and his witnesses under the guise of Right to Information Act activists have been searching the BPL applicants and under the guise of getting information keeping the officers busy and all such activities of the complainant and his witnesses is like blackmailers.

2.9 It is further the say of the complainant in **the complaint at Exhibit 01** that the accused have shown the very representation to the public at Vallabhipur Town and they had affixed the very representation in the Tower Chok Area and outside the Old Nagarpalika and therefore, the people were misled by the same and they had called the parents of the complainant and his witnesses and talked about their defamation and thereby, the accused have defamed the complainant and his witnesses.

2.10 It is further the say of the complainant in **the complaint at Exhibit 01** that the complainant on 22.08.2015 had issued legal notice to the accused persons, however, no reply has been given. Further,

when the complainant along with his witnesses had gone to the office of the Nagarpalika on 10.12.2015 at around 03-00 p.m. to 03-45 p.m. the Chief Officer and all the corporators who are the accused herein were present there and the accused No.21, who is the husband of the accused No.4, in connivance with other accused had hurled abuses to the complainant and his witnesses and insulted the complainant and his witnesses and driven them away from the Nagarpalika by pushing them. Thus, it is urged that the accused have committed the offences punishable under sections 211, 499, 500, 504, 506(2), 120B, 34 and 114 of the Indian Penal Code.

:: VERIFICATION ::

3. In the very verification of the complainant which was recorded after about 18 months on 06.09.2019, the complainant has stated almost in the line of his complaint and prayed for framing of charge against the accused, however, **at no place the complainant has indicated qua the mens rea of the accused persons** in the entire verification which appears almost identical to the complaint at Exhibit 01, which plays a pivotal role in deciding the present complaint.

:: PRE CHARGE EVIDENCE ::

4. After issuance of process to the accused, the accused appeared through their learned counsel.
- 4.1 After the issuance of process to the accused and their appearance before this Court, **being the pre-charge evidence, the complainant has been examined vide Exhibit 108**, whereby he has stated in the line of the verification and got executed a huge

number of documentary evidence, **including the representation at Exhibit 122 dated 15.04.2015.**

- 4.2 In the very cross-examination, the complainant has admitted that since the RTI Act came into existence he has been doing the work as RTI Activist; that he has been demanding the necessary documents from the Government and Semi Government Institutions being the RTI Activist; that till date he has not filed any complaint or application in any Court except the present application on the basis of the documents collected through the RTI.
- 4.3 The complainant has further admitted in the cross-examination that **the accused persons have alleged qua the encroachment by the mother and wife of the complainant on the Government Land; that it is not true that the District Collector has not done any inquiry thereof; the complainant has volunteered that the Circle Officer had inquired thereof; that it is true that the complainant has not produced on record any documentary evidence qua the inquiry made by the Circle Officer qua the aforesaid land owned by the mother and wife of the complainant.**
- 4.4 The complainant has further admitted in the cross-examination that there was a committee named Vallabhi Hit Rakshak; he has denied that he was a member thereof; **that Dharamshibhai Nandoliya, Ashokbhai Vegad and Bhargavbhai Maheta has not filed any complaint qua their defamation in any Court; that he has not produced on record any documentary evidence indicating that there was defamation**

and/or insult to the reputation of either the complainant or his family members.

4.5 The complainant has also examined different witnesses from different Government Departments like Traffic Controller, Circle Officer, Mamlatdar Office, Office of the Deputy Collector Shihor, Office of the District Collector, Office of the Water Supply, etc. as his witnesses :

- (1) PW-2 **Hardikbhai Rambhai Chad** vide Exhibit 287, Office of Traffic Controller, S.T., Vallabhipur,
- (2) PW-3 **Govindbhai Bhagvanbhai Chauhan**, Postal Assistant, vide Exhibit 301
- (3) PW-4 **Alpeshbhai Keshubhai Solanki, Circle Officer**, vide Exhibit 304,
- (4) PW-5 **Ajitbhai Jamsangbhai Kher, Deputy Mamlatdar**, vide Exhibit 328,
- (5) PW-6 **Mehul Khimjibhai Galani, Junior Clerk, Water Supply Department**, vide Exhibit 347
- (6) PW-7 **Kuldipsinh Natubhai Makwana, Senior Clerk, Public Health Department**, vide Exhibit 354.
- (7) PW-8 **Kanubhai Gangaram Parmar, Mamlatdar**, vide Exhibit 370.
- (8) PW-9 **Udesingbhai Dansingbhai Rathod, Administrative Clerk, Vallabhipur Nagarpalika**, vide Exhibit 379.

4.6 It is pertinent to note that all these witnesses were either the Government or Semi Government Officers who have produced the documentary evidence available in their offices as prayed for by the complainant.

5. What is to be noted is that the complainant has also examined his close friends i.e. **PW-10 – Bhargavbhai Maheta vide Exhibit 389 and PW-11 Dharamshibhai Nandoliya vide Exhibit 392**, who have stated in line of the case of the complainant, however, they have not taken the case of the complainant any further.

5.1 This witness has admitted in his cross-examination that his father and grandfather were doing the job of selling Newspaper at Vallabhipur; he has denied that he is not the reporter of Gujarat Samachar Newspaper; **he has admitted that there is as such no “Vallabhi Hit Rakshak Samiti” at Vallabhipur. The very fact has been admitted by the complainant that there is one “Vallabhi Hit Rakshak Samiti” at Vallabhipur.**

5.2 The very witness has further admitted that **he does not have any idea that** he along with Dharamshibhai Nandoliya had registered the objection qua allotment of land for the Court Building under the name of “Vallabhi Hit Rakshak Samiti” at Vallabhipur and later on the very MLA Shri Atmaram Parmar, Umrula Constituency, had forwarded a copy of the letter dated 20.03.2023 addressed by the Resident Additional Collector to the MLA and copy was forwarded to this witness Bhargavbhai and Dharamshibhai Nandoliya; that on perusal of the very letter at Exhibit 390, he states that the name of Dharamshibhai Nandoliya is indicated at Sr. No.6 being the President of Vallabhi Hit Rakshak Samiti and his name is shown at Sr. No.16 and at Sr. No.19 the name of Ashokbhai Balabhai Vegad is shown.

5.3 This witness has further admitted that he has served as the Member of the Nagarpalika for the period from 2021 to 2026; that

after presentation of the representation at Exhibit 122, he has been elected as the member of the Nagarpalika.

5.4 This witness has further admitted that **for the statement made in his examination in chief that “wherein we all were proved acquitted”, he has not produced on record any documentary evidence.**

5.5 This witness has further admitted that **Rajeshbhai Vaghasiya, Dharamshibhai Nandoliya and Ashokbhai Balabhai Vegad as well as he himself are very close friends**; that he was a witness in a case where the complainant herein had filed a complaint against one Vinubhai Vaghasiya; that he himself has not filed any complaint qua the incidents that took place in the present complaint.

6. The complainant has further examined his friend Shri Dharamshibhai Nandoliya vide Exhibit 392, whereby he has supported the case of the prosecution, however, in the very cross-examination he has admitted that his residential premises has been situated at Pativada Area of Vallabhipur; that he is unmarried; that he has been allotted a plot free of charge by the Vallabhipur Taluka Panchayat and it has been situated in Sardar Avas at Vallabhipur; **that he does not stay there**; the witness has volunteered that he happens to go there; that he knows Umarbhai Sulemanbhai Nathvani; that in his aforesaid plot, Umarbhai Sulemanbhai has been staying; the witness volunteers that since the time when there was flood at Vallabhipur and the hut of the said Umarbhai got submerged, the said Umarbhai has been staying there; that this Umarbhai Nathvani stays in a well-constructed home; the witness

volunteers that this pukka home is made by the witness; that it is not true that he has sold his plot on 22.03.2008 to the said Umarbhai Nathvani by way of agreement to sell; he does not know whether in such an agreement to sell there is photograph of this witness and also the photograph of Umarbhai Nathvani.

6.1 This witness Shri Dharamshibhai Nandoliya has further admitted in the cross-examination that the people of Vallabhipur Town had raised objection qua allotment of 10000 sq. mtr. land for the Court premises; **that such objection was raised in the name of members of Vallabhi Hit Rakshak Samiti; that thereafter the Government had cancelled the allotment of the said land to the Court; that a copy of this order of the Resident Additional Collector addressed to the MLA Shri Atmaram Parmar, Umralla Constituency, has been received by him;** that he has been shown the letter at Exhibit 390 addressed by the **Resident Additional Collector to the MLA Shri Atmaram Parmar, Umralla Constituency** and thereby, he has admitted that in the very letter in the end at “Copy Forwarded to” at Sr. No.6 his name has been indicated as **Vallabhi Hit Rakshak Samiti’s President Dharamshibhai J. Nandoliya** i.e. his name is indicated; that it is true that in the letter at Exhibit 390, his surname is indicated as **“Nandoliya”**.

6.2 This witness has further admitted in his cross-examination that he had filed one complaint in the Court qua the land of Bal Mandir against the Chairman of Vallabhipur Nagarpalika Mahesh L. Savani, which came to be rejected by the Court; that he has not initiated any further proceedings against rejection of the said complaint.

- 6.3 This witness has further admitted in his cross-examination that he is witness in two cases filed by the complainant Rajeshbhai Vaghasiya; that he knows Bhavikbhai Maheta, who is the brother of his friend Bhargavbhai Maheta; that he does not know as to whether there are 3 to 4 prohibition cases registered with Vallabhipur Police Station against the said Bhavikbhai Maheta.
- 6.4 This witness has further admitted in his cross-examination that if his defamation has taken place, then he himself has not filed any case; **that he has not produced any documentary evidence qua the allegation that** the accused had levelled absolutely false allegations against him and they had shown the representation in public and made false propaganda and by calling the persons of their family spread false information and by giving mental harassment done criminal offence.
- 6.5 This witness has further admitted in his cross-examination that qua the facts stated in paragraph 9 of his examination-in-chief, **“Wherein no allegation against him is proved”, no evidence has been produced by this witness on record**; that he himself has not filed any case qua the incident in question.
7. In view of aforesaid facts and with above averments, the complainant has approached this Court by way of present complaint.

:: ARGUMENTS ::

8. **The right of the complainant to argue the matter was closed by this Court as though time was granted, the complainant has failed to argue the matter.** Further, he has not given any application to open his right to argue the matter till date. However,

looking to the say of the complainant in the complaint, it is the case of the complainant that a *prima facie* case is made out to frame the charge against the accused persons under sections 211, 500, 504, 506(2), 120B, 34 and 114 of the Indian Penal Code.

9. In the backdrop of the facts and circumstances of the case, verification of the complainant and the statements of the witnesses as also the huge documentary evidence produced on record, now this Court moves further to examine the merits of the matter. For deciding the matter at issue, the following points need to be considered :

A. Whether there is prima facie case for framing of the charges against the accused persons.

B. Whether there are sufficient pleadings to fulfil the prerequisites of offence under Section 499 of the Indian Penal Code.

C. Whether the alleged defamatory statement made in the representation dated 15.04.2015 at Exhibit 122 was made in defence and in good faith and, therefore, the ninth exception to section 499 of the Indian Penal Code would apply to the present case.

D. Whether the mens rea and intention are the sine qua non and whether they form part of the pleadings and statements.

10. The whole controversy revolves around a question whether the essential ingredients of the offence of defamation under section 499 of the Indian Penal Code are present to constitute the offence.

11. The law of defamation seeks to protect individual reputation. The word “defamation” is the generic name for the wrong; Libel and

Slander are forms of it. Defamation therefore, is of two kinds viz. Libel and Slander.

12. Broad distinction between the two is that libel is addressed to the eye while as slander to the ear.
13. Slander is the publication of defamatory statement in a transient form, which may be spoken words. Libel is a representation made in some permanent form, e.g. writing, printing, picture.
14. In the above referred backdrop, at this juncture, it would be profitable to regurgitate the provisions of sections 499, 500 of the Indian Penal Code, which read as under :

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a

loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says— “Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who

have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—“Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty.” A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

15. The above definition is subject to **four explanations and ten exceptions**. If a person is found guilty of having committed defamation in terms of section 499 of the Indian Penal Code, the

punishment is stipulated in section 500 of the Indian Penal Code. The offence is non-cognizable and bailable.

16. It becomes evident from the reading of section 499 of Indian Penal Code that mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. Therefore, the intention and knowledge to cause harm are the essential ingredients to constitute the offence under section 499 of Indian Penal Code.
17. Let us examine the law on issuance of summons and framing of charges. The Hon'ble Supreme Court of India, time and again reiterated that Criminal Case is a serious matter and Criminal Law cannot be set into motion as a matter of course. The Magistrate has to therefore, carefully scrutinize the evidence brought on record before issuance of summons. For instance, I may refer to some of the judgments of the Hon'ble Supreme Court of India, in this regard, namely :

17.1 The Hon'ble Supreme Court of India in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate, reported in (1998) 5 SCC 749***, has held as under :

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant

to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

17.2 The Hon'ble Supreme Court of India in the case of **Mehmood Ul Rehman v. Khazir Mohammad Tunda, reported in (2015) 12 SCC 420**, has held as under :

“22. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

17.3 The Hon'ble Supreme Court of India in the case of **Sunil Bharti Mittal v. CBI, reported in (2015) 4 SCC 609**, has held as under :

“52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate

ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

17.4 The Hon'ble Supreme Court of India while examining what care shall be taken by the Magistrate while exercising discretion to issue process/ frame charge, the Apex Court of India in the case of ***Subramanian Swamy v. Union of India, reported in (2016) 7 SCC 221***, has held thus :

"207. ... In Punjab National Bank v. Surendra Prasad Sinha it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. ..."

17.5 The Hon'ble Supreme Court of India in the case of ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., reported in (2019) 16 SCC 610***, has held as under :

“35. To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank v. Surendra Prasad Sinha, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.”

18. From the above referred judgments of the Hon'ble Supreme Court of India, it becomes evident that the Magistrate framing the charge against the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind is best demonstrated by disclosure of mind on the satisfaction. The Magistrate would be judicious in exercising discretion lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice, but **it would not be the means to wreak personal vengeance as it is a serious matter affecting one's dignity and reputation in the society.**

19. In the teeth of above referred well settled law, this Court will examine whether to frame the charges against the accused or not. This Court, therefore, reverts back to the facts of the case.

19.1 It is the case of the complainant that the accused in their representation dated 15.04.2015 to the District Collector, Bhavnagar, had averred that the accused have alleged that the complainant has been obtaining the water for his fields by leaking the Mahi Pariej Line and has been doing cultivation by encroaching upon the Government land and he has been misdirecting the people of Vallabhipur Town. It is further alleged that the witness Dharamshibhai Nadoliya has been doing the illegal activity of constructing Sardar Awas in his own name and thereafter, selling the same illegally. It is also alleged that the witness Ashok Balabhai Vegad has been extorting money from the public under the different schemes of the Government and has also done certain offences of getting S.T.Bus passes illegally and earlier, he had made his family members to eat DDT and attempted to siege the Chairman, House Keeping Chairman and Members of the Nagarpalika illegally and therefore, they are frightened of the said witness. It is further alleged that the witness Bhargavbhai Harshadbhai Maheta has been threatening the Nagarpalika employees saying that he is the report of Gujarat Samachar and his brother has been doing the business of illegal liquor and as the said Bhargavbhai is the reporter of Gujarat Samachar, the police and other officers are frightened. It is further alleged that the complainant and his witnesses under the guise of Right to Information Act activists have been searching the BPL applicants and under the guise of getting information keeping the officers busy and all such activities of the complainant and his witnesses is like blackmailers.

19.2 It is, thus, the say of the complainant that the said statements of the accused are defamatory in nature and therefore, the complainant has filed the present complaint.

20. The Hon'ble Supreme Court of India in the case of ***S.Khushboo v. Kaniamal and another, reported in AIR 2010 SC 3196***, after considering the key ingredients of the offence contemplated by section 499 of Indian Penal Code, has held that the definition makes it amply clear that the accused must **either intend to harm the reputation of a particular person or reasonably know that his/ her could cause such harm.**

21. It is, therefore, for inviting the provisions contained in section 499/500 of the Indian Penal Code which is penal in nature, the Magistrate has to consider if the requirement of ***mens rea which is a mandate for criminal defamation punishable under Section 500 of the IPC*** was fulfilled or not. ***If mens rea or criminal intention is lacking or is missing in the act of the accused, they cannot be held guilty for an offence of defamation within the meaning of Section 499 of Indian Penal Code.***

22. The Hon'ble Supreme Court of India in the case of ***Subramaniam Swamy (supra)*** has held that in the matters of criminal defamation the heavy burden is on the Magistrate to scrutinize the complaint from all aspects. The Magistrate has also to keep in view the language employed in section 202 of Code of Criminal Procedure. which stipulates about the residence of the accused at the place beyond the area the Magistrate exercises his jurisdiction. He must be satisfied that the ingredients of section 499 of Indian Penal Code are satisfied. Application of mind in case of complaint is imperative.

23. The question that also arises for consideration is whether reading the above referred relevant paragraphs of the complaint can it be said that a *prima facie* case exists for framing of charge against the

accused. It is evident from the verification as well as the evidence in chief that at no place it is averred that **the alleged imputation is with the intention of causing harm to the reputation of the complainant and his witnesses or it was with knowledge or reason to believe that the imputation will harm the reputation of the person to whom it pertains**. Hence, it can safely be said that the complaint does not fulfil the prerequisites of section 499 of the Indian Penal Code.

24. It is pertinent to note that on perusal of the verification of the complainant and the statements of a number of witnesses, it transpires that **sufficient pleadings are not made by the complainant as regards mens rea or criminal intention of the accused as the mens rea is sine qua non to attract section 499/500 of Indian Penal Code.**
25. Admittedly, there are no pleadings in the complaint, **verification and the statements of the witnesses about the criminal mens rea or intention of the accused**. Thus, this Court has no hesitation to hold that in this case **mens rea or criminal intention is lacking or for want of necessary pleadings it is missing in the act of the accused and therefore, they cannot be held guilty for the offence of defamation within the meaning of section 499 of Indian Penal Code.**
26. Further, on perusal of the entire complaint, verification and the statements of all the witnesses as also the huge number of documents produced on record, it transpires that mainly the contentions are raised qua some of the incidents which either took place or a part thereof took place and later on even as per the say of the complainant they have been either discharged or acquitted

and, therefore, it can be said that *prima facie* there existed the facts for which the allegations have been levelled against the complainant and his witnesses and later on, they have been acquitted of the same, however, even as per the say of the witnesses of the complainant, they have not produced any evidence on record to indicate that they have been acquitted, except in the case of Ashokbhai Balaram Vegad, whereby the judgment of acquittal has been placed on record, however, there does not appear to be any criminal *mens rea* to defame the complainant and other witnesses by the accused persons.

27. In view of the above referred observations and in absence of necessary pleadings, this Court does not think it necessary to go into the issue whether the alleged imputation amounts to defamation or whether it falls within the exceptions to section 499 of Indian Penal Code as the complaint, verification and the examination-in-chief simultaneously do not attract the said provisions of the offence.

:: OFFENCES UNDER SECTIONS 211, 504, 506(2), 120b, 34 AND 114 OF THE INDIAN PENAL CODE ::

28. On overall perusal of the complaint, verification and the examination in chief as well as the statements of the witnesses of the complainant, it transpires that only bald averments have been made qua the offences punishable under section 211, 504, 506(2), 120B and 34 of the Indian Penal Code. There does not *prima facie* appear to be any such averment that attracts the aforesaid offences which has been even discarded by my learned Predecessor Presiding Officer at the stage of issuance of process to the accused persons.

:: NO INDEPENDENT WITNESS ::

29. The complainant in the complaint, verification and examination-in-chief has made severe allegations against the accused stating that they have made hopeless and false allegations against the complainant and his witnesses in the representation dated 15.04.2015 given to the District Collector. However, for prima facie establishing the said aspect, the complainant has not examined any independent witness qua the allegations made in the representation at Exhibit 122.
30. Though the complainant has examined Government and Semi Government witnesses, they are examined only with a view to bring on record certain documentary evidence, however, they have not led further the case of the prosecution.
31. Though it is the case of the complainant and his witnesses that the incident in question took place in the Vallabhipur Town, except his close friends, the complainant has failed to examine any independent witness, which goes to the root of the matter. No witness has been examined except his friends by the complainant to indicate that any defamatory material was affixed on the walls outside the Nagarpalika and other places of Vallabhipur Town.
32. Further, even qua the incident which took place on 10.12.2015 in the office of the Nagarpalika, the complainant has failed to examine any independent witness qua such allegations, which goes to the root of the complaint.

:: NO DOCUMENTARY EVIDENCE QUA DEFAMATION ::

33. The complainant in his cross-examination has categorically admitted that qua the alleged defamation of the complainant and

his witnesses, **he has not produced on record any documentary evidence.**

34. Thus, on the very admission by the complainant that he has not produced on record any documentary evidence to suggest any defamation of the complainant and his witnesses, this Court is left with no option but to dismiss the present case.

:: DELAY IN GIVING COMPLAINT TO THE POLICE ::

35. It transpires from the evidence of the complainant that the alleged offence in question took place on 15.04.2015 and the complainant approached this Court on the verge of about three years on 13.03.2018.

- 35.1 It is the case of the complainant that since the accused are influential persons he could not give complaint to the Court.

- 35.2 In fact and in reality, it has been admitted by the complainant that he is the Right to Information Act activist since the enactment of the Right to Information Act, 2005 i.e. the year 2005. Further, it has come on record that there are multiple cases filed by the complainant and his witnesses either before this Court or before the other institutions.

- 35.3 Further, **it has not come on record that** for all these three years (around one month less in three years) i.e. from 15.04.2015 to 13.03.2018, the complainant and his witnesses were not residing at Vallabhipur and they were residing outside Vallabhipur due to the influence of the accused persons.

35.4 Further, **it has also not come on record** that the complainant was frightened due to the influence of the accused persons all these three years since no complaint to that effect has been filed before any Court of Law or even before any Police Station. Had it been a case, the complainant could have approached some other Police Station or some other Court. However, no such steps have been taken by the complainant and he has whiled away the time and no plausible reason is coming forth for filing the present complaint at such a belated time of about 03 years (around one month less in three years). Thus, the very story appears to be concocted one and there does not appear to be any *prima facie* reason for not giving complaint to the Court within 24 hours of the alleged defamation.

35.5 It is well settled principle of law that at the time of appreciating the *pre-charge evidence*, the meticulous documentation analysis of the *evidence* produced by and on behalf of the complainant, is not called for. The only exercise that the Court is expected to undertake is to find out whether there is *prima facie evidence to frame charge* against the accused persons or not. The bare reading of the oral *evidence* of complainant and rest of the witnesses, including the huge documentary evidence on record, do not disclose *prima facie evidence* against the accused persons. This Court is aware that it is fatal at this stage so as to discharge the accused at very nascent stage of framing of the *charge*, *however, when there is insufficient evidence to frame the charge against the accused, this Court has no option but to discharge the accused persons*. This Court is aware that even if there is a slight suspicion as to the commission of the offence the *charge* against the accused person can be framed, which is not so in the present case. Hence, this Court is inclined to discharge the accused under section 245(1) of the Code

as there is no whisper in the oral *evidence* of complainant and his witnesses as alleged in the complaint.

36. Thus, this Court comes to the following conclusion :

- (a) The complainant and his witnesses have failed to point out even remotely the **criminal mens rea** in the actions of the accused persons.
- (b) The complainant has in the deposition recorded in the year **2024 stated that the incident of pushing him took place on 10.12.2025.**
- (c) The complainant has admitted in the cross-examination that qua **the defamation of the complainant and his family members, he has not produced on record any documentary evidence.**
- (d) The two independent witnesses i.e. **Bhargavbhai Maheta and Dharamshibhai Nandoliya**, examined qua the alleged incidents are **very close friends of the complainant**, who are his witnesses in other criminal cases pending before this Court, which is an admitted fact.
- (e) Though the complainant and witness Bhargavbhai Maheta have stated that there is no Vallabhi Hit Rakshak Samiti, it has been admitted by the third witness **Dharamshibhai Nandoliya that there exists such Vallabhi Hit Rakshak Samiti at Vallabhipur.**
- (f) Further, the very witness Dharamshibhai Nandoliya has admitted that the people of Vallabhipur had raised objections

qua allotment of 10000 sq.mtrs. of land to the Court and further, the very witness Dharamshibhai Nandoliya **has admitted that there is his name in the letter at Exhibit 392 as President of Vallabhi Hit Rakshak Samiti and further, he has received a copy of the letter addressed by the Resident Additional Collector** to the MLA Shri Atmaram Parmar of Umralla Constituency cancelling such allotment of 10000 sq.mtrs. of land for the Court premises, of which a copy was forwarded to the President of Vallabhi Hit Rakshak Samiti.

- (g) **There is a huge delay about three years (just a month less in three years) in filing the present complaint** as the alleged incident took place on 15.04.2015 and later another incident took place on 10.12.2015, however, the complaint has been filed almost after three years (just a month before three years) on 13.03.2018 and there is no plausible explanation towards the same.
- (h) The essential ingredient to attract the provisions of section 499 of the Indian Penal Code punishable under section 500 of the Indian Penal Code are thoroughly missing from the evidence of any of the witnesses.
- (i) Though the incident dated 10.12.2015 took place at a public place i.e. office of the Nagarpalika, the complainant has failed to **examine any independent witness** in support of his case which goes to the root of the complaint.
- (j) Further, all the witnesses have admitted in their cross-examination that **they have not produced any documentary evidence qua exonerating them from the charges alleged against them in the representation at Exhibit 122** by any of

the authorities, except in case of Ashokbhai Balabhai Vegad, whereby the complainant has produced on record the judgment and order of acquittal giving him benefit of doubt.

(k) Further, the complainant has thoroughly failed to produce on record the final order of the District Collector, if any, exonerating the charges against him.

37. In view of the foregoing discussion, this Court finds that there does not appear to be any *prima facie* evidence to frame the charge against the accused persons and the evidence on record is insufficient to frame the charges against the accused. Thus, this Court does not find that any offence is attracted against the accused in light of the aforesaid discussion, especially of defamation and rest of the offences. Insofar as the rest of the offences are concerned, except the verbal say of the complainant and his witnesses (his close friends), no independent evidence has been produced on record to corroborate the version of the complainant and his witnesses. Further, though the alleged offences which took place on 15.04.2015, the complainant thoroughly failed to approach the Court at the first available opportunity and the complaint to this Court was given on 13.03.2018 only (after around one month less in three years). The present complaint appears to be the brainchild of the complainant only to implicate the accused persons. Thus, this complaint is nothing but an example as to how a false case can be foisted against a person with whom one has a motive. On the above analysis of factual and legal aspects, this Court is of the opinion that there does not appear any *prima facie* case to frame the charge against the accused persons. Hence, I pass the following order :

:: ORDER ::

- (1) For the foregoing reasons, the present Criminal Case is hereby dismissed at the pre-charge stage and the accused are hereby discharged of the offences in question under section 245(1) of the Code of Criminal Procedure, 1973.
- (2) Registry is directed to release the amount of witness allowance of Rs.10,000/- in favour of the five witnesses examined. As ordered earlier, each witness be paid an amount of Rs.2000/-.

Pronounced in the open Court today on this 20th day of April, 2026 at Vallabhipur.

PLACE : VALLABHIPUR
DATE : 20.04.2026

AAKAR L. TRIVEDI
JMFC, VALLABHIPUR