

IN THE COURT OF THE ADDITIONAL CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI-8.

PRESENT: THIRU D. ARULRAJ B. SC., B.L.,
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE.

5th day of November Two thousand Four.

JUDGMENT.
(UNDER SECTION 353 Cr.P.C.)

- (a) Serial Number of the Case : 4680/04.
- (b) Date of Commission of the offence : 7.2.04.
- (c) Name of the Complainant : Asst. Commissioner of Police,
Cyber Crime Cell, Central Crime Branch,
Egmore, Chennai-8.
X.Cr.No. 107/2004.
- (d) Name of the accused person,
his parentage and their
residence : Sukas Kanti. A.31. S/o Madhum Kanti.,
No.28.Amar Jothi, Four Bungalows,
St. Johns Convent Avenue, Andheri West,
Mumbai. 53.
- (e) Offence complained of :

Assistant Commissioner of Police, Cyber Crime Cell, C.C.B. Egmore, Chennai-8 has filed Final Report against the accused, that on 7.2.04, evening at Cyber Cafe Hello World Centre, Sion, Mumbai having an I.S. 61.11.10.29, the accused with the intention of harming the reputation of the Complainant Ms. Roseind, created user id in the name of her and composed an obscene message intending that such document shall be used for posting in different obscene Yahoo groups, with the intention to make others to believe that the document was made by her, so that the persons seeing the obscene message would send offending calls to her, in harming her reputation and by insulting her modesty by the words exhibited in the email and in the course of same transaction, on 7.2.04,

evening at Cyber Cafe Hello World Centre, Sion, Mumbai, having an IP.61.11.10.99 the Accused posted obscene messages which are lascivious and also have the effect to corrupt persons who are likely to read and see such obscene messages and caused to be published in different obscene Yahoo groups and in the course of same transaction, that on 9.2.04, morning, at Cyber Cafe Heighten Advertising, Mahim, Mumbai, having an IP. 202.88.165.53 the accused with the intention of harming the reputation of the complainant Ms. Roselind entered user id. which was created by him in the name of the complainant and composed an obscene message intending that such document shall be used for posting in different obscene Yahoo groups, with the intention to make others to believe that the document was made by her, so that the persons seeing the obscene message would send offending calls to her, in harming her reputation and by insulting her modesty by the words exhibited in the email and that in the course of same transaction, that on 9.2.04, morning at Cyber Cafe Heighten Advertising, Mahim, Mumbai, having an IP. 202.88.165.53, the accused posted obscene messages which are lascivious and also have the effect to corrupt persons who are likely to read and see such obscene messages and caused to be published in different obscene Yahoo groups and thereby the accused have committed offences u/s 469 IPC, 67 I.T. Act, 469 & 509 IPC, and 67 I.T. Act.

f) Plea of the accused and his Examination:

On the appearance of the accused, free copies of prosecution documents were furnished to him in compliance of Section 207 Cr.P.C. Upon hearing the accused, charges u/s 469 IPC, & 509 IPC, and 67 I.T. Act. were framed, read over and explained to him in English. He pleaded not guilty and claimed to be tried. On the side of the prosecution 12 witnesses were examined and Ex.P.1 to Ex.P.34 were marked. When the

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accused was examined u/s 313 Cr.P.C. he denied the evidence of prosecution witnesses appearing against him. The accused not examined witnesses and Ex.D.1 was marked on his side.

g) Final Judgment:

Accused is found guilty for offences u/s 67 of Information Technology Act 2000, 469 and 509 IPC.

h) Date of Judgement: 5th November 2004.

i) Brief reasons for the Decision:

The case of the prosecution as revealed from the evidence of prosecution is as follows: P.W.1 is the only daughter of P.W.2 and P.W.3. P.W.2 is the father, P.W.3 is the mother. Presently, P.W.1 is working as a senior Executive (H.R.) in a multinational Company at Chennai. She studied her M.B.A. Course in Mumbai in the year 1997. The Accused studied with P.W.1 and she was his classmate in Mumbai. Accused belongs to Mumbai. On 9.2.04, She opened her Rediff.e.mail and noticed the receipt of two obscene messages which were posted on 7.2.04 and 9.2.04. She took computer output of the obscene message posted on 7.2.04. Ex.P.1 is the obscene message. The obscene messages carried her Office phone numbers and her e.mail I.D. The house Phone number was wrongly given. The said obscene messages have been sent through Yahoo Web site to 5 Sex groups. The computer print out obscene message posted in the Radha lovers group is Ex.P.2. On seeing the said messages, several person sent responsive messages and many persons tried to contract her over phone. Ex.P.3 series is the responsive Message. Several Phone calls came to her office. P.W.1 informed the said matter to her parents. The messages were likely to harm the reputation and morale of P.W.1.

P.W.1 had married Jaichand Prajapathi of Uttar Pradesh in the year 2001. The family life was not happy and she obtained divorce through court in the year 2003. The

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Accused was cited as a witness in the divorce petition. P.W.1 recollected one incident and suspected the involvement of the Accused. During college days in the year 1997, the Accused used to travel with P.W.1 in train at Mumbai. On one such occasion, Accused pointed out an obscene scriblings with phone number in the train and told P.W.1 that on seeing the phone number, many persons would try to contact the phone number and this is the best way to spoil the reputation of a woman. The Accused even expressed his desire to marry P.W.1, after the engagement of P.W.1 with Jaichand Prajapathi was over. P.W.1 turned down his proposal. In the year 2003, the Accused stayed in the house of P.W.1 for about 10 days stating that he has to attend an interview at Bangalore. At that time also, the Accused offered to marry P.W.1, for which P.W.1 and her parents refused the alliance. Thereafter, P.W.1 after his return to Mumbai, was in the habit of making phone calls, sending S.M.S. Messages and sending E-mail to P.W.1 frequently. Hence P.W.1 blocked the e-mail I.D. of the Accused. Ex.P.5 is the Computer output for blocking the e-mail I.D. of the Accused.

On seeing the obscene message, P.W.1 discussed the matter with P.W.2 and P.W.3, and sought the help of the Accused over phone. P.W.1 and her parents issued a warning message in the name of P.W.2 and P.W.3 by creating an e-mail I.D. viz., Par - ant 2003 @ Yahoo Co., in and transmitted the same to the Yahoo Groups. She sent warning messages to the persons, who sent responsive message in Ex.P.6 series. A copy of warning message was also sent to the Accused.

P.W.1 lodged a complaint on 14/2/2004 along with Ex.P.1 at at Cyber Crime Police. The Complaint is Ex.P.4. P.W.12 who received the complaint directed P.W.4 to obtain header details and other particulars to find out the origination of the messages. P.W.4 went to a Cyber Cafe at Kennath Lane, Egmore along with P.W.1. She down

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loaded the message took print out by using the e-mail I.D. Parant 2003 @ Yahoo Co., in Ex.P.9—Ex.P.12. She extracted and stored the messages in Mo.2 floppies. Thereafter, P.W.12 gave a requisition to Hathway Cable and Data Com Pvt. Ltd., under Ex.P.13, for which it gave a reply in Ex.P.14. P.W.2 also gave a requisition to Dishnet D.S.L. in Ex.P.13 and the reply given by Dishnet D.S.L. is Ex.P.15. P.W.5 speaks about Ex.P.13 and Ex.P.14. P.W.6 speaks about Ex.P.15. P.W.12 also examined P.W.11 and obtained particulars in Ex.P.29 series and confirmed that the messages were originated from Mumbai. P.W.12—Investigation Officer registered F.I.R. Ex.P.34 on 20.2.04.

Thereafter, P.W.12 proceeded to Mumbai on 24.2.04, and arrested the Accused at Mumbai on 25.2.04. He seized Mo.1 Cell Phone from the Accused under Mahazar Ex.P.8. P.W.8 and P.W.9 who are running browsing Centre at Mumbai, identified the Accused in the presence of P.W.12. He seized Ex.P.23, 24 registers from them. P.W.8 speaks about the Accused and the seizure of Ex.P.22 and the remarks made by P.W.12 in Ex.P.23. P.W.9 speaks about the Accused that he came to the browsing centre and signed in the Register Ex.P.24 as Roselind. Ex.P.25 is the word written by the Accused.

P.W.12, brought the Accused to Chennai on 28.2.04, after producing the Accused before a Mumbai Court. The Accused gave a confession statement in the presence of P.W.10 and he gave the password 'an rose'. The said word is Ex.P.27.

The particulars stored in the SIM Card were taken print out in Ex.P.28 series through S.M.S.Reader. P.W.12 went to the office of P.W.7 and took computer print out by using the password 'an rose'. He issued the certificate in Ex.P.21. The computer print

outs are Ex.P.16— P.20. P.W.12 completed investigation and laid charge sheet against the Accused for offences u/s 67 of I.T.Act and u/s 469 and 509 IPC.

Now, the point for consideration is:

Whether the charges levelled against the accused has been proved beyond all reasonable doubt ?

POINT:

P.W.1 Roselind is a MBA. Graduate and presently she is working as a Senior Executive (SR.) in a multinational Company at Chennai. She studied MBA in South Indian Education Society college at Mumbai during 1997-99. The accused was her classmate and they became friends during college days.

P.W.1 loved and married one Jaichand Prajapathi of Uttar Pradesh in the year 2001 and their marriage life did not last long. She obtained divorce on 16.9.03 through a Family Court in Chennai.

The case of the prosecution is that even prior to P.W.1's marriage with Prajapathi, the Accused wanted to marry P.W.1 and after P.W.1 having secured divorce from her husband, the Accused again expressed his desire to marry her and P.W.1 did not like his marriage proposal and turned down his offer. Having frustrated over the refusal, the Accused originated an obscene message on 7.2.04 from Bombay at the browsing Centre belonging to P.W.8. He went to yahoo Web site through internet and created a new mail id in the name of Roselind as "roosean Yahoo com", and gave a password "an rose". He went into 4 sex Groups and became a member. He composed an obscene message about P.W.1, as if though she is a call-girl inviting men and gave her office phone numbers and

residence phone number and her e-mail id. ie., Roselind Antony @ Rediff mail.Com. The

Accused also sent a copy of the said obscene message to her e-mail id.

On seeing the message in the Yahoo Group, several people from various places made offending calls to P.W.1, through phone and e-mail, thereby harming the reputation and modesty of P.W.1.

Again on 9.2.04, the Accused posted another similar obscene message about P.W.1, from the browsing centre belonging to P.W.9 at Bombay.

Learned Counsel for Accused vehemently attacked the prosecution case both on legal and factual aspects.

During 313 Cr.P.C. questioning, the Accused admitted that he studied with P.W.1 at Bombay. But he denied the version of the prosecution that he intended to marry P.W.1. The defence case is that originally P.W.1 wanted to marry the Accused wherein he turned down her proposal and after her divorce also the Accused continued to be friendly with her and again she proposed to marry him and the Accused advised P.W.1 not to entertain such thoughts and that he is only her friend always. Being aggrieved over that, she has chosen to point her suspecting finger at the Accused. According to the defence, the alleged obscene message should have been composed and posted either by P.W.1 and her parents in order to take revenge on the Accused or by the estranged husband of P.W.1.

It is seen from the evidence of P.W.1 that she opened her rediff e-mail id. ie., Roselind Antony @ Rediff mail. Com. on 9.2.04, and found two obscene e-mails posted on 7.2.04 and 9.2.04, purported to have been created by her, depicting her as a call-girl. The obscene message also carried her office phone number and her e-mail I.D. The house phone number was wrongly given. The obscene message was transmitted through Yahoo Group under the head 'Radha lovers'. She down loaded and took print out of the messages from her computer system. The obscene messages are marked as Ex.P.1 and Ex.P.2 series. She has produced Ex.P.1 along with her complaint Ex.P.4 when she

lodged the complaint on 14.2.04 with the Cyber Crime Police. The obscene message found in Ex.P.1 reads as follows:

"Hi. My name is Rosy and I am 23 years old girl based in Chennai. Like the flower rose, I am blossom fully and waiting to be picked. Inviting Chennai and Bangalore Guys to contact me to have fun.

I can be contacted at 044-28275511, 28254937, 43444810 or on Roselind Antony @ Rediff Mail Com. Waiting for your Phone Calls"

On seeing the obscene message, many offending calls through phone came to be noticed in at her office. Further several persons have sent offending response messages. They are marked as Ex.P.3 series. It is seen from Ex.P.3 series, one Sandeep Sathur Madhavan, Jerry Boss, Rajiv Roy, Shahul Hameed, and several others have sent reply messages for Ex.P.1 and Ex.P.2 series. It is seen from the evidence of P.W.4 - Umarami, Cyber Crime S.I. that the said offending messages have been transmitted to 5 Sex Groups through Yahoo Web site ie., i) Radha lovers. ii) Beautiful Tamil Actresse iii) Tamil Sexy Babes. iv) Tamil girls showing their Pundai. v) Tamil girls showing everything.

P.W.1 has set out the reasons in her evidence for suspecting the involvement of the Accused. She would state that during college days in the year 1997, the Accused used to travel along with P.W.1 in train when she returned from the College and on one such day, P.W.1 happened to see an obscene message with a phone number which was scribbled in the train and on P.W.1 seeking explanation, the Accused told her that one could spoil the reputation and damage the image of a girl in this way and several persons would try to contact the number. This is the best way to spoil and defame a woman.

Further, after the marriage engagement of P.W.1 with Prajapathi was over, the Accused had expressed his desire to marry her. Even thereafter P.W.1 continued her friendship with the Accused, unmindful of his intention. P.W.1 has even cited the Accused as a witness in her divorce petition. Further, the accused was staying for about 10 days in the house of P.W.1 in the year 2003 during Deepavali stating that he has to attend an interview at Bangalore. At that time also, he proposed to marry P.W.1, and his proposal was turned down by P.W.1 and her parents i.e., P.W.2 and P.W.3. They also in their evidence would speak about the desire expressed by the Accused to marry P.W.1. The Accused after his return to Bombay, was in the habit of sending S.M.S. Messages to P.W.1 frequently and calling her over phone often during night time. Being annoyed over that, P.W.1 has blocked the e-mail I.D. of the Accused in Ex.P.5. P.W.1 also stopped speaking with him over phone. It is further seen from the evidence of P.W.1, P.W.2 and P.W.3 that they have contacted the Accused over phone asked him to transmit warning message to all groups and the Accused has given warning message to only three groups. P.W.1 has created a new e-mail I.D. under the user I.D. Parant 2003 @ Yahoo! Co. in. and have, transmitted the warning message purported to have been issued by her parents i.e., P.W.2 and P.W.3. The said warning message is found in Ex.P.6 series. It is seen from Ex.P.6 series that the warning message has been sent to several persons who tried to contact P.W.1. A copy of the said message was also sent to the Accused by P.W.1. A reference to Ex.P.18 series would show that a warning message was sent to the Accused by P.W.1 through e-mail I.D. 'Parant 2003 @ Yahoo Co. in.'

Learned Counsel for Accused would argue that the Cyber Crime Investigation Officer (Assistant Commissioner) P.W.12 did not register a case on 14.2.2004, on the basis of Ex.P.4, though the contents of the complaint (Ex.P.4) discloses a cognizable

offence and he has violated the provisions of law. He further argued that P.W.1 did not make any reference about the Accused in Ex.P.4, and the Accused has been roped in by P.W.1 in order to take revenge on him and P.W.12 has manipulated the documents in connivance with P.W.1.

It is true that P.W.1 has lodged the complaint.Ex.P.4, with the Cybor Crime on 14.2.04. On receipt of the complaint, the offence being a technical crime relating to I.T. Act., the Investigation Officer P.W.12 has directed the Sub-Inspector of Police, Cyber Crime P.W.4, to find out the origination of the message. She has gone to a browsing centre at Kennath Lane, Egmore along with P.W.1 and took print out of the obscene messages in Ex.P.2, P.9—P.12. and extracted the messages in floppies in Mo.2 by using user I.D. Par-ant 2003 @ Yahoo.Co.in. Pass word ma 21626. P.W.4 also found out the header details and it came to light that the obscene messages dated 7.2.04 and 9.2.04 were originated from Internet Protocol Bombay. Hathway Cable and Data Com.Pvt. Ltd., and Dishnet D.S.L. are the Web.site servers. It is seen from Ex.P.9—P.12, the obscene messages were sent to five groups in Yahoo Web site. On 17.2.2004 P.W.12 has asked General Manager, Dishnet D.S.L. to furnish the details about I.P.—61.11.10.99 under Ex.P.13 for which the Dishnet Company furnished reply in Ex.P.15. It has given the full address of the intermediary server at Mumbai. In Ex.P.15, One Srividya has given the address of the said intermediary server. P.W.6 speaks about the said factor. P.W.12 has requested Hathway Cable and Data Com.Pvt. Ltd., to furnish the particulars about I.P.—202. 88.165.53 for which P.W.5 has furnished the details on 17.2.04 under Ex.P.14. From Ex.P.14, it transpires that the 2nd message was also originated from a browsing centre at Mahim, Mumbai. Therefore it is clear that two messages have been originated from Mumbai. The investigation Officer P.W.12, seems to have registered the F.I.R. on

20.2.04 after having ascertained the origination of the obscene messages. On 18.2.04, P.W.12 examined a computer expert P.W.11 and confirmed that the obscene messages have been emanated through Yahoo Groups. Hence this Court is of the view that there is nothing wrong in registering the case on 20.2.04. Further there is no hard and fast rule that all the facts in issue should be stated in the complaint itself. P.W.1 has elaborately spelt out the reason in her evidence for suspecting the involvement of the Accused. The evidence of P.W.1 is creditworthy and P.W.2 and P.W.3 in their evidence corroborates the testimony of P.W.1 especially with reference to the obscene message, warning message given by them, the behaviour of the Accused, and his proposal of marriage alliance with P.W.1.

Learned Counsel for Accused would contend that according to P.W.1, she has sent warning messages on 10.2.04 by creating an e-mail I.D. Parant 2003 @ Yahoo. Co. in, but in Ex.P.2 series which is said to have been taken on 9.2.04, the e-mail I.D. Parant is found, and the prosecution did not give any explanation for this contradiction. P.W.1 in her evidence never stated that she took the print out in Ex.P.2 series on 9.2.04 itself. With regard to the date found in Ex.P.12 series as 8.2.04, it is submitted on the side of the prosecution, the date is indicated taking into account of P.S.T. time (U.S.time.) Further a perusal of the said document would reveal that the said message has been received through I.P. 202.88.165.53.

Learned Counsel for Accused would further contend that Ex.P.9—P.12 seems to have been taken on 23.3.04, instead of 14.2.04 as spoken by P.W.4. It is seen from the evidence of P.W.4, that she has stored all the obscene messages and other details in Mo.2 series. She has fed the floppies in their office computer System on 23.3.04, and took computer print out. P.W.12 has also certified the same under Ex.P.32. P.W.4 in her cross-examination would state that “அ.சா.ஆ.32 வரிசைகள் கிளியராக இவ்வாததால்

பிளாப்பியில் எடுத்ததை தெளிவாக பிளினிட் அவுட் எடுத்துள்ளேன்”

Learned Counsel for Accused would contend that as per Sec.65B of Indian evidence Act, to make an electronic record i.e., computer output admissible in evidence, the certificate of the person having lawful control over the use of computer is essential and as such Ex.P.1, P.2, P.6 Series, P.7 Series, P.9—P.12, cannot be valid documents to be admitted in evidence. So far as Ex.P.1, P.2 is concerned, P.W.1 herself has taken out the computer output from her systems and speaks about them in her evidence. Hence separate certificate is not necessary. With regard to Ex.P.6 series, P.7 series, and P.9—P.12, as stated earlier, they were stored in the Mo.2, floppies by P.W.4 and the computer print outs were taken from the Computer system at the office of P.W.12. He has given the certificate in Ex.P.32. Though there is some delay, in producing Ex.P.32 before Court, the validity of the said documents cannot be brushed aside on the ground of delay, because P.W.4 has already on 14.2.04 extracted and stored all the incriminating materials in Mo.2 series. P.W.1 and P.W.2 confirms in their evidence that Mo.2 series floppies were taken by P.W.4. The materials which were extracted and stored on 14/2/04 were converted into computer output on 23/3/04. Therefore, the Argument of the Learned Counsel cannot be accepted. For the reasons stated above, this court is of the considered view that the two obscene messages, 7/2/04 and 9/2/04 have been originated from Mumbai from the I.P. 202.99.163.33 and I.P.61.11.10.99 as evidenced by Ex.P.14, P.15.

It is clear that the origination of the obscene messages was Mumbai. Now, we have to analyse, whether the said messages were generated by the Accused from Mumbai or not?

It is seen from the evidence of P.W.12, that after having examined P.W.1 and after having obtained particulars in Ex.P.14, P.15 he has proceeded to Mumbai on 24.2.04

and reached Mumbai on 25.2.04 and arrested the Accused. He has gone to the browsing Centre of P.W.8 and P.W.9 and seized Ex.P.23 and 24 registers. It is pertinent to note that P.W.8 is running his browsing centre at the address mentioned in Ex.P.14 and P.W.9 is running the browsing centre at the address mentioned in Ex.P.15. P.W.12 has brought the Accused to Chennai on 28.2.04, after getting transit warrant from a Mumbai Court.

It is seen from the evidence of P.W.8 that his I.P.No.is 202.88.165.53. He specifically states in his evidence that the Accused came to his centre for browsing. P.W.9 also in his evidence categorically states that the Accused came to his centre on 7.2.04 for browsing and he wrote his name as 'Rosedlind'. Ex.P.25 signature in Ex.P.24 confirms the testimony of P.W.8.

Learned Counsel for the Accused would contend that because of the threatening unleashed by P.W.12, that P.W.8 and P.W.9 would be prosecuted under I.T.Act, they are giving false evidence and several people are coming to his Cyber cafe daily and as such a man of ordinary prudence cannot be expected to identify the Accused and the Investigation Officer due to over enthusiasm, has fixed the Accused without any substance. A reading of the whole testimony of P.W.8 and P.W.9 would reveal that the said witnesses are telling the truth. The ocular testimony is supported by documentary evidence i.e., Ex.P.23—P.25. The Accused, P.W.8, and P.W.9 hail from Mumbai. They need not appease the Tamil Nadu Police by giving false evidence against the Accused. This Court considers them as credible witnesses and their evidence is trustworthy. Each and every person is having different kind of memory power. P.W.9 was able to recollect and identify the Accused, because he wrote his name in the name of a girl viz., Roselind.

This Court holds that because of the meticulous investigation carried on by P.W.12, the origination of the obscene message was traced out and the real culprit has been brought before the Court of Law.

Mo.1 is the cellphone belonging to the Accused which was seized under Mahazar Ex.P.8 from the Accused on 25.2.04 by P.W.12. It is seen from the evidence of P.W.10 and P.W.12 that P.W.12 has taken out hard and soft copy of data available in the Sim Card of Mo.1. (Cell No.98210 - 31271) by using G.S.M. reader at the Office of P.W.12. Ex.P.28 series shows the list of phone numbers stored by the Accused in Mo.1. The Phone No. of P.W.1 is found in Serial No.9, 51, 56. Ex.P.32 is the document issued by S.S.N.L. Chennai wherein the office Phone Nos. (044 - 28275511, 044 - 28254937) of P.W.1 is furnished. These numbers are found to have been stored in Mo.1. Further, there is S.M.S. Message from P.W.1 seeking to discontinue the relationship.

Learned Counsel for Accused would vehemently contend that G.S.M. Reader is a Machine not a software as spoken by P.W.12. and in Ex.P.28, there is nothing to suggest that it was taken from an instrument called 'GSM Reader'. He further argued that P.W.12 has specifically avoided the name GSM Reader throughout the final report with a view to prevent the Accused to meet the case of the prosecution, and the Sim Card was not specifically stated in the seizure Mahazar. According to him, since Mo.1 with Sim Card was in the custody of P.W.12, he has pumped in Phone numbers. GSM Reader can be used to delete phone numbers messages etc., found in the memory of Sim Card. He vehemently argued that P.W.10 and P.W.12 at any rate of imagination cannot be called as 'Expert Witnesses' and they can only be dubbed as 'Specialist'.

So far as Sim Card is concerned, it is found packed in the cell phone and it will not be visible. Hence the non-mentioning of the Sim Card in the Mahazar will not affect the prosecution case.

A reading of the G.S.M. Reader Magazine produced by the Accused, would show that the said device is being used for reading phone book entries from the SIM Card and view SMS. Messages, redial numbers, edit and delete etc., So, We cannot come to a conclusion that the phone numbers were pumped into the SIM Card because the Mo:1 was under the custody of P.W.12. Further admittedly both P.W.1 and Accused were friends, and as such they might have known the phone numbers of each other. It is not strange to find the phone number of P.W.1 in the SIM Card. This Court is of the view that non disclosure of 'GSM' reader will in no way cause prejudice to the Accused.

P.W.12 has recorded the confession statement of the Accused on 28.2.04 in the presence of P.W.10, in which he has given the password of the new e-mail id. created on 7.2.04 as 'an rose'. The said password is Ex.P.27. It is seen from the evidence of P.W.7, that P.W.12 and his team came to the office of P.W.7, and they took computer print out and extracted and stored the data in floppies. Ex.P.16—P.20 are the computer print out taken by the Investigation Officer by using the password 'an rose'. Ex.P.21 is the certificate issued by P.W.7.

It is seen from Ex.P.29 series that the Accused has transmitted the obscene message on 9.2.04 in the name of P.W.1 by creating a new e-mail id. under the name 'roosean'. P.W.11 has visited the Yahoo Web site, and has searched and found out all the messages with his technical knowhow. The obscene message is seen in Message No.1756. Message No.1758, is the warning message issued by P.W.1 and P.W.3. The offending messages are seen in Message No.1791. It is clear from Ex.P.20 series that the Accused had posted the obscene message in five Yahoo Groups with the forged e-mail id 'roosean' @ Yahoo.Co.in. He has also sent the copy to the e-mail id. of P.W.1 ie., roselind antony @ rediff-mail. Com. In Ex.P.29 series, P.W.11 has given his opinion stating that Message No.1756, would continue to attract the attention of visitors of the Web site and message No.1756 at Yahoo Groups named "Radha lovers" is accessible to any person in the world.

P.W.11 is a private consultant on Cyber Crime and founder of Cyber evidence Archival Centre. He is in management of the said centre. This Court is of the view that he is competent enough to give opinion in Ex.P.22-series. Section 65 B of Indian Evidence Act does not suggest that the certificate should be issued by an expert. It is enough if the person issuing the certificate stated that any matter covered by the certificate was to the best of his knowledge and behalf and he was in management of relevant activities.

Learned Counsel for Accused submit that the Ex.husband of P.W.1 was not examined and the signature in Ex.P.24, which is Ex.P.25 should have been sent for comparison by taking the specimen signature of the Accused and the divorced husband Jaichand Prajapathi. P.W.9 in his evidence clearly identified the Accused and he asserts that it is the Accused who came to his Cyber cafe and put his name as 'Roselind'. Therefore it is not necessary to seek the opinion of Handwriting expert.

P.W.1 in her evidence would state "நான் இதைப் பார்த்து மிகவும் நடுங்கி அமைதிப்படலேன். என் பெற்றோரிடம் செல்லி அழுதேன். இதைத் தொடர்ந்து எனக்கு இன்டர்நெட்டில் நிறைய Offending Message கள் வந்தன. என் அனுபவமகத்திற்கும் நிறையப் போன் கால்கள் வந்தன. என்னுடைய பெண்மைக்கு களங்கமும், என் பெயருக்கும், பெண்மைக்கும் அவமானத்தை ஏற்படுத்தும் வகையிலும், எதிர்கால வாழ்க்கைக்கு பாதிப்பு ஏற்படும் வகையிலும் இருந்தது. It is clear that the offending messages and the offending calls have deeply hurt the feelings of the Accused.

For the reasons stated above, this court is not inclined to accept the theory projected by the Accused that the obscene messages would have been created by P.W.1, P.W.2 and P.W.3 or by Jaichand Prajapathi. It is clear that the Accused himself has composed and posted the obscene messages from the browsing centre of P.W.8 and P.W.9. This Court holds that the prosecution has proved its charges against the accused beyond all

reasonable doubt and hence the Accused is liable to be punished.

The Accused was heard regarding the question of sentence u/s 248(2) Cr.P.C. The Accused pleaded for admonition. The Accused is not a lay man. He is educated and studied upto M.B.A. P.W.1 is holding a responsible post in a multinational Company at Chennai. The Accused has chosen to post the obscene message for the simple reason that she refused to marry him. He did not behave like an educated man. Only a family woman can realise the mental sufferings and pain if unknown persons contacted her through phone and e-mail and invited her to bed. The mental sufferings and humiliation undergone by the P.W.1, cannot be compensated in terms of money or by solace words. It cannot be stated that the Accused had acted in a heat of passion. Two days repeatedly he had sent the obscene message—Computer system and browsing centre are meant for learning things and updating knowledge in various fields. The Accused has misused the same to take revenge on a sophisticated lady. Therefore, the Accused does not deserve leniency and is liable to be punished.

In the result, the Accused is found guilty of offences u/s 469, 509 IPC and u/s 67 of IT Act and the Accused is convicted and is sentenced to undergo Rigorous imprisonment for 2 years u/s 469 IPC and to pay a fine of Rs.500/- i/d. to undergo simple imprisonment for 1 month and for the offence u/s 509 IPC, sentenced to undergo 1 year ~~Rigorous~~ ^{Simple} Imprisonment and to pay a fine of Rs.500/- i/d. to undergo simple imprisonment for 1 month and for the offence u/s 67 of Information Technology Act 2000, to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.4,000/- i/d to undergo S.I. for 6 months. All sentences to run concurrently. The period undergone of the Accused will be set off u/s 428 Cr.P.C. Total Fine Rs.5,000/-

Property Order: Mo.1 Nokia Cell Phone is ordered to be confiscated to State after removing the SIM Card and the Sim Card, Mo.2 Floppies are ordered to be destroyed after the appeal time is over.

//Typed to my dictation by the Stenographer, corrected and pronounced by me in the open court on this the 5th day of November 2004.//

(Sd.) D. Anilraj.
ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI 8.

WITNESSES EXAMINED ON THE SIDE OF THE PROSECUTION:

- P.W.1. Thirumathi.Rosalin Raji Antony.
- P.W.2. Thiru.Antony.
- P.W.3. Tmt.Marakatham Antony.
- P.W.4. Tmt.Uma Devi.
- P.W.5. Thiru.Eswar Kumar.
- P.W.6. Tmt.Santhia.
- P.W.7. Thiru. John.K.Isaq.
- P.W.8. Thiru.Logesh Vijay Ranadev.
- P.W.9. Thiru.Deepak Patel.
- P.W.10. Thiru.Raman.
- P.W.11. Thiru.Vijaya Sankar.
- P.W.12. Thiru.S.Balu.

EXHIBITS MARKED ON THE SIDE OF THE PROSECUTION:

- Ex.P.1. Message.
- Ex.P.2. Obscene Message.
- Ex.P.3. Series. Mails.
- Ex.P.4. Complaint.
- Ex.P.5. I.D. Block.

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Ex.P.6.Series. Copy of Warning Message.

Ex.P.7.Series. Downward Printouts.

Ex.P.8. Mahazar.

Ex.P.9. *

to * Message Documents.

Ex.P.12.*

Ex.P.13. Requisition of Assistant Commissioner.

Ex.P.14. Hathway Report. Dt: 17/2/04.

Ex.P.15. Dishnet D.S.L. Report. Dt:24/2/04.

Ex.P.16. E.mail Print out.

Ex.P.17. Inbox Document.

Ex.P.18.Series. Per ait Message.

Ex.P.19.Series. Message Documents.

Ex.P.20. Obscene Message. Dt:8.2.04.

Ex.P.21.Series. Certificate Dt: 28/2/04.

Ex.P.22. Register.

Ex.P.23. Police Endorsement in Ex.P.22.

Ex.P.24. Register.

Ex.P.25. Entry in Ex.P.24.

Ex.P.26. Signature of P.W.10 in Confession Statement.

Ex.P.27. Password.

Ex.P.28. Series. Telephone Nos. List.

Ex.P.29. Series. Report submitted by P.W.11.

Ex.P.30. Signature of P.W.12 in Ex.P.22.

Ex.P.31. Certificate issued by P.W.12 Dt: 28.2.04.

Ex.P.32. B.S.N.L. Letter dt: 23.3.04.

Ex.P.33. Certificate issued by P.W.12 dt: 23.3.04.

Ex.P.34. First Information Report.

WITNESSES EXAMINED ON THE SIDE OF THE ACCUSED: NIL.

EXHIBITS MARKED ON THE SIDE OF THE ACCUSED:

EX.D.1. Certified Copy of Petition in P.C.O.P.96/02.

MATERIAL OBJECTS: Mo.1.Nokia Cell Phone. Mo.2. Floppies.

(Sd.) D. Anuraj.

ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI 8.

// True copy //

Addl. Chief Metropolitan Magistrate.
Egmore, Chennai 8.