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Kasargod District of Kerala for Endosulfan residues. The said report has been published the Accused / Respondent No. 2 on its official websites of www.cseindia.org as well as www.downtoearth.org.in by CSE with the titled as "Pesticide Residue Monitoring Study GSE/PRM-1/2001". The said report is available for global access to everyone and all persons.

3. 23.12.2006 The Petitioner had last accessed the said report from this website. The front page of this report shows a photograph of a girl with malformed fingers. A summary of this study report was also published in India in the fortnightly magazine 'DOWN TO EARTH, 28 February, 2001' issue. Electronic version of this issue of the magazine is still available and can be accessed globally from the official website [DOWN TO EARTH magazine www.downtoearth.org.in](http://www.downtoearth.org.in). The full report of the said study has also been published / reproduced / referred to in numerous print and electronic media within and outside India. It was also widely distributed in several international conferences including the ones organized

by United Nation Environment Programme (UNEP), Food and, Agriculture Organization (FAO) in 2006.

4. -- All the Accused have written, printed, published and actively involved in the defamatory act in their respect capacities as reflected above, which can be further seen from the alleged study report and other documents.
5. -- The Accused with a malafide and criminal objective created, printed, published and circulated the defamatory study report against the said Federation and its members. The defamatory study report was also printed, published and circulated all over the world by Accused Nos. 2 to 6 in their internet edition on their websites www.cseindia.org and www.downtoearth.org. The above study report is available on their website even now. It has also been subsequently published / reproduced / referred to in numerous print and electronic media within and outside India.
6. -- The excerpts of the study report also appeared in 'DOWN TO EARTH' 28 February, 2001 print issue and web edition is available and accessible till date

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from its website www.downtoearth.org. The defamatory study report uploaded in the website www.cseindia.org contains 17 pages. The first page contains the name of the CSE and study, date, names of the Investigators and donors i.e. on the top the name of the Institute is printed i.e. Centre for Science and Environment, New Delhi, below the same it mentions "POLLUTION MONITORING LABORATORY" and "Pesticide Residue Monitoring Study CSE/PRM-1/2001" below the same Accused had printed a photograph of a child with deformed hand and fingers which follows the name of the study i.e. "Analysis of samples from Padre Village in Kasaragod district of Kerala for endosulfan residues", which clearly indicates that all the Accused have conducted the alleged study in the laboratory owned by CSE.

7. -- The Accused named the members of complainant as the persons who manufactures "endosulfan" and wants to attribute all the defamatory statements as stated above on endosulfan vis-à-vis to its producers such as, Excel Industries Limited and Excel Crop Care Limited,

Hindustan Insecticides Ltd. and E.I.D. Parry (formerly Coromandel Fertilizers Ltd.).

8. -- The entire study by the accused was founded on falsehood that alarming high levels of endosulfan were found during laboratory tests in environmental and biota samples collected from Padre Village in Kasargod district of Kerala.
9. 08.06.2006 Letter from the Petitioner's Advocate giving details of the analysis.
10. -- The defamatory report was used, printed and published continuously in various places and various forms and the same is continuing even today. For example, during Rotterdam Convention's COP-3 meeting held from 9th October - 13th October, 2006 in Geneva, an international environmental NGO called PANAP circulated a booklet (reprinted in April 2006) quoting what was printed in 28 February, 2001 issue of DOWN TO EARTH magazine of CSE. PANAP also exhibited at this international meeting photos originally published by CSE.
11. -- The said defamatory study report created major problems for the members of the said Federation apart from damaging

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their reputation.

12. -- The Petitioner received a letter from Coromandel Fertilizers Limited, Secunderabad, India forwarding the letters received by them from dealers and distributors and asking to take suitable actions.
13. 25.07.2006 & 25.08.2006 Excel Crop Care Limited vide their letters addressed to The President of CCFI, conveyed their sufferings and damage to their reputation and business due to the defamatory report and also forwarded four letters received by them.
14. -- The Petitioner has many members including large multi-national and small-scale industries. The approximate total turnover is 6000 crores, which includes 2500 crores of exports and 3500 crores of domestic sales. The total investments of the members of this Federation in the business are about 1000 crores, which employs thousands of peoples. The activities of the Petitioner in training and educating the fanners in growth and development with their concern for the protection of ecology and the environment.
15. 22.05.2006 & The Petitioner through Mr. R. G. Agarwal

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- 07.10.2006 appraised about the defamatory report to Respondent No. 6 vide his letters and requested for an explanation.
16. 30.10.2006 The Chairman of the Petitioner, Mr. R. G. Agarwal received a letter from Accused Nos. 2 and 3 stating the receipt of Petitioner's notice and a letter dated 7th October, 2006 and also stated that their lawyer had; replied to the lawyer of the Complainant in the month of August. The same is not yet received by the Petitioner or his Advocates.
17. 02.06.2006, Mr. R. G. Agarwal, Respondent No.6 i.e.
15.07.2006 & Mr. M. S. Swaminathan and Respondent
17.07.2006 No.2 exchanged letters by email with respect to the defamatory report etc.
18. 08.06.2006, The Petitioner issued legal notices to the
24.07.2006 & Accused through their Advocates stating
12.09.2009 that all the Accused in collusion and connivance with each other have printed, published and circulated the defamatory study report and called upon the Accused to tender an unconditional apology failing which informed them that appropriate legal proceedings before civil and criminal courts would be initiated against all the persons who are in-charge and

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circulating the said defamatory study reports.

19. 31.08.2006 After receipt of the notice Accused Nos. 8, 9, 10 and 11 vide their Advocate gave evasive reply and claimed that Dr. Padma S. Vankar i.e. Accused No.7 was never associated with the Institute at the relevant time etc., which is nothing but blatantly incorrect and false statement and is an attempt to shield their crimes and illegal acts.
20. 01.11.2006 The Advocate for the Petitioner vide his rejoinder replied to the above reply giving parawise reply and also exposed their incorrect, false and baseless stand.
21. -- The information downloaded from IIT, Kanpur itself shows that Accused No.7, Dr. Padma Vankar was associated with IIT, Kanpur ever since 1999 as can be seen from the website i.e. <http://phys4.haxvard.edu>.
22. -- From the report bearing No. 2 published by Society for Scientific values, while dealing with Ethics in Scientific Research Development and Administration, News and Views -Volume 1, March 2004 - No. 1, shockingly shows how Accused No. 7 was involved in plagiarism, case details of

which is available on the website i.e. www.scientificvalues.org. This clearly shows Accused have past record of scientific fraud and misconduct. This report proves that "Dr. Padma Vankar, is consultant to the Centre for Science and Environment" (CSE) even as she is employed by Indian Institute of Kanpur.

23. -- The report published by the Respondents being false and defamatory and not based on any scientific analysis of the Petitioners.
24. 2006 Immediately the reactions of the said defamatory report started coming in. Various dealers addressed their letters to the Petitioners as well as its members who complained of the reaction by the members of public.
25. 22.05.2006 The Petitioners addressed a letter to Prof. Swaminathan, a renowned Agro-Scientist to comment on the same. The fallacy in the claim of the Accused is apparent from the fact that item No. 25 of the Conclusions showed Water-3 as having total Alfa Endosulfan quantities of 9.19 PPM. A reference to the Indian Council of Agricultural Research were made.
26. 28.12.2006 By their letter, the Indian Council of

Agricultural Research in no uncertain terms brought their findings that 9.19 PPM was impossible since the water solubility of Endosulfan is 0.32 PPM.

27. 2006 On the aforesaid facts, the Petitioners filed a Complaint No. 925/Misc./2006 before the Learned Metropolitan Magistrate's 9th Court, Bandra, Mumbai under Sections 500, 501, 502, 201 read with 34 of the Indian Penal Code, 1860 against the Accused.
28. 05.01.2008 The Learned Metropolitan Magistrate after recording the verification, held that the ingredients of Section 499 of the Indian Penal Code was satisfied and that the study only reported the adverse effect in a specific case of the human beings which was studied by the group of scientific experts. The Learned Magistrate observed that the report was misunderstood as an offending without indication of the defamatory version therein in order to lower the dignity of the Federation / Complainant. The Learned Magistrate therefore passed an order under Section 203 of Cr.P.C. rejecting the complaint.
29. 2008 The Petitioners challenged the said order dated 5th January, 2008 dismissing the

Petitioners' complaint by approaching the Hon'ble Sessions Court in Criminal Revision Application No. 253 of 2008.

30. 19.06.2008 The said Revision Application was heard and finally decided by the Learned Sessions Judge by his order and rejected the Petitioners' application holding that the report was not in reference to the Complainant nor is it of a defamatory nature and held that it was merely a criticism and that the ingredient of Section 499 of I.P.C. was not satisfied.
31. 10.12.2008 Hence, the present Petition.

POINTS TO BE URGED

- (A) The Complaint filed by Petitioner/Org. Complainant against the Accused u/s.500, 501, 502, 201 r/w.34 of The Indian Penal Code, as Accused knowingly and intentionally had written an incorrect and false report. The same were printed, published and circulated not only by them vide their study report and in their web site but also distributed the said defamatory article to be used by various persons.
- (B) The Ld. Magistrate instead of issuing process as required by law in the given facts and circumstances was pleased to dismiss the complaint. Unfortunately the reasons stated by the Ld. Magistrate were not based on the facts produced before it and relevant laws required to be

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followed at the time of issuance of process in a private complaint.

- (C) As aggrieved by the Ld. Magistrate's Order for rejecting the complaint, the Petitioner/Org. Complainant preferred a Criminal Revision Application before the Hon'ble Sessions Court, Mumbai vide Criminal Revision Application No.253 of 2008 date 19th June, 2008, wherein Petitioner/Org. Complainant stated the brief facts leading to the Criminal Revision Application vis-à-vis the reasons given by the Ld. Magistrate and how the same is contrary to the material placed before it and the law applicable to the same.
- (D) The impugned Order passed by the Hon'ble Sessions Court contains four pages and six paragraphs. Para Nos.1 and 2 speaks summarily about complaint. Para 3 and 4 speaks about the hearing of the Petitioner/Org. Complainant and A.P.P. and points for his consideration.
- (E) The Hon'ble Sessions Court in its Order at para 6 stated that Accused has committed no offence as the report is published after research and study although which may be said to criticism.
- (F) The grievance of the Petitioner/Org. Complainant that by using the name of laboratory test and study, Accused committed fraud without doing any scientific study, which is clearly demonstrated in the complaint. The so-called results of the laboratory test are scientifically impossible.

- (G) The Ld. Magistrate erred in dismissing the complaint u/s.203 of Cr.P.C. and Hon'ble Sessions Court failed and neglected to decide the Criminal Revision Application as per facts placed before it and law applicable to the same, which are contrary to the provisions of law, uncalled for, unwarranted and based upon wrong assumptions of law and in the given facts and circumstances of the case.
- (H) The impugned order passed by the courts below is totally erroneous inasmuch as the same does not take into consideration that the report is based on factually incorrect facts which are not only incorrect but are impossible as certified by the scientific bodies.
- (I) The courts below erred in not considering that the reports have adversely affected the reputation of the Petitioners' members for whom the Petitioners' represent which is amply demonstrated by the queries raised by its members showing that such defamatory articles have affected their business.
- (J) The impugned order passed by the courts below is totally erroneous inasmuch as the same does not take into consideration that the report is based on factually incorrect facts which are not only incorrect but are impossible as certified by the scientific bodies.
- (K) The courts below erred in not considering that the reports have adversely affected the reputation of the Petitioners' members for whom the Petitioners' represent which is amply demonstrated by the queries raised by its

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members showing that such defamatory articles have affected their business.

(L) The courts below erred in not considering that the report was not a mere opinion but made out that it is a study made on the scientific facts and thereby having an adverse effect on the business of the Petitioners' members.

(M) The courts below erred in not considering that the Petitioners have made out a prima facie case wherein the ingredients of Section 499 of I.P.C. were satisfied since the report had lowered the dignity of its members who were shown to be manufacturing Endosulfan which was harmful and discharging the effluents in a manner as to harm the human beings.

(N) The courts below erred in not considering that the ingredients of Section 499 of I.P.C. were complete inasmuch as the report showed the Petitioners' members as acting contrary to the interest of human beings and general public.

(O) The courts below erred in not considering that the report did not fall within any of the exceptions and since the report would have a larger impact, the Petitioners would suffer serious prejudice especially when the report is a false report.

(P) The courts below erred in not considering that the report suggested that the manufacturers did not use the proper care and caution nor observed the rules while

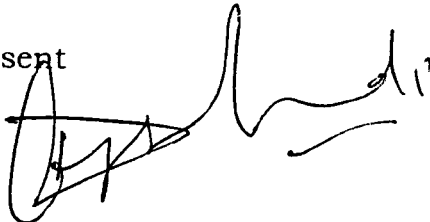
manufacturing or production or distribution of pesticides
in India.

ACTS TO BE REFERRED TO AND RELIED UPON

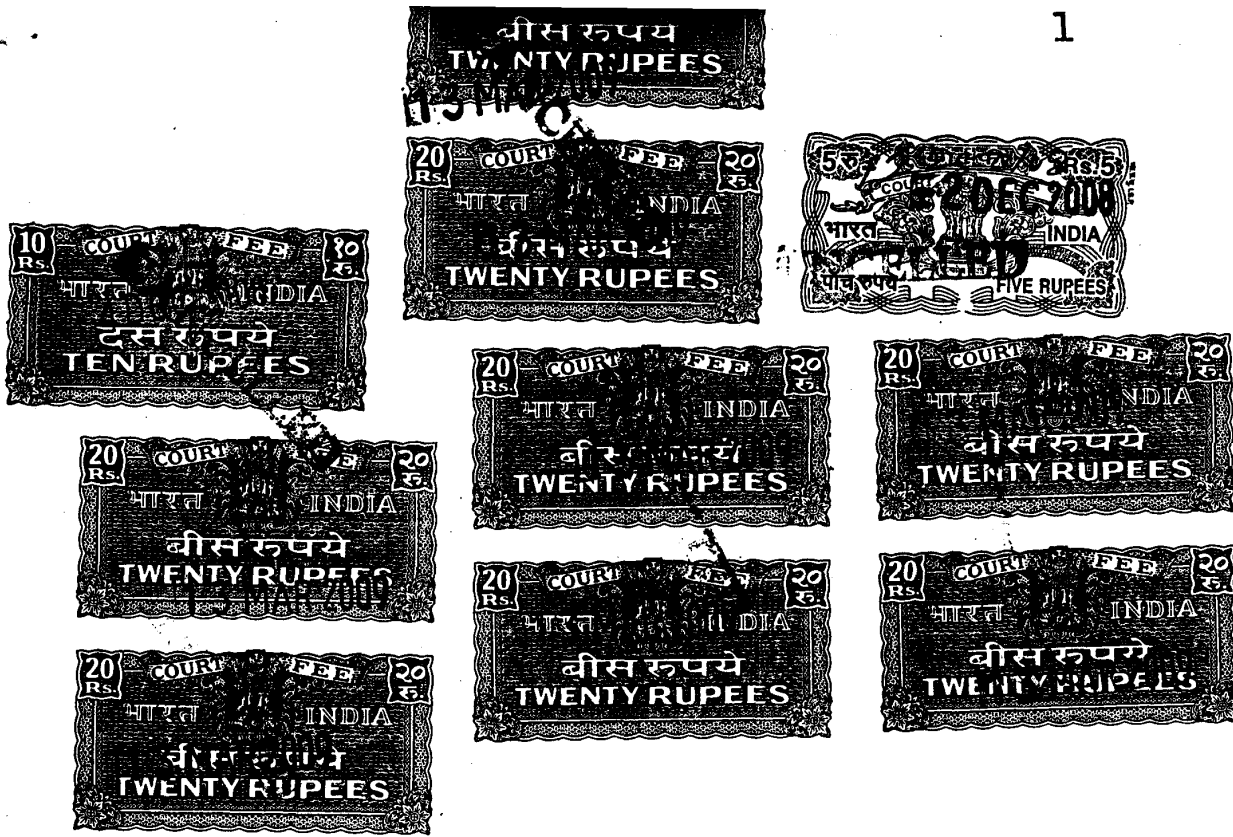
1. Constitution of India;
2. Code of Criminal Procedure,
3. Indian Penal Code,
4. Indian Evidence Act,

AUTHORITIES

None at present



Advocate for the Petitioners



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

DISTRICT : BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 668 OF 2008

In the matter of Article 227 of the
Constitution of India;

And

In the matter of Section 482 of Cr.P.C.;

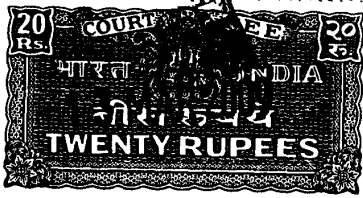
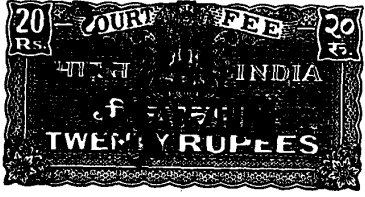
And

In the matter of dismissing the
Complaint under Section 203 of
Cr.P.C. by the Hon'ble Additional Chief
Metropolitan Magistrate, 9th Court at
Bandra, Mumbai bearing Criminal
Complaint No. 925/MISC of 2006;

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And

In the matter of rejecting the Criminal
Revision Application No. 253 of 2008
by the Hon'ble Sessions Court,
Bombay.

Crop Care Federation of India,)
(formerly known as Pesticides)
Association of India) through its)
Authorised Representative, Mr. ^{Vinod} Sachin)
~~Vijay Desai~~ ^{R. Gadhvi}, having his office at Uniphos)
House, 11th Road, Madhu Park, Khar)
(West), Mumbai 400 052.) ...

Petitioner
(Original)

Versus

1. State of Maharashtra,)
through Government Pleader,)
High Court, Bombay.)
2. Centre for Science and)
Environment)
3. Ms. Sunita Narain, Director,)
Centre for Science and Environment))
And Editor & Publisher, Down to)
Earth, Society for Environmental)
Communications,)
4. Dr. Rashmi Mishra, Investigator,)
Pollution Monitoring Laboratory,)
Centre for Science and Environment)
5. Dr. Sapna Johnson, Investigator,)
Centre for Science and Environment)
6. Dr. M.S. Swaminathan, Chairperson))
Centre for Science and Environment))
Nos. 2 to 6, have their office at)
41, Tughlakabad Institutional Area,)
New Delhi 110 062.)
7. Dr. Padma S. Vankar,)
Professor & Head,)
Facility for Ecological Analytical)
Testing, Indian Institute of)
Technology, Kanpur.)
8. Dr. Sanjay G. Dhande, Director,)



- Indian Institute of Technology,)
 Kanpur.)
9. Dr. Kripa Shankar, Deputy Director,)
 Indian Institute of Technology,)
 Kanpur.)
10. Shri Sanjeev S. Kashilkar, Registrar)
 Indian Institute of Technology,)
 Kanpur.)
11. Dr. Somnath Biswas,)
 Dean (Faculty Affairs),)
 Indian Institute of Technology,)
 Kanpur.)
- Nos. 7 to 11 have their office at)
 Indian Institute of Technology (IIT))
 302, Southern Laboratories,)
 Kanpur 208 016.) ... Respondents

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED :

MOST RESPECTFULLY SHEWETH :

1. The Petitioner abovenamed is a company incorporated under the provisions of the Companies Act, 1956. The Petitioner was earlier known as Pesticides Association of India and have changed their name to Crop Care Federation of India as per the fresh certificate of incorporation consequent upon change of name issued /

by the Registrar of Companies, NCT of Delhi and Haryana. The Petitioner comprises of different members who fall in various categories like Active Members, Active Associate Members, Technical / Professional Members, Institution Members and Honorary Members. The Petitioner's members comprise of leading corporates in the field of chemicals, fertilizers and various other related manufacturing activities. An individual, firm or body corporate, co-operative society, whether registered or incorporated in or outside India, engaged in bonafide manufacture, production, processing or sale in India under his or its own brand, name of pesticides are eligible to become active members of the Petitioner. A body corporate, registered or incorporated outside India, having an office or branch in India, and connected with the use and application of agricultural and pesticides in India are also eligible to become an active member. The Petitioner craves leave to refer to and rely upon the Memorandum and Articles of Association of the Petitioner, when produced. Hereto annexed and marked **Exhibit "A"** is a copy of the list of members of the Petitioner.

2. The Petitioner states that they have been incorporated mainly with an object of effective and safer use of pesticides with a view to prevent risk to human being or animals by improving techniques of application or formulation or otherwise along with promoting and

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protecting the commercial and economic interest of those engaged in the manufacture, production, processing and/or distribution of agricultural, horticultural, public health and domestic insecticides, fungicides, herbicides and/or other allied chemical products.

3. The 1st Respondent is the State of Maharashtra and is a formal party. Respondent Nos. 2 to 11 are the original Accused. Respondent No. 2, Centre for Science and Environment (hereinafter referred to as "CSE") is a non-governmental organization based in New Delhi. Respondent No. 3, Ms. Sunita Narain is the Director of CSE and also the editor, publisher (web and print edition) of Down to Earth magazine. Respondent No. 4, Dr. Rashmi Mishra and Respondent No. 5, Dr. Sapna Johnson are the Investigators working for CSE and Respondent No. 6, Dr. M.S. Swaminathan is the Chairperson of CSE, as disclosed by them and having their office situated at the address given in the cause title. Respondent Nos. 3 to 6 were and are at all relevant time in charge of and responsible for the activities of Respondent No. 2 i.e. CSE and had taken active part in preparation, printing, publication and circulation of the defamatory report. Respondent No. 7, Dr. Padma Vankar, named as investigator in CSE's published report, is working as Professor and Head of the Facility for Ecological Analytical Testing of Indian Institute of Technology, Kanpur (hereinafter referred to as IIT,

Kanpur). Respondent No. 8 is the, Director, Respondent No. 9 is the Deputy Director, Respondent No. 10 is the Registrar and Respondent No. 11 is the Dean (Faculty Affairs) of IIT, Kanpur having their offices as given in the cause title hereinabove. Respondent Nos. 8 to 11 are the persons who are in-charge of IIT, Kanpur and under whose administrative control the affairs of IIT, Kanpur as per records.

4. The Petitioner states that they have a perfect quality control. The Petitioner further states that their members are subjected to stringent law for prevention of pollution. The Petitioner states that any lapse on the part of the Petitioner's members would be dealt with diligently by the Pollution Control Board. The Petitioner states that the In-house Departments of the Petitioner's members also prevent such pollution. The Petitioner states that thus there is a continuous monitoring of the levels of effluents and residue monitored. The Petitioner states that in order to maintain the scientific method of testing, the supplying is done in a scientific manner which gives accurate results. The Petitioner states that methods are laid down by Pollution Control Board to ensure correct accurate results.
5. The Petitioner states that Respondent Nos. 2 to 11 (hereinafter referred to as "the Accused") claim to have conducted so called pesticide residue monitoring study

analyzing self collected environmental and' biota samples from Padre Village in Kasargod District of Kerala for Endosulfan residues. The said report has been published the Accused / Respondent No. 2 on its official websites of www.cseindia.org as well as www.downtoearth.org.in by CSE with the titled as "Pesticide Residue Monitoring Study GSE/PRM-1/2001". The said report is available for global access to everyone and all persons. The Petitioner had last accessed the said report on 23rd December, 2006 from this website. The front page of this report shows a photograph of a girl with malformed fingers. A summary of this study report was also published in India in the fortnightly magazine 'DOWN TO EARTH, 28 February, 2001' issue. Electronic version of this issue of the magazine is still available and can be accessed globally from the official website DOWN TO EARTH magazine www.downtoearth.org.in. The full report of the said study has also been published / reproduced / referred to in numerous print and electronic media within and outside India. It was also widely distributed in several international conferences including the ones organized by United Nation Environment Programme (UNEP), Food and, Agriculture Organization (FAO) in 2006.

6. All the Accused have written, printed, published and actively involved in the defamatory act in their respect capacities as reflected above, which can be further seen

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from the alleged study report and other documents. The Accused with a mala fide and criminal objective created, printed, published and circulated the defamatory study report against the said Federation and its members. All the Accused are therefore liable to be prosecuted in their respective capacities for committing an offence under Sections 500, 501, 502, 201 read with 34 of the Indian Penal Code. The Accused in furtherance of their common object colluded, consented and connived in commission of the offences against the said Federation and further on account of their neglect to comply with the requisition made in the notices issued to them. The defamatory study report was also printed, published and circulated all over the world by Accused Nos. 2 to 6 in their internet edition on their websites www.cseindia.org and www.downtoearth.org. The above study report is available on their website even now. It has also been subsequently published / reproduced / referred to in numerous print and electronic media within and outside India.

7. (The excerpts of the study report also appeared in 'DOWN TO EARTH' 28 February, 2001 print issue and web edition is available and accessible till date from its website www.downtoearth.org. The defamatory study report uploaded in the website www.cseindia.org contains 17 pages. The first page contains the name of the CSE and study, date, names of the Investigators and



donors i.e. on the top the name of the Institute is printed i.e. Centre for Science and Environment, New Delhi, below the same it mentions "POLLUTION MONITORING LABORATORY" and "Pesticide Residue Monitoring Study CSE/PRM-1/2001" below the same Accused had printed a photograph of a child with deformed hand and fingers which follows the name of the study i.e. "Analysis of samples from Padre Village in Kasaragod district of Kerala for endosulfan residues", which clearly indicates that all the Accused have conducted the alleged study in the laboratory owned by CSE. It must be mentioned here that CSE had, at the time of conducting the study, neither had any approval for authorization to carry out analysis of environmental samples for chemical residues. The photo in the first page was mischievously planted to lead the readers into perceiving and believing that deformed fingers were due to presence of Endosulfan residues in the child's body. Hereto annexed and marked as **Exhibit "B"** is the copy of the study report.

8. The defamatory content of the study report uploaded in websites is reproduced, which is as follows:
 - (a) A bare reading of page No.1 with the photograph clearly shows that, the Accused have preplanned agenda to commit offences against the Complainant. The impugned study report visually links endosulfan with deformed fingers in a child's

hand. The photo was mischievously planted on first page of the report to mislead common man into perceiving and believing that human hand can be deformed by endosulfan.

- (b) The Accused named the members of complainant as the persons who manufactures "endosulfan" and wants to attribute all the defamatory statements as stated above on endosulfan vis-à-vis to its producers such as, Excel India Limited, Hindustan Insecticides and E.I.D. Parry. It is submitted that Accused has given incorrect names i.e. Excel India Limited the correct name being Excel Industries Limited and Excel Crop Care Limited, the Hindustan Insecticides is a limited company as such, the correct name is Hindustan Insecticides Ltd., the E.I.D. Parry is the old name of Coromandel Fertilizers Ltd. All of them are the members of the Petitioner.
- (c) The entire study by the accused was founded on falsehood that alarming high levels of endosulfan were found during laboratory tests in environmental and biota samples collected from Padre Village in Kasargod district of Kerala.
- (d) On page 9 of the alleged study report the Accused under the head-note summarizing the result

states as under :

"Alarming high values of endosulfan residues (ppm) for blood, fruits, tissues only go to prove the high diseased condition in the people of Kerala....."

The above statement is without any support, factually incorrect and scientifically wrong, which is made with a sole intention to harm the reputation of the Petitioner. The allegation that alarming high values of Endosulfan residues in parts per million levels (ppm) is itself a result of laboratory fraud. The United States Environmental Protection Agency (US EPA) defines laboratory fraud as *"the deliberate falsification of analytical and quality assurance results...."*. US EPA cites following examples, among others, for laboratory fraud, (i) Fabricating data, (ii) Calibrating equipments using other than accepted procedures, (iii) Manipulating analytical results and (iv) Falsifying records of analytical equipment readings. The Petitioner submits that the accused had surreptitiously indulged in one or more of these to generate false and scientifically incorrect laboratory data to defame the complainant. The Petitioner craves leave to refer to and rely upon the relevant documents, when produced.

(e) The most glaring example of laboratory fraud committed by the accused to defame the Petitioner is shown against Serial No.25 of Annexure-I of the study report available on the website of Respondent Nos. 2 to 6. The study report claims that the Accused had found, upon analysis, as much as 9.19 ppm of Endosulfan residues from a water sample collected (and subsequently filtered during analysis) from Padre village. This value (9.19 ppm) is scientifically implausible as it exceeds the known water solubility of Endosulfan by nearly 2800%. As stated in detail in the Advocate for Petitioner / Original Complainant's notice dated 8th June, 2006, the pesticides solubility in water is an important factor in residue analysis. It indicates the maximum possible amount of a pesticide in solution (in accidentally contaminated water. When the known and validated water solubility of Endosulfan is 0.32 ppm, how could the Accused find as much as 9.19 ppm (+) in filtered water? To understand the gravity of falsehood in this claim, here is an illustration. The water solubility of common salt is 360 gms. per litre of water. This means the maximum possible amount that can ever be dissolved in and/or extracted from one litre of water can not be more than 360 gms. If any one claims to have found 10 kgs (i.e. nearly 2800%



higher than its water solubility) it should be considered to be a scientifically false, incorrect and fraudulent claim. Indian Council of Agricultural Research, New Delhi vide its Letter dated 28th December, 2006 to the Petitioner has categorically stated "it is not theoretically possible to find upto 9.19 ppm of its (Endosulfan) residues in filtered water". The said Letter was duly signed by Dr. T. P. Rajendran, Assistant Director General (Plant Protection). Hereto annexed and marked as **Exhibit "C"** is a copy of the said letter dated 28th December, 2006.

- (f) It must be pointed out here that the Accused has claimed to have measured only alpha and beta, Endosulfan leaving out the principal metabolite i.e. Endosulfan Sulphate. This is procedurally not in conformity with international norms. The quality control procedures for pesticides residues analysis laid down by European Union which provides guidelines for residue monitoring including Endosulfan. Hereto annexed and marked as **Exhibit "D"** is the relevant pages of guidelines laid down by European Union appeared in second edition. The Accused also claimed to have followed US EPA methods for analysis to deceive the public and to gain credibility to their defamatory statement. All the accused are well educated.

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Notably, Accused Nos. 4 to 7 has qualifications in chemistry and matters related to pesticides. The basic scientific principle that extraction of chemical residues in water can never be in excess of its maximum, solubility ought to be known to them. Yet, they claimed to have found Endosulfan residues 2800% higher than its solubility in water. Clearly, the Accused deliberately closed their eyes to what would otherwise have been obvious. The Accused acted with criminal intent, knowingly and willfully, to defame the Petitioner. On the strength of their false data, they wanted the common people, press and the policy makers to believe that residents of Padre Village were drinking water containing 9.19 ppm of Endosulfan residues and, consequently, suffered health problems. The Accused intentionally misrepresented the lab data with intent to deceive the gullible public. All accused collectively contributed to defamation of the principle of good scientific practice. The basic tenant in scientific laboratory studies is reproducibility. When challenged to reproduce the study results, the Accused did not respond (as can be seen from the documents exhibited to this Petition).

Scientifically absurd claims made by the Accused were not limited to Endosulfan's residues in water

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alone. Defamatory report claimed to have found lethal levels of Endosulfan residues from people who are alive till date. The residues of Endosulfan allegedly found in human blood samples exceeded the lethal levels by 10000% to 20000%.

Stating that the lethal level of Endosulfan for frogs is 0.7 ppm, CSE report claims that it found 10.35 ppm (i.e. more than 1000% than lethal level) from live frog.

CSE report also says that it collected butter sample for analysis in the year 1977 i.e. much before the establishment of CSE which was in the year 1980.

In short, the whole so called residue analysis report of CSE appears to be fabricated, false and fictitious.

Similar fraudulent and scientifically implausible data was generated for all the samples analyzed by the accused. The Petitioner craves leave to refer to and rely upon the published study and all relevant documents in this respect, as and when required.

The above facts totally expose the false and incorrect pesticides residue study and its conclusion. From the acts of the Accused it is clear

c that their comments and conclusions were premeditated and peppered with cooked up data.

A simple definition of laboratory fraud is intentional misrepresentation of lab data to hide real facts with an intention to deceive. The Petitioner submits that all the Accused individually and collectively caused defamation of principle of good scientific practice and through this process they caused and contributed to defamation of the Petitioner's reputation and business.

Article 51A (h) of The Indian Constitution states that it shall be the fundamental duty of every citizen of India to develop scientific temper. The accused, by collectively generating and publishing false data, openly disrespected Article 51A (h) of our Constitution. Hereto annexed and marked as **Exhibit "E" (Collectively)** are the copies of the defamatory study report published in the study report, Down to Earth magazine and web editions.

It is submitted that the study report contains false, scientifically baseless and incorrect statements about the pesticides in which the said Federation and its members are in the business of as stated above.

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The defamatory report was used, printed and published continuously in various places and various forms and the same is continuing even today. For example, during Rotterdam Convention's COP-3 meeting held from 9th October - 13th October, 2006 in Geneva, an international environmental NGO called PANAP circulated a booklet (reprinted in April 2006) quoting what was printed in 28 February, 2001 issue of DOWN TO EARTH magazine of CSE (Exhibits B and C). PANAP also exhibited at this international meeting photos originally published by CSE. Hereto annexed and marked as Exhibit "F" is the copy relevant pages of PANAP issue dated April 2006. They have also distributed CD containing 15 reports alongwith the defamatory report. The Petitioner craves leave to refer to and rely upon the contents of the said CD as and when produced.

The known scientific solubility of Endosulfan in water is 0.32 ppm. This fact can be proved by various scientific document and persons. The Petitioner wants to examine Dr. S. Y. Pandey of JRF, Vapi, Gujarat with respect to this and craves leave to produce various documents in support of the same.

9. It is respectfully submitted that the contents of the said

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study report are unfounded, unscientific and imaginary, which was written and published without due diligence and without verifying. All the Accused have printed, published, edited and circulated the defamatory article knowing fully about the same as false, scientifically incorrect and baseless. All the Accused in furtherance of their common intention to defame the said Federation / Petitioner and their members not only published the above study report but also gave wide circulation by printing, publishing and circulating the same on the website, which is still appearing as on date.

The study report shows that the Accused brazenly did not follow basic protocol required in residue analysis. They did not exercise due diligence. They did not follow proper and validated protocol while sampling, analyzing and subsequent reporting. For example in page number 7 of the study report, the Accused state "*extraction and clean up of the milk samples collected during 1979 and 1980 were accomplished...*". In the same page the accused also claims that butter samples were collected during the year 1977. This speaks volumes of falsehood and fabrication involved in the so called scientific study and needs no comments. If this is so, blaming endosulfan and its manufacturer for causing various diseases etc. is totally false and defamatory, due to which the Petitioner and its members are facing humiliations and problems. (The Petitioner respectfully



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submits that the Accused must be asked to produce before this Hon'ble Court all data and information about sampling, transport of sample, storage and analysis of samples including original chromatograms generated during analysis so that further falsehood in the study can be examined and exposed.

10. International and national regulatory agencies register pesticides after elaborate studies and only after assessing that when used as recommended they will perform intended functions without unreasonable risks to man and environment. The above needs to be scrupulously complied with as per the various rules and enactments. It shows that pesticide undergoes various tests before it qualifies for registration.

The following are the some of the Acts and Regulations which governs the manufacturing, distribution and sale of pesticides in India :

1. The Insecticide Act 1968 and subsequent amendments.
 2. The Environment (Protection) Act, 1986.
 3. Hazardous Wastes (Management and Handling) Rules, 1989.
 4. Water (Prevention and Control of Pollution) Act, 1984.
 5. Air (Prevention and Control of Pollution) Act, 1981.
 6. Prevention of Food Adulteration Act, 1954.
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7. The Factories Act, 1948.
8. Bureau of Indian Standards Act.
9. Central Insecticides Board.
10. Registration Committee.
11. Inter Ministerial Committee.

The Petitioner craves leave to refer, to and rely upon the above and other Acts, Rules and regulations which governs their activities, as and when produced.

The industries needs to follow strictly all the procedures and laws before, during and after the introduction of their products in the market, slightest deviation invites action, cancellation of license etc.

The member industries export their products to various countries, while doing so they need to observe various procedure, rules etc. to qualify their products for exports. Accused arc well aware that the international community is highly sensitive about adverse reports involving chemicals. The slightest rumor is enough to cancel their orders. To counter the propaganda the industry is would be required to spend huge amount of its resources and time.

11. The said defamatory study report created major problems for the members of the said Federation apart from damaging their reputation. Some of which are as follows :



- (a) The Petitioner received a letter from Coromandel Fertilizers Limited, Secunderabad, India forwarding the letters received by them from dealers and distributors and asking to take suitable actions. Hereto annexed and marked as **Exhibit "G"** (**Collectivey**) are the copies of three letters received by Coromandel Fertilizers Limited alongwith their covering letter, these are some of the letters received. The Petitioner craves leave to refer to and rely upon various other letters and witnesses, as and when produced.
- (b) Excel Crop Care Limited vide their letter dated 25th July, 2006 and 25th August, 2006 addressed to The President of CCFI (Petitioner), conveyed their sufferings and damage to their reputation and business due to the defamatory report and also forwarded four letters received by them. Hereto annexed and marked as **Exhibit "H"** are the copies of letter dated 25th July, 2006, 25th August, 2006 along with four other letters.

The Petitioner has been constantly receiving letters from various persons due to the defamatory acts of the Accused. The above are some of them. The Petitioner craves leave to refer to and rely upon all the documents in respect to the above as and when produced.

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After publication of the said study report the Federation and its members are facing problems in dealing with the financial institutions for getting funds.

The various activities of the federation which includes imparting training and educating the farmers for getting high yields of crops which resulted into high profits to the farmers. The effects of above can be easily seen from the production export data of farmers.

The allegations leveled against the said federation are untrue and baseless which can be seen from the amount of export and generation of foreign currency through exports of pesticides which is increasing year by year. The Accused should know about the various rules, regulations and scrutiny which need to be observed scrupulously before using pesticides.

12. The above circumstances, clearly indicates the overall bad impact created by the Accused through their defamatory study report published intentionally and knowingly the same to be false, incorrect and contrary to the truth, not only in India but also all over the world.
13. The Petitioner has many members including large multi-national and small-scale industries. The approximate total turnover is 6000 crores, which includes 2500 crores of exports and 3500 crores of domestic sales. The total

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investments of the members of this Federation in the business are about 1000 crores, which employs thousands of peoples. The activities of the Petitioner in training and educating the fanners in growth and development with their concern for the protection of ecology and the environment.

14. The Petitioner through Mr. R. G. Agarwal appraised about the defamatory report to Respondent No. 6 vide his letters dated 22nd May, 2006 and 7th October, 2006 and requested for an explanation. Hereto annexed and marked as **Exhibit "I" (Collectively)** are the copies of the letters dated 22nd May, 2006 and 7th October, 2006. The Chairman of the Petitioner, Mr. R. G. Agarwal received a letter dated 30th October, 2006 from Accused Nos. 2 and 3 stating the, receipt of Petitioner's notice and a letter dated 7th October, 2006 and also stated that their lawyer had; replied to the lawyer of the Complainant in the month of August. It is pertinent to note that the same is not yet received by the Petitioner or his Advocates. Hereto annexed and marked as **Exhibit "J"** is the copy of letter dated 30th October, 2006). Mr. R. G. Agarwal, Respondent No.6 i.e. Mr. M. S. Swaminathan and Respondent No.2 exchanged letters by email dated 2nd June, 2006, 15th July, 2006 and 17th July, 2006 with respect to the defamatory report etc. The same are self explanatory. Hereto annexed and marked as **Exhibit 'K'** **(Collectively)** are the copies of the email letters dated 2nd
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June, 2006, 15th July, 2006 and 17th July, 2006.

15. The Petitioner issued legal notices to the Accused through their Advocates dated 8th June, 2006, 24th July, 2006 and 12 September, 2006 stating that all the Accused in collusion and connivance with each other have printed, published and circulated the defamatory study report. In the said notices, the Advocate called upon the Accused to tender an unconditional apology failing which informed them that appropriate legal proceedings before civil and criminal courts would be initiated against all the persons who are in-charge and responsible for printing, publishing and circulating the said defamatory study reports.
16. These notices were dispatched by Registered Post A.D. to the Accused which were duly received by them as per their endorsements on the Acknowledgement Due Cards which were duly stamped and signed by them. Hereto annexed and marked as **Exhibit "L" (Collectively)** are the copies of Advocate's notice, Registered A.D. receipts and A.D. cards. The A. D. Cards or packets containing the, notices sent to Accused Nos. 3, 4, 5 and 7 were not returned. As such, the Advocate vide its letter dated 11th July, 2006 and 27th September, 2006 addressed to the Post Master, Bandra (West) Post Office, Mumbai - 400 050 informing them of non-receipt of A.D. card and/or envelope containing the notices through dead mail and



✓ requested to look into the records and inform the receipt details by the addressee / Accused. Till date they have not responded to the same. Hereto annexed and marked as **Exhibit "M"(Collectively)** are the copies of letter dated 11th July, 2006 and 27th September, 2006. It is therefore presumed that the Accused Nos. 3, 4 and 5 have duly received the registered A. D. notices but failed and neglected to reply and/or comply with the requisitions made therein by the Petitioner. With respect to the notice dated 8th June, 2006 sent to Accused No.7 the Post Office had vide their reply dated 28th July, 2006 stated that "RL U/R HAS BEEN DELIVERED TO ADDRESSEE ON 13/06/06". This clearly shows that Accused No.7 has duly received the notice. Hereto annexed and marked as **Exhibit "N"** is the copy of letter from post office dated 28th July, 2006.

17. After receipt of the notice Accused Nos. 8, 9, 10 and 11 vide their Advocate replied dated 31st August, 2006, received on 21st September, 2006 gave evasive reply and claimed that Dr. Padma S. Vankar i.e. Accused No.7 was never associated with the Institute at the relevant time etc., which is nothing but blatantly incorrect and false statement and is an attempt to shield their crimes and illegal acts. Hereto annexed and marked as **Exhibit "O"** is the copy of the reply dated 31st August, 2006.

18. The Advocate for the Petitioner vide his rejoinder dated

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1st November, 2006 replied to the above reply giving parawise reply and also exposed their incorrect, false and baseless stand. The same is dispatched by Registered Post A.D. which was duly received by the Advocate / Addressee. Hereto annexed and marked as **Exhibit "P"** **(Collectively)** are the copies of the rejoinder dated 1st November, 2006, Registered A.D. Receipt and A. D. Card.

It is pertinent to note the contents of the following documents, which is contrary to the stand taken by Accused Nos. 8, 9, 10 and 11 in their reply dated 31st August, 2006 :

- (a) India Today on 23rd July, 2001 published a report titled "Inadequate precaution", which says that "The Centre for Science and Environment in Delhi conducted tests on samples collected from Padre village under the guidance of Padma Vankar of the Facility of Ecological and Analytical testing at the Indian Institute of Kanpur". The same is available on India Today's website. Hereto annexed and marked as **Exhibit "Q"** is the copy of web printout taken on 23rd December, 2006.
- (b) Down to Earth report titled "Probing a pesticides tragedy" downloaded on 23rd December, 2006 from their website www.downtoearth.org dated 28th February, 2001 says that "The tests conducted by



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Padma S. Vankar, Head of Ecological and Analytical Testing at Indian Institute of Technology, Kanpur". Hereto annexed and marked as **Exhibit "R"** is the copy of web edition taken on 23rd December, 2006.

- (c) And also an article downloaded from website www.downtoearth.org from Down to Earth titled "Ban lifted" dated 15th May 200~~9~~ quotes that "meanwhile Padma S. Vankar, in-charge Laboratory Facility of Ecological and Analytical Testing (FEAT), Indian Institute of Technology (IIT), Kanpur feels that the state government have overlooked". Hereto annexed and marked as **Exhibit "S"** is the copy of web edition taken on 25th September, 2006.

The above contents clearly establishes that Dr. Padma S. Vankar i.e. Accused No.7 is and was associated with Indian Institute of Technology, Kanpur which is governed by Accused Nos. 8, 9, 10 and 11, who are intentionally and falsely claiming contrary in their reply through their Advocate's reply dated 31st August, 2006 knowing fully the true and correct facts knowingly gave false information to shield Accused No.7 from the offences committed by her and alternatively trying to evade their responsibilities and creating false defenses for them.

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19. It is pertinent to note here that the information downloaded from IIT, Kanpur itself shows that Accused No.7, Dr. Padma Vankar was associated with IIT, Kanpur ever since 1999 as can be seen from the website i.e. <http://phys4.haxvard.edu>. Hereto annexed and marked as **Exhibit "T"** is the copy of the web printout taken on 25th September, 2006.

20. The Petitioner respectfully submits that from the report bearing No. 2 published by Society for Scientific values, while dealing with Ethics in Scientific Research Development and Administration, News and Views - Volume 1, March 2004 - No. 1, shockingly shows how Accused No. 7 was involved in plagiarism, case details of which is available on the website i.e. www.scientificvalues.org. This clearly shows Accused have past record of scientific fraud and misconduct. The Petitioner is producing herewith the hard copy. This report proves that "Dr. Padma Vankar, is consultant to the Centre for Science and Environment" (CSE) even as she is employed by Indian Institute of Kanpur. These statements clearly connect the Accused with each other and their collective, work and involvement in the defamatory study report and their non- replies, evasive and vague replies. Hereto annexed and marked as **Exhibit "U"** is the copy of the report.

21. The defamatory report was also printed, published and

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circulated in various forms before various forums. Some of them are as follows :

- (i) The CD with the title Ban Endosulfan - A campaign, containing 15 reports along with the defamatory article was circulated in October 2006 at Geneva meeting convened by UNEP / FAO, which was attended by Mr. Shunmugam Ganesan on behalf of Indian Chemical Council. The Petitioner received the said CD and craves leave to refer to and rely upon the same as and when produced.
- (ii) Down to Earth Magazine dated 15th July, 2002.
- (iii) Down to Earth Magazine dated 15th April, 2004.
- (iv) Down to Earth Magazine dated 15th October, 2006.
- (v) India Today dated 23rd July, 2001.
- (vi) Policy Research & Analysis by Pesticides Action Network Asia and Pacific - Volume 2 reprinted April 2006. This was also circulated in October 2006 at UNEP/FAO meeting held in Geneva, Switzerland.

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(vii) The Accused No.3 in her Article published in THE WEEK in its December, 31, 2006 Volume No.1, issue, written an Article with the title THE WOODS ARE LOVELY, wherein she stated that "Aerial spraying of Endosulfan crippled Pedre village in Kasargode, Kerala. Hundreds died due to cancer, epilepsy, congenital anomalies. The Petitioner craves leave to refer to and rely upon the same as and when produced.

The above are some of the examples wherein the defamatory article was reproduced and widely circulated. There are many such cases as can be seen from the internet printout downloaded on 23rd December, 2005. The Petitioner craves leave to refer to and rely upon the same as and when produced.

22. The Petitioner says and submits that the Accused have made defamatory imputations and innuendos against the said Federation who are involved in the production, distribution of the pesticides which in the eyes of right thinking people, including the industrial community and the general public has not only defamed the said Federation and its members but has also reduced its image. The said imputations and innuendos have caused great injury to the impeccable reputation of the said Federation. It is further submitted that as a result of the aforesaid libelous and scandalous report published by

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the Accused the reputation and goodwill has been tarnished and has become a subject matter of uncalled for and/or unwarranted innuendoes in the course of discussion amongst the members of the industrial community.

23. The Petitioner further submits that as a result of the aforesaid libelous and scandalous study report published by the Accused the reputation and goodwill of the Petitioner has been tarnished/damaged and has become a subject matter of uncalled for and/or unwarranted innuendoes in the course of discussion amongst the members of the public at large. The Petitioner submits that it is not possible to come to a definite figure as to the damage suffered by the Petitioner in monetary terms. The said article has affected the goodwill and reputation of said Federation on a long-term basis.

The defamatory study was printed, published and circulated throughout Mumbai and across the world. As stated above, the defamatory study report was also flashed on the website, which enabled the people around the world to access and read the same. The same was read in and around India and abroad by various persons.

The said defamatory report was read by Mr. Shunmugam Ganesan, Mr. Kakkar, Mr. Sachin Desai,

Mr. Rajju Shroff at Uniphos Houue, 11th Road, Madhu Park, Khar (West), Mumbai - 400 052. They also received various phone calls from the customers, members of the Federation raising various questions and showing their fear and uncertainty over the defamatory report. The letters with regards to the defamatory report as stated above were also received in Khar (West) which is situated within the jurisdiction of this Hon'ble Court.

The web edition of the defamatory report was read all over India and also abroad, the web edition of the defamatory report created havoc when it was read by the employees of Excel Crop Care Limited and other members of the Petitioner who are directly and indirectly connected with this business. It took huge time and efforts for the Directors and the Chairman to pacify and explain the realities and resolve the problems created due to the defamatory report amongst the employees. The said company is also regularly facing problems with its sales officers and distributors due to the defamatory report and every time they hold meetings in their above office they need to spend huge time and energy explaining true and correct facts. The companies referred in the defamatory report as :

Basic manufacturers in India :

- Excel India Limited
- Hindustan Insecticides
- E.I.D. Parry

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are the members of the Petitioner.

24. The Petitioners state that the report being false and defamatory and not based on any scientific analysis of

the Petitioners. *The petitioners crave leave to refer to and*
rely upon a copy of the said defamatory report published by
 the Respondents *as and when produced*

25. The Petitioners state that immediately the reactions of the said defamatory report started coming in. Various dealers addressed their letters to the Petitioners as well as its members who complained of the reaction by the

members of public. *The petitioners crave leave to refer to*
and rely upon the copies of some of the said letters received by the Petitioners.

26. The Petitioners state that the Petitioners therefore addressed a letter dated 22nd May, 2006 to Prof. Swaminathan, a renowned Agro-Scientist to comment on the same. The Petitioners state that it would not be out of place to set out that the fallacy in the claim of the Accused is apparent from the fact that item No. 25 of the Conclusions showed Water-3 as having total Alfa Endosulfan quantities of 9.19 PPM. A reference to the Indian Council of Agricultural Research were made. By their letter dated 28th December, 2006, the Indian Council of Agricultural Research in no uncertain terms brought their findings that 9.19 PPM was impossible

since the water solubility of Endosulfan is 0.32 PPM. The Petitioners state that on the aforesaid facts, the Petitioners filed a complaint before the Learned Metropolitan Magistrate's 9th Court, Bandra, Mumbai under Sections 500, 501, 502, 201 read with 34 of the Indian Penal Code, 1860 against the Accused. The said complaint was numbered as 925/Misc./2006. Hereto annexed and marked as Exhibit "V" (without annexures) is a copy of the Complaint No. 925/Misc./2006.

27. The Petitioners state that the Learned Metropolitan Magistrate after recording the verification, held that the ingredients of Section 499 of the Indian Penal Code was satisfied. The Learned Magistrate held that the study only reported the adverse effect in a specific case of the human beings which was studied by the group of scientific experts. The Learned Magistrate observed that the report was misunderstood as an offending without indication of the defamatory version therein in order to lower the dignity of the Federation / Complainant. The Learned Magistrate therefore on 5th January, 2008 passed an order under Section 203 of Cr.P.C. rejecting the complaint. Hereto annexed and marked as Exhibit "W" is a copy of the said order dated 5th January, 2008 passed by the Learned Metropolitan Magistrate rejecting the Petitioners' complaint in respect of an offence under Section 499 of the Indian Penal Code.

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28. The Petitioners state that the order dated 5th January, 2008 was passed by the Learned Metropolitan Magistrate in Complaint Case No. 925/Misc./2006 dismissing the Complaint. The Petitioners challenged the said order dated 5th January, 2008, Exhibit "^W" hereto dismissing the Petitioners' complaint by approaching the Hon'ble Sessions Court in Criminal Revision Application No. 253 of 2008. The said Revision Application was heard and finally decided by the Learned Sessions Judge by his order dated 19th June, 2008. The Learned Sessions Judge rejected the Petitioners' application holding that the report was not in reference to the Complainant nor is it of a defamatory nature. The Learned Sessions Judge held that it was merely a criticism and that the ingredient of Section 499 of I.P.C. was not satisfied. Hereto annexed and marked as Exhibit "^X" is a copy of the said order dated 19th June, 2008 passed by the Learned Sessions Judge in Criminal Revision Application No. 253 of 2008.

29. Being aggrieved by the impugned order dated 19th June, 2008 (being Exhibit "^X" hereto), the Petitioners approach this Hon'ble Court in its jurisdiction under Article 227 of the Constitution of India read with Section 482 of Cr.P.C. on the following amongst other grounds which are taken without prejudice to one another :

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30. Being aggrieved by the criminal acts committed by the Accused Petitioner/Org. Complainant filed a complaint against ten (10) Accused for offences committed by them against it before the Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai on 30th December, 2006. The Ld Magistrate after recording the verification statement denied the process vide its Order dated 5th January, 2008.

Being aggrieved by an Order of dismissing the Complaint u/s.203 of The Code of Criminal Procedure dated 5th January, 2008 by the Hon'ble Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai.

Petitioner/Org. Complainant filed Criminal revision Application bearing No.253 of 2008, which was rejected on 19th June, 2008 by the Hon'ble Sessions Court.

Being aggrieved by the Order passed by the Hon'ble Sessions Court in Criminal Revision Application bearing No.253 of 2008, Petitioner/Org. Complainant files this present application for setting aside the Order passed by the Hon'ble Sessions Court, as the same is contrary to the facts and law.



31. The brief facts leading to this application is as under :-

Petitioner/Org. Complainant filed a Complaint bearing No.925/MISC of 2006 before the Ld. Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai on 30th December, 2006 u/s.500, 501, 502, 201 r/w. Sec.34 of The Indian Penal Code against the Accused mentioned therein. The copy of Complaint bearing No.925/MISC of 2006 is annexed hereto as Exhibit "Y" hereto alongwith 22 annexure including defamatory article which is at Exhibit 'B' and other various magazines, we editions etc. wherein the defamatory report was used, published, printed and circulated.

It is respectfully submitted that verification of the Complainant was recorded and after the argument was heard the Ld. Magistrate dismissed the Complaint u/s.203 of The Code of Criminal Procedure on 5th January, 2008 being Exhibit "^W" hereto.

Petitioner/Org. Complainant filed a Criminal Revision Application bearing No.253 of 2008 in March, 2008 before the Hon'ble Sessions Court, Mumbai. The Criminal Revision Application bearing No.253/2008 containing 11 pages and the page Nos.12 to 27 are the copies of the Complaint and the Order passed by the Ld. Magistrate are set out herein in this Petition.

The Hon'ble Sessions Court rejected the criminal revision application vide its Order dated 19th June, 2008 being Exhibit "X" hereto.

32. Under the circumstances, Petitioner/Org. Complainant files this application for setting aside the Order of the Hon'ble Sessions Court, which failed to correct the Ld. Magistrate's Order and directing the Ld. Magistrate to take the cognizance of the offence as disclosed in the Complaint filed by Petitioner/Org. Complainant against the Accused before the Ld. Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai on the following amongst other grounds :-

MEMORANDUM OF OBJECTION

- (a) The Complaint filed by Petitioner/Org. Complainant against the Accused u/s.500, 501, 502, 201 r/w.34 of The Indian Penal Code, as Accused knowingly and intentionally had written an incorrect and false report. The same were printed, published and circulated not only by them vide their study report and in their web site but also distributed the said defamatory article to be used by various persons.



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All the facts alongwith documents which amounts to commission of criminal offences under various sections of The Indian Penal Code prima facie committed by the Accused mentioned in the complaint were made out in the complaint and annexure therewith.

- (b) The Ld. Magistrate instead of issuing process as required by law in the given facts and circumstances was pleased to dismiss the complaint. Unfortunately the reasons stated by the Ld. Magistrate were not based on the facts produced before it and relevant laws required to be followed at the time of issuance of process in a private complaint.

The Ld. Magistrate formed his own opinion as can be seen from the Order, ought not to be the reasons arrived from the material placed before him. (The Order is annexed as Exhibit 'B' to this application. The details of the Order alongwith the reasons terming the same as unconnected and out of context to the facts and circumstances of the complaint are stated in the criminal revision application which is Exhibit 'C', as such same are not reproduced here. Petitioner/Org. Complainant craves leave to refer to and rely upon the contents of criminal revision application to explain the

incorrect and illegal order passed by the Ld. Magistrate).

- (c) As aggrieved by the Ld. Magistrate's Order for rejecting the complaint, the Petitioner/Org. Complainant preferred a Criminal Revision Application before the Hon'ble Sessions Court, Mumbai vide Criminal Revision Application No.253 of 2008 date 19th June, 2008, wherein Petitioner/Org. Complainant stated the brief facts leading to the Criminal Revision Application vis-à-vis the reasons given by the Ld. Magistrate and how the same is contrary to the material placed before it and the law applicable to the same.

It is prayed in the criminal revision application to set aside the order dated 5th January, 2008 passed by the Ld. Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai in Case bearing No.925/MISC of 2006 rejecting the complaint by evoking section 203 of The Code of Criminal procedure and/or directing necessary inquiries through The Chief Metropolitan Magistrate or through any other Magistrate subordinate to him into the complaint, which is dismissed illegally, as provided u/s.398 of The Code of Criminal Procedure alongwith other prayers.



- (d) The Hon'ble Sessions Court instead of going into the facts as placed before the Ld. Magistrate in the form of Complaint and Exhibits thereto and evaluating the same with the Order rejecting the Complaint, as required by law u/s.397 of The Code of Criminal Procedure while exercising the revisional powers, came out with its own assumption, which is contrary to law and facts placed before it.

For the sake of convenience, reproduced is section 397 of Cr.P.C.

Sec. 397 – Calling for records to exercise powers of revision.

- (1) The high court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

The plain reading of above section alongwith the Criminal Revision Application and Order passed by the Hon'ble Sessions Court makes it crystal clear that reasons given by the Hon'ble Sessions Court for rejecting the Criminal Revision Application is contrary to the law and contents of the Criminal Revision Application.

- (e) The impugned Order passed by the Hon'ble Sessions Court contains four pages and six paragraphs. Para Nos.1 and 2 speaks summarily about complaint. Para 3 and 4 speaks about he hearing the Petitioner/Org. Complainant and A.P.P. and points for his consideration.

Para 5 and 6 are the reasons for dismissing the Criminal Revision Application - the only reason which is given is that the defamatory article is a study report.

Petitioner/Org. Complainant reproduces the only reason, which is given by the Hon'ble Sessions Court at para 6 is reproduced as follows ;

"The fact that it is the study report suffice to show that it is not in reference to the complainant nor it is of any defamatory in nature. This view of the

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accused after research and study, which may be said to criticism believing by the complainant. So, this is not the case of defamation filing u/s.499 of I.P.C. At the most if the complainant is hurt by the report, it may sue for damages in the appropriate court. There is no merit in the revision”.

- (f) Instead of vetting the Complaint as required u/s.397 of The Code of Criminal Procedure, the Hon'ble Court came out with its own conclusion as can be seen in the above para, which is contrary to the intentions of law and the point which Hon'ble Sessions Court stated in its Order at para 4 (1). The Hon'ble Sessions Court failed and neglected to comply with the requisite and mandatory duty cast upon it while hearing and deciding the Criminal Revision Application.

The Hon'ble Sessions Court failed to evaluate the contents of the complaint, Order passed by the Ld. Magistrate with the Criminal Revision Application and the provisions of law.

- (g) It is further submitted that the Hon'ble Sessions Court in its Order at para 6 stated that Accused has committed no offence as the report is published after research and study although which may be said to criticism. ✓

From the above conclusion it seems the Hon'ble Sessions court has not gone through the contents of the Complaint and annexure properly. It is the case of the Complainant that Accused deliberately and intentionally arrived at false scientific conclusions and falsely claimed that the chemical which is the subject matter of the study causes various diseases including deformed body as can be seen from the front page photograph of the defamatory article.

Complainant conclusively proved with the scientific study and records as exhibited alongwith the complaint and even in the averments of the complaint that the so-called study of the Accused is nothing but an intentional attempt with the use of scientific language etc. to damage the reputation, goodwill and character of the Complainant. The Exhibit 'D' to the Complaint which is not disputed as a false document either by the Ld. Magistrate or by the Hon'ble Sessions Court clearly demonstrates that the so-called scientific study by the Accused is incorrect and false. As such, further allegations by them about ill effects on the human and other species is also incorrect and false.



It is pertinent to note that Accused inspite of receipt of notice by the Complainant decided to remain silent and not to respond to the plain scientific questions as they claimed to have been arrived in their study, which conclusively proves their guilt. Any scientific person will not shy to demonstrate his scientific test if challenged. The behaviours of Accused to not to respond speaks for itself. The Petitioner / Original Complainant even now is ready and willing to withdraw their complaint and notices if Accused proves the conclusions arrived by them in their defamatory study report before the Complainant and any five scientist.

The Hon'ble Sessions Court in its Order at para 5 although refers about issuing notices by the Complainant to Accused and Accused not caring to reply, but unfortunately the same was not taken into consideration while dismissing the Criminal Revision Application.

- (h) It is submitted that it is the grievance of the Petitioner/Org. Complainant that by using the name of laboratory test and study, Accused committed fraud without doing any scientific study, which is clearly demonstrated in the complaint.
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The so-called results of the laboratory test are scientifically impossible.

Making allegations of human beings contracting various diseases alongwith deformed bodies and other effects etc. (as stated in the complaint) through the chemicals produced by Complainant is a conclusive proof of criminal offences.

- (i) It is clearly established by the Petitioner/Org. Complainant in their complaint that how Accused No.7 to 10 where involved in a criminal act for disowning their responsibilities of the defamatory act of Accused No.6. The so-called study report at Exhibit 'C' of the complaint refers Accused No.6 as the Investigator attached with Accused Nos.7 to 10, but Accused Nos.7 to 10 disowned her, which is once again demonstrated by the Petitioner/Org. Complainant as factually incorrect and the attempt made by Accused Nos.7 to 10 is a clear commission of an offence u/s.201 read with other sections of The Indian Penal Code.

Unfortunately, the above facts and documents were totally ignored by the Ld. Magistrate as well as the Hon'ble Sessions Court.



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- (j) The Ld. Magistrate erred in dismissing the complaint u/s.203 of Cr.P.C. and Hon'ble Sessions Court failed and neglected to decide the Criminal Revision Application as per facts placed before it and law applicable to the same, which are contrary to the provisions of law, uncalled for, unwarranted and based upon wrong assumptions of law and in the given facts and circumstances of the case.
- (k) It is submitted that dismissing the Complaint by the Ld. Magistrate is a travesty and mis-carriage of justice in the given situation. Petitioner/Org. Complainant has no other alternative remedy available to them to resolve their grievance as per law inspite of Accused committing blatant criminal acts under the name of study and science than prosecute the Accused for their acts which are prima facie an offences.
- (l) It is further submitted that dismissing the Complaint by the Ld. Magistrate suffers from a lack of non-application of mind to the legal principles, is arbitrary and an incorrect interpretation of the law, which instead of being corrected during Criminal Revision Application by the Hon'ble Sessions Court absurdly dismissed by forming his own opinion, as can be seen from para 6 of his Order, which is at Exhibit 'D'. ✓

- (m) The impugned order passed by the courts below is totally erroneous inasmuch as the same does not take into consideration that the report is based on factually incorrect facts which are not only incorrect but are impossible as certified by the scientific bodies.
- (n) The courts below erred in not considering that the reports have adversely affected the reputation of the Petitioners' members for whom the Petitioners' represent which is amply demonstrated by the queries raised by its members showing that such defamatory articles have affected their business.
- (o) The impugned order passed by the courts below is totally erroneous inasmuch as the same does not take into consideration that the report is based on factually incorrect facts which are not only incorrect but are impossible as certified by the scientific bodies.
- (p) The courts below erred in not considering that the reports have adversely affected the reputation of the Petitioners' members for whom the Petitioners' represent which is amply demonstrated by the queries raised by its members showing that such defamatory articles have affected their business.

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- (q) The courts below erred in not considering that the report was not a mere opinion but made out that it is a study made on the scientific facts and thereby having an adverse effect on the business of the Petitioners' members.
- (r) The courts below ought to have considered that the Petitioners were concerned about the interest of their memebtrs and it could not be said that the Petitioners were not concerned with the report or that the report was not in respect of the Petitioners.
- (s) The courts below erred in not considering that the Petitioners have made out a prima facie case wherein the ingredients of Section 499 of I.P.C. were satisfied since the report had lowered the dignity of its members who were shown to be manufacturing Endosulfan which was harmful and discharging the effluents in a manner as to harm the human beings.
- (t) The courts below erred in not considering that the ingredients of Section 499 of I.P.C. were complete inasmuch as the report showed the Petitioners' members as acting contrary to the interest of human beings and general public.
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- (u) The courts below erred in not considering that the report did not fall within any of the exceptions and since the report would have a larger impact, the Petitioners would suffer serious prejudice especially when the report is a false report.
- (v) The courts below ought to have considered that the report made statements which were scientifically false as established by various documents and that such false report had serious implications on the reputation of the Petitioners' members who were shown to be acting contrary to the interest of human being and flouting the law.
- (w) The Learned Magistrate ought to have considered that while the Respondent Nos. 2 to 6 are naming Respondent No. 7 as the instigator, in-charge of the facility for ecological and analytical testing at IIT Kanpur (shown under the head 'Testing for Endosulfan'), Respondent Nos. 8 to 10 have denied any association of Respondent No. 7 with the IIT Kanpur which once again creates a serious doubt about the veracity of the report.
- (x) The Learned Magistrate erred in not considering that while there are scientific bodies governed under the law to carry out such studies which

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have to be done under certain Regulations and Guidelines, even with regard to the drawing of samples and retaining the same with certain temperatures, the present alleged study was based on a total uncontrolled and unchecked manner neither supported by scientific findings nor by scientific studies.
- (y) The effects as suggested by the report of spready Endosulfan on crops were specifically impossible effects and hence even the conclusions are incorrect.
- (z) The courts below erred in not considering that the report suggested that the manufacturers did not use the proper care and caution nor observed the rules while manufacturing or production or distribution of pesticides in India.
- (aa) The courts below erred in not considering that the false report concluded that the manufacturers and distributors of pesticides in India were using unethical methods without adhering to the manufacturing and scientific norms.
- (bb) The false report published not only affected the reputation of the Petitioners' members, but the entire manufacturing and trade of pesticides in
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India which would also affect the country's reputation in the long run.

33. It is respectfully submitted that under the above circumstances, the Ld. Magistrate dismissing the complaint on 5th January, 2008 and the Hon'ble Sessions Court upholding the same on 19th June, 2008 is illegal, unwarranted and not maintainable.
34. It is therefore prayed that this Hon'ble Court be pleased to call the records and proceedings of Case No.925/MISC of 2006 filed before The Hon'ble Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mumbai and after perusal of records and proceeding be pleased to evaluate correctness, legality and propriety of the finding and to set aside the Order of dismissing the Complaint to prevent abuse of the process of law and secure the ends of justice.
35. The Petitioner / Original Complainant craves leave to add, delete, alter and/or amend any of the grounds and/or reliefs with the permission of this Hon'ble Court.
36. In the circumstances hereinabove, the Petitioners most respectfully submit that this Hon'ble Court be pleased to call for the records and proceedings of the present case and on perusal thereof be pleased to quash and set aside

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the impugned order dated 19th June, 2008 (being Exhibit "X" hereto) passed by the Learned Sessions Judge in Criminal Revision Application No. 253 of 2008 confirming the order dated 5th January, 2008 (being Exhibit "W" hereto) passed by the Learned Metropolitan Magistrate dismissing the Complaint No. 925/Misc./2006 and restore the Complaint to file.

37. The Petitioners submit that this Hon'ble Court be pleased to direct issuance of process against Respondent Nos. 2 to 10 under Section 500 of the Indian Penal Code, 1860.

38. The Petitioners state that they have not filed any other Petition either in this Hon'ble High Court or in any other Courts in India or in the Hon'ble Supreme Court of India on the subject matter of the present Petition.

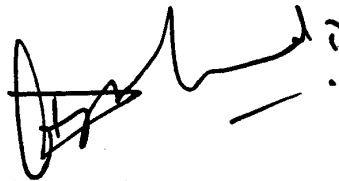
The Petitioners therefore pray that :

(a) that this Hon'ble Court be pleased to call for the records and proceedings of the present case and on perusal thereof be pleased to quash and set aside the impugned order dated 19th June, 2008 (being Exhibit "X" hereto) passed by the Learned Sessions Judge in Criminal Revision Application No. 253 of 2008 confirming the order dated 5th January, 2008 (being Exhibit "W" hereto) passed by

the Learned Metropolitan Magistrate dismissing the Complaint No. 925/Misc./2006 and restore the Complaint to file;

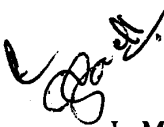
- (b) this Hon'ble Court be pleased to direct issuance of process against Respondent Nos. 2 to 10 under Section 500 of the Indian Penal Code, 1860;
- (c) for costs of the Petition;
- (d) for such further and other reliefs as the nature and circumstances of the case may require.

Mumbai, dated this day of December, 2008.



Advocate for the Petitioners

VERIFICATION


I, Mr. Vinod R. Gandhi, of Mumbai, Indian Inhabitant,

the Authorised Representative of the Petitioners abovenamed, having office address at Uniphos House, 11th Road, Madhu Park, Khar (West), Mumbai 400 052, do hereby solemnly declare that whatever stated in paragraph Nos. 1 to 28 are true to the best of my knowledge and whatever stated in paragraph Nos. 29 to 32 are based on information and I believe the same



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to be true. to 41 are true and correct to the best of my knowledge, information and belief which I believe to be true.

Solemnly declared at Mumbai,)
this 10th day of December, 2008.)

VR. G. G. G. G.

Before me,

[Handwritten Signature]

Advocate for the Petitioners

Identified by me
[Signature]
10/12/08
Clark

Solemnly affirmed before me.
by *Vinod R. Gandhi,*
he is identified before me,
by *R. G. Pawar, Clerk*
whom I personally know.
This 10th day of Dec. 2008
High Court, Appellate Side.
Bombay.

[Signature] 10/12/08
Assistant Registrar,
High Court, Appellate Side
Bombay

Seen Original authority letter/Extract at Board Resolution/Power-
of Attorney dated ..24/09/08.....in favour of deponent
and returned.

[Signature] 10/12/08
Assistant Registrar
High Court, Appellate Side
Bombay