

HIGH COURT FORM NO.(J) 2.  
HEADING OF JUDGMENT ON ORIGINAL SUIT.

**District : Sonitpur.**

**IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.**

Present : **Sri M. Kalita,**  
**Civil Judge,**  
**Sonitpur, Tezpur.**

Wednesday, the 29<sup>th</sup> day of August, 2012.

**Money Suit NO. 8 of 2007.**

**1.** Sri Paneswar Basumatary,  
S/O Late Suren Basumatary,  
resident of Jaisidhi,  
Mouza – Nagsankar, P..O.- Balipara,  
Dist. Sonitpur, (Assam) ..... **Plaintiff.**

**-VERSUS-**

**1.** M/S Agradoot Publishers Pvt. Ltd,  
C/O B.S.Deka, Agradoot Bhawan,  
Dispur, Guwahati-6,Dist Kamrup.  
**2.** Sri B.S. Deka, the Printers & Publishers of  
Dainik Agradoot, C/O Agradoot Bhawan,  
Dispur, Guwahati-6,Dist Kamrup.  
**3.** Sri Kanaksen Deka, Editor,  
C/O Agradoot Bhawan,Dispur,  
Guwahati-6,Dist Kamrup. .... **Defendants.**

This suit coming on for final hearing or having been  
heard on 21st day of July, 2012.

Mr. J. Sundi, Advocate ... For the Plaintiff

Mr. P.Goswami, Advocate,  
Gauhati High Court. .... For the defendant.

And having stood for consideration this day, the  
29<sup>th</sup> August, 2012 the Court delivered the following  
Judgment :

**J U D G M E N T.**

**1.** This is the suit for damages on account of printing, publishing and distributing defamatory and libelous news item in Assamese daily news paper "Dainik Agradoot". The suit is valued at Rs. 20,00,000/- and advalorem Court fee has been paid.

**2.** As reflected in the plaint, the plaintiff's case in brief, is that, the plaintiff being a graduate, was elected member of Assam Legislative Assembly of Assam for the period 2001 to 2006 from 75 Sootea Assembly constituency of Assam. He has a good reputation, good image amongst the general people. He was closely associated with various types of social activities within the Sootea Assembly constituency. He earned love, respect and reputation by dint of his selfless, sincere social activities from all sections of people of the society. During the tenure of his membership of Assam Legislative Assembly, from 2001 to 2006, several development activities/works were done. The plaintiff has also cited 29 nos of development works done during his tenure as member of Assam Legislative Assembly as for instance of development activities.

**3.** The plaintiff's further case is that to his utter surprise he found 2 Nos of news items containing false, baseless, malicious, libelous and defamatory news published on 08-03-06 and 09-03-06 in the daily news paper "Dainik Agradoot" which were printed and published by Sri B.S. Deka from Agradoot Bhawan, Dispur-6, Guwahati. The defendant No.2 is the printer and publisher of the said news paper and defendant No.3 is the Editor of the news paper. The news item was printed and published on 08-03-06 under the head and caption "The direction of Election Officer has become baseless" and "The distribution of thread and cheque by Congress MLA in Sonitpur" The news item printed and published on 09-03-06 under the head and caption "The wide ranging Election campaign by

AGP in Sootea” and “the grievances of public against MLA Paneswar Basumatary.” The said news item which were published against the plaintiff were not only false and baseless but also deliberate lies intentionally made by the defendants and printed and published in the news paper dt. 08-03-06 and 09-03-06 and circulated in Assamese daily “Dainik Agradoot”. The said news items were published though the defendants were duty bound to check the news items before publication. The said news items were published by violating the guide line of Hon’ble Supreme Court given in the Judgment in the case of Harijai Singh Vs. Vijoy Kumar reported in AIR 1997 SC 73.

**4.** The plaintiff’s further case is that the names of the local reporters were not mentioned in the paper though he is liable to be sued and prosecuted. The news items were only printed as ‘Agradoot Barta’ without mentioning the name of the reporters. Hence, the defendants were themselves responsible for reporting, printing and publishing the said news items. Though the notice was issued on 09-03-06 through the Advocate Mr. J. Sundi to the defendant No.3 to furnish the name and address of the reporters but he did neither furnish the name and address of the reporters nor replied to the said letter. The aforesaid news item were most defamatory, slanderous and libelous. The news item dt 08-03-06 implicating the plaintiff regarding distribution of weaving thread and cheque either by himself or through Sri Buhegwari Bhuyan, a member of Charduar Zilla parishad or through himself at the Charduar inspection bungalow were out and out false. In the reported news dated 09-03-06, the reporter, printer, publisher and editor had most maliciously and mischievously reported the news that the plaintiff was involved in various illegal activities during his tenure of representing the Sootea LAC and thereby they have not only defamed the plaintiff who is of Congress (I) party and a

prospective candidate for the election of Assam LA from No.75, Sootea LAC for 2006 election but the defendants in fact campaigned against him by taking the side of the then prospective Asom Gana Parishad candidate Sri Padma Hazarika, who, in fact ultimately contested the said election and defeated the plaintiff in favour of whom the defendants so campaigned by taking side of the said candidate and against the plaintiff.

**5.** The plaintiff's further case is that by the act of publishing such news items the defendant defamed the plaintiff and lowered his prestige, fame and good name in the society. So, the defendants are liable to compensate the plaintiff by way of damages in terms of money. The defendants have also by their wilful act caused damage to the fame, prestige, good name, character, good will and good reputation of the plaintiff in the society. The said false, baseless, libelous, slanderous and defamatory news items caused great confusion, dismay and astonishment in the mind of the readers of the said news paper. So, such publication of news items lowered and hampered the prestige, position, fame, good name and good reputation of the plaintiff in the estimation of others, specially amongst the voters of Sootea LAC. As a result, he was defeated by AGP candidate Padma Hazarika. So, the plaintiff has prayed for monetary compensation amounting to Rs. 20,00,000/- for the aforesaid false, baseless, malicious, libelous, slanderous and defamatory news items printed and published in the Assamese daily news paper "Dainik Agradoot". Hence, the plaintiff has prayed for a decree of Rs. 20,00,000/- by way of damage with a direction to defendants to tender news of apology towards the plaintiff. The plaintiff has also further prayed for cost along with the future interest @ 12% on the decretal amount.

**6.** After receiving the summons, the defendants have

contested the suit by submitting written statement through the defendant No.3 on the grounds that the suit is not maintainable in its present form, the suit is bad for non-joinder of necessary parties, there is no cause of action of the suit and the suit is barred by law of limitation. The defendants have further stated in the written statement that the news items were published on the basis of reports furnished by the reporters of the respective areas by maintaining the principle of impartial journalism and it was not published to impute the reputation of any person. The plaintiff has also not stated specifically and in details about the damages caused to the plaintiff due to publication of such news items. There was also no malicious intention to cause damage to the name and fame of the plaintiff. They were always maintaining the restriction in discharging the duties of the press as per guidelines of Hon'ble Supreme Court.

**7.** The defendants have further stated in the written statement that though the plaintiff was politician and at the relevant point of time he was campaigning against another political leader who won the election by defeating the plaintiff, but the plaintiff has not impleaded the political candidate who had elected, as party of the suit though he is the necessary party for proper adjudication of the suit. So, the defendants have prayed for dismissing the suit with compensatory cost as provided under section 35(A) of the CPC.

**8.** Upon consideration of the contents of pleadings and after hearing from both parties, the following issues are framed:

- 1.** Whether there is any cause of action for the suit ?
- 2.** Whether the reported news items are defamatory against the plaintiff ?
- 3.** Whether the plaintiff is entitled for any decree as prayed for ?

**4.** To what other relief or reliefs the parties are entitled to ?

**9.** During the course of hearing, the plaintiff has examined as many as 5 witnesses including the plaintiff himself and proved two documents, the news papers published and printed on 08-03-06 and 09-03-06 in support of his case. On the other hand, the defendants have examined 3 DWs including the defendant No. 3 in support of his case.

**10.** During the course of final hearing, the learned counsel for the plaintiff has presented the plaintiff's case in details. He has also submitted one decision of **Hon'ble Supreme Court reported in AIR 1997 SC 73** in which decision he has placed the reliance.

**11.** On the other hand, the learned counsel for the defendants has submitted that the plaintiff's suit is not maintainable and so liable to be dismissed. The same is bad for non-joinder of necessary parties. The learned counsel for the defendants has further submitted that the news items published in the news paper is not admissible as per provision of section 62 of Evidence Act. The learned counsel has submitted the decision of Hon'ble Supreme Court reported in **(2001) GLT (SC) 1** in which decision he has placed reliance.

**12.** From the backdrop of aforesaid materials on record as well as submission of learned counsel, I deem it necessary to discuss the issues one by one for finally deciding the suit.

**Issue No. 1.**

**13.** Whether there is any cause of action for the suit?

Regarding this issue, the defendants have taken the plea that there is no specific cause of action in the plaint because, no description in details regarding the damage caused to the plaintiff for publication of such news items has been mentioned in the plaint. On the other hand, the plaintiff has pleaded in the plaint as well as in his evidence that due to such publication of false, baseless, malicious, libelous, slanderous and defamatory news items printed and published in the Assamese daily news paper "Dainik Agradoot". It lowered and hampered the position, reputation, good name and fame in the estimation of the society specially among the voters of Sootea LAC. The news items were defamatory, false, baseless, malicious, libelous and slanderous. Due to publication of such news items against the plaintiff which caused damage to his image in the estimation of the society. So, the defendants are jointly and severally liable for compensating by way of damage. So, for such allegation of the plaintiff and also the denial of the defendants as appears in the records, I find that the Civil Court has to decide the matter. So, considering such fact, I am of the opinion that there is cause of action in the suit for which the decision of Civil Court is required and for that reason, this issue is decided in affirmative.

### **Issue No. 2.**

**14.** Whether the reported news items are defamatory against the plaintiff ?

Regarding this issue, the plaintiff has asserted that the news items published under head and caption "The direction of Election Officer has become baseless" and "The distribution of thread and cheque by Congres MLA in Sonitpur" printed and published on 08-03-06 and news item under the head and caption "The wide ranging Election campaign by AGP in Sootea" and "the

grievances of public against MLA Praneswar Basumatary" printed and published on 09-03-06 were very much defamatory. The allegation levelled in the news items were defamatory, false, baseless, malicious, libelous and slanderous. Even the news items were printed by violating the guidelines given in the Judgment by Hon'ble Supreme Court in the case of Harijai Singh Vs. Vijoy Kumar reported in **AIR 1997 SC 73**. As a member of Assam Legislative Assembly elected from Sootea Constituency, he earned love, respect and reputation by dint of his selfless, sincere social activities.

In the evidence, the plaintiff (PW 1) has reiterated the same allegations against the defendants. The PW 2 Putul Rava, who is the member of Congress Party has also stated that the plaintiff during his tenure as member of Legislative Assembly of Sootea Constituency did several development works in the Constituency. Due to publication of such defamatory news items against the plaintiff in "Dainik Agradoot" news paper his name and fame was tarnished. In the cross-examination, the plaintiff (PW 1) has stated that he has not impleaded the local reporters of concerned news paper as party of the suit. He has not submitted any documents regarding the development works completed during the period of his tenure as MLA of Sootea Constituency. Though he sent clarification against the news items but that was not published in any news paper. He has also not submitted any accurate statement of damage caused to him for publication of such news items. Though he sent notice to the Editor of the paper to furnish the name of local reporters of the news paper but he has not submitted the copy of such notice before the court. In the cross -examination, PW 2 has stated that the development works in the constituency was done by concerning department. He was not involved with any such activities. No any legal action was taken against the news paper on behalf of the party.

**15.** On the other hand, the defendants have contended in the written statement that the plaintiff has not impleaded the local reporters as party in the suit though news items were collected from the local news reporter and it was published on the basis of report collected from such reporters. This is a necessary party for proper adjudication of the suit. The defendants have further contended that though the plaintiff was campaigning against another politician by whom he was defeated, but he has not impleaded the said Politician Sri Padma Hazarika as necessary party in the suit. Because his presence is also required for adjudication of the suit in proper manner. Moreover, the details of the damages caused to the name and fame of the plaintiff has not been mentioned by the plaintiff. In the evidence, DW 1, one of the Managing Director, DW 2 Sri Upendra Nath Sarma, Secretary of M/S Agradoot Publishers Pvt. Ltd. And DW 3 – Sri Kanaksen Deka, Editor of news paper "Dainik Agradoot" have asserted that the news items were published on the basis of report furnished by local reporters. The details of the damages caused to the plaintiff has not mentioned by the plaintiff. So, the plaintiff is not entitled to any damage as no damages was suffered by him due to publication of such news items. In the cross-examination, the DW 1 has admitted that the news collected from local reporters is usually scrutinized by the person who was appointed for the same. Thereafter, the news are published in the paper. In the cross-examination DW 3 who is the editor of concerned news paper, has admitted that he only look after the editorial page. Both news items were published in the news paper "Dainik Agradoot" but he has forgot the name of the local reporters at the relevant time.

**16.** After considering the materials on records in its entirety and considering the submissions of learned counsel of both sides, it is

found that the plaintiff has placed reliance on the point that the news items was published by violating the guidelines of Hon'ble Supreme Court and news items was very much defamatory which caused the damages to the name and fame of the plaintiff in the estimation of the society. On the other hand, the defendants have placed reliance on the point that no damage can be claimed on the basis of news items published in news paper because, the news items published in the news paper is not admissible under the provision of section 63 of Evidence Act.

**17.** In support of the contention of the plaintiff, the the learned counsel for the plaintiff has submitted the decision of Hon'ble Supreme Court reported in AIR 1997 SC 73 regarding the observation of Supreme Court on the subject "Freedom of Press". In the para 10 of the said decision it is observed by Hon'ble Supreme Court as :

***"10. But it has to be remembered that this freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be mis-understood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognized with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of Press freedom must not be thrown open for wrong doings. If a news paper publishes what is improper, mischievously false or illegal and abuses its liberty must be published by the Court of Law. The Editor of a Newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact that the utterances of an individual and by reason of their***

*appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the Press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations. "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline." It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression."*

**18.** On the other hand, the learned counsel for the defendants has placed reliance on the decision of Hon'ble Supreme Court reported in **2000(1) GLT (SC) 1**. In para 26 of the decision, it is observed by Hon'ble Apex Court in regards to news appears in newspaper as evidence :

*"26. Newspaper reports regarding the Central Government decision could not be any basis for the respondents to stop action under the Assam Control Order of 1961. The paper reports do not specifically refer to the Assam Control Order, 1961. In fact, the Government of Assam itself as not prepared to act on the newspaper reports, as stated in its wireless message, section 81 of the Evidence Act was relied upon for the appellant in this behalf, to say that the newspaper reports were evidence and conveyed the necessary information to one and all including of genuineness attached under section 81 to news paper reports can not be treated as proof of the facts and stated therein. The statements of fact in newspapers are merely heresay (Laxmi Raj Shetty -Vs – State of TN (1988) 3 SCC 319 : 1988 SCC (Cri) 633."*

**19.** After going through the pleadings and the above decisions of Hon'ble Supreme Court as submitted by learned counsel for the plaintiff and defendants and after giving the anxious consideration to the submissions of learned counsel of both parties I am of the considered opinion that the plaintiff has failed to state specifically regarding the damages caused to his reputation in the estimation of the society, because, such news items were published during the election campaign period and the news items were published on the basis of the report furnished by the local reporters. So, considering such fact as revealed in the case record, I hold the view that such news items did not cause damage to the name and fame of the plaintiff. The plaintiff has failed to prove the damage caused to his name and fame specially either by documentary or oral evidence. As per the provision of 63 of Indian Evidence Act, the news item published in the news paper is a secondary evidence unless the original script of the news item is proved it can not be reliable. Because, the reports of the news paper are simply hearsay matter as reflected in the decision of Hon'ble Supreme Court. Moreover, though the plaintiff has placed reliance on the decision of Hon'ble Supreme Court regarding the subject "Freedom of Press" but I do not find any extra-ordinary words in the news items which can violate the guidelines given in the decision. So, the plea of plaintiff taken regarding violation of guidelines is found not appealable and acceptable in view of above decision of Hon'ble Supreme Court.

**20.** The result of the above discussion is that said news items did not lower and hamper the prestige, position, good name and good reputation of the plaintiff in the estimation of others and such items were not published with view to cause defamation to the plaintiff's reputation amongst the voters of concerned constituency. So, for that reason, it is found that the above news items were not defamatory and accordingly for that reason, this issue is decided

accordingly in negative.

**Issue No. 3.**

**21.** Whether the plaintiff is entitled for any decree as prayed for ?

Regarding this issue, it has been already discussed in the Issue No.2 that as no news items were not defamatory and as the news items did not lower and hamper the prestige, position, good name and good reputation of the plaintiff in any way. So, the plaintiff is not entitled to the decree of monetary compensation by way of damage and for that reason, this issue is also decided in negative. Moreover, due to non-joinder of local reporter who is a necessary party for proper adjudication of the suit, the plaintiff is not deserved to get relief from the defendants as the defendants published the news after collecting the same from local reporter.

**Issue No. 4.**

**22.** To what other relief or reliefs the parties are entitled to ?

On the basis of above discussions of Issue Nos. 1,2 and 3, it is found that the plaintiff is not entitled to any relief of compensation by way of damage. Moreover, considering the facts and circumstances of the case, I find that the suit is deserved to be dismissed on contest with cost.

**O R D E R**

**23.** The suit is dismissed on contest with cost.

Prepare decree accordingly.

**24.** Judgment is pronounced in an open court, written on separate sheets and enclosed with the case record.

**25.** Given under my hand and seal of this court, I have signed and delivered this judgment on this 29<sup>th</sup> day of August, 2012.

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpur

Dictated and corrected  
by me .

(M. Kalita)  
Civil Judge,  
Sonitpur, Tezpur

Typed by  
me

R.Hazarika  
steno