

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

PRESENT THIRD.D.ARHLRAJ.B.SC.,BL
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE
5th day of November two thousand four

JUDGMENT
(UNDER SECTION 355 CR. P. C)

Sr. No. of the case	1680/04
Date of Commission of offence	7.2.04
Name of the complainant	Asst. Commissioner of police Cyber Crime Cell, Central Crime Branch, Egmore, Chennai-8, X Cr. No. 107/2004
Name of the accused persons Kani his parentage & their residence.	Sukas <u>Suhas</u> Kani. A.31 S/o Madnum No. 28 Amar Jothi, Four Banglows St--- Covent Avenue, Andheri West, Mumbai 53

Offence claimed of.

Assistant Commissioner of Police Cyber Crime Cell, CCB , Egmore, Chennai-8 has filed final report against the accused that on 7.2.2004 evening at Cyber Cafe, Hello World Center, Sion Mumbai having an IP 61.11.10.99, the accused with the intention of harming the reputation of the complainant Ms. Roselind 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 e-mail 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 message which are lascivious and also have the effect to corrupt

persons who are likely to read and use 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 Heighter 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 ad 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, 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 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 offence U/s 469 IPC, 67 IT Act, 469 & 509 IPC and 67 IT Act.

1) 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 IT Act were framed, read over and explained to him in English. He pleaded not guilty and claimed to be tried. On the side of prosecution 12 witnesses were examined and Ex. P1 to Ex. P34 were marked. When the 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. D1 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

1) Brief reasons for the Decision:

The case of the prosecution as revealed from the evidence of prosecution is as follows:

PW1 is the only daughter of PW2 and PW3. PW2 is the father, PW3 is the mother. Presently PW1 is working as 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 PW1 and she was his classmate in Mumbai. Accused belongs to Mumbai. On 9.2.04she opened her Rediff e.mail and noticed the receipt of two obscene message 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. P1 is the obscene message. The obscene messatge carried her Office phone numbers and her e.mail ID. The house Phone number was wrogly given. The said obscene messages have been sent through Yahoo Website to 5 Sex groups. The computer print out obscene message posted in @ Radha lovers group is Ex. P2. O 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 ame to her office. PW1 informed the said matter to her parents. The messages were likely to harm the reputation and morale of PW1.

PW1 had married Jaichand Prajapati of Uttar Pradesh in the year 2001. The family life was not happy and she obtained divorce through court in the year 2003. Accused was cited as a witness in the divorce petition. PW1 recollected one incident and suspected the involvement of the Accused. During college days in the year 1997, the Accused used to travel with PW1 in train at Mumbai. On one such occasion, Accused pointed out an obscene scriblings with phone number in the train and told PW1 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 women. The accused even expressed her desire to marry PW1 after the

engagement of PW1 with Jaichand Prajapathi was over. PW1 turned down his proposal. In the year 2003, the Accused stayed in the house of PW1 for about 10 days stating that he has to attend an interview at Bangalore. At that time also the Accused offered to marry PW1 for which PW1 and her parents refused the alliance. Thereafter PW1 after his return to Mumbai was in the habit of making phone calls, sending S. M. S Messages and sending E-mail to PW1 frequently. Hence PW1 blocked the e-mail ID of the Accused. Ex. P5 is the Computer output for blocking the e-mail ID of the Accused.

On seeing the obscene message, PW1 discussed the matter with PW2 and PW3 and sought the help of the Accused over ph one. PW1 and her parents issued a warning message in the name of PW2 and PW3 by creating an e-mail ID 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.

PW1 lodged a complaint on 14/2/2004 along with Ex.P1 at Cyber Crime Police. The complaint is Ex. P4. PW12 who received the complaint directed PW4 to obtain header details and other particulars to find out the origination of the messages. PW4 went to Cyber Cafe at Kenath Lane, Egmore along with PW1. She down loaded the message took print out by using the e-mail ID Par-ant2003@Yahoo Co., in Ex. P9-Ex. P12. She extracted and stored the messages in Mo.2 floppies. Thereafter, PW12 gave a requisition to Hathway Cable and Data Com Pvt Ltd., under Ex. P13 for which it gave a reply in Ex. P14. PW2 also gave a requisition to Dishnet D. S. I., in Ex. P13 and the reply given by Dishnet D. S. I., is Ex. P15. PW5 speaks about Ex. P13 and Ex. P14. PW6 speaks about Ex. P15. PW12 also examined PW11 and obtained particulars in Ex. P29 series and confirmed that the messages were originated from Mumbai. PW12-Investigating Officer registered F.I.R Ex. P34 on 20.2.04.

Thereafter PW12 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. P8. PW8 and PW9 who are running browsing Centre at Mumbai, identified the Accused in the presence of PW12. He seized Ex. P23, 24 registers from them. PW8 speaks about the Accused and the seizure of Ex. P22 and the remarks made by PW12 in Ex. P.23. PW9 speaks about the Accused that he came to the browsing centre and signed in the Register Ex. P24 as Roselind. Ex. P25 is the word written by the Accused.

PW12, 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 PW10 and he gave the password as 'rose'. The said word is Ex. P27.

The particulars stored in the SIM Card were taken print out in Ex. P28 series through S. M. S. Reader. PW12 went to the office of PW7 and took computer print out by using the password 'rose'. He issued the certificate in Ex. P21. The computer print outs are Ex. P16-P20. PW12 completed investigation and laid charge sheet against the Accused for offences u/s 67 of IT 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

PW1 Roselind is a MBA, Graduate and presently she is working as a Senior Executive (HR) 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.

PW1 loved and married one Jaichand Prajapati 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 PW1's marriage with Prajapathi, the Accused wanted to marry PW1 and after PW1 having secured divorce from her husband, the Accused again expressed his desire to marry her and PW1 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 PW8. He went to Yahoo Web site through internet and created a new mail id in the name of Roselind as :roosean Yahooocom: and gave password "anrose". He went into 4 sex Groups and became a member. He composed an obscene message about PW1 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., Roseling Antony @ Redifmail.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 PW1 through phone and e-mail thereby harming the reputation and modesty of PW1.

Again on 9.2.04, the Accused posted another similar obscene message about PW1 from the browsing centre belonging to PW9 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 PW1 at Bombay. But he denied the version of prosecution that he intended to marry PW1. The defence case is that originally PW1 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 PW1 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 that Accused. According to the defence, the alleged obscene message should have been composed and posted either by PW1 and her parents in order to take revenge on the accused or by the estranged husband of PW1.

It is seen from the evidence of PW1 that she opened her rediff e-mail id. ie., Raoseling 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 ID. 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. P1 and Ex. P2 series. She has produced Ex. P1 along with her complaint Ex. P4 when she lodged the complaint on 14.2.04 with the Cyber Crime Police. The obscene message found in Ex. P1 reads as follows:

“Hi, My name is Rosy ad I am 23 years old girl based in Chennai. Like flower rose, I am blossom fully ad waiting to be picked. Inviting Chennai and Bangalore Guy 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 poured in at her office. Further several persons have sent offending response messages. They are marked as Ex. P3 series. It is seen from Ex. P3 series, one Sandeep Sathur Madhavan, Jerry Boss, Rajiv Roy, Shahul Hameed and several others have sent reply messages for Ex. P1 and Ex. P2 series. It is seen from the evidence of PW4-Umarani, Cyber Crime SI that the offending messages have been transmitted to 5 Sex Groups through Yahoo Website ie I) Radha lovers, ii) Beautiful Tail Actresses iii) Tamil Sexy Babes iv) Tamil girls showing their Pundai v) Tamil girls showing everything.

PW1 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 PW1 in train when she returned from the College and on one such day PW1 happened to see an obscene message with a phone number which was scribbled in the trail and on PW1 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 PW1 with Prajapathi was over, the accused had expressed his desire to marry her. Even thereafter PW1 continued her friendship with the accused, unmindful of his intention. PW1 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 PW1 in the year 2003 during Deepavali stating that he has to attend an interview at Bangalore. At that time also, he proposed to marry PW1 and his proposal was turned down by PW1 and her parents ie PW2 and PW3. They also in their evidence would speak about the desire expressed by the accused to marry PW1. The accused after his return to Bombay, was in the habit of sending S.M.S. Messages to PW1 frequently and calling her over phone often in the night time. Being annoyed over that PW1 has blocked the e-mail ID of the accused in Ex. P5. PW1 also stopped speaking with him over phone. It is further seen from the evidence of PW1, PW2 and PW3 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 persons. PW1 has created a new e-mail ID under the user I. D. Par-ant2003@Yahoo.Co.in and have transmitted the warning message purported to have been issued by her parents ie PW2 and PW3. The said warning message is found in Ex. P6 series. It is seen from Ex. P6 series that the warning message has been sent to several persons who tried to contact PW1. A copy of the said message was also sent to the accused by PW1. A reference to Ex. P18 series would show that

a warning message was sent to the accused by PW1 through e-mail ID Par-ant2003@Yahoo.Co.in.

Learned counsel for accused would argue that the Cyber Crime Investigation Officer (Assistant Commissioner) PW12 did not register a case on 14.2.2004, on the basis of Ex. P4, though the contents of the complaint (Ex. P4) disclosed a cognizable offence and he has violated the provisions of law. He further argued that PW1 did not make any reference about the accused in Ex. P4 and the accused has been roped in by PW1 in order to take revenge on him and PW12 has manipulated the documents in connivance with PW1.

It is true that PW1 has lodged the complaint Ex. P4 with the Cyber Crime on 14.2.2004. On receipt of the complaint, the offence being a technical crime relating to I. T. Act, the investigation officer PW12 has directed the Sub-Inspector of Police, Cyber Crime PW4 to find out the origination of the message. She has gone to a browsing centre at Kennath Lane, Egmore along with PW1 and took print out of the obscene messages in Ex. P2, P9-P12 and extracted the messages in floppies in Mo.2 by using user ID Par-ant2003@Yahoo.Co.in Pass word ma 21626. PW4 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. P9-P12, the obscene message were sent to five groups in Yahoo Website. On 17.2.2004 PW12 has asked General Manager, Dishnet D. S. L. to furnish the details about I. O. 61.11.10.99 under Ex. P13 for which the Dishnet Company furnished reply in Ex. P15. It has given the full address of the intermediary server at Mumbai. In Ex.P15, one Srividya has given the address of the said intermediary server. PW6 speaks about the said factor. PW13 has requested Hathway Cable and Data Com. Pvt. Ltd., to furnish the particulars about I. P. 202.88.165.53 for which PW5 has furnished the details on 17.2.2004 under Ex. P14. From Ex. P14, 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 PW12 seems to have registered the FIR on 20.2.04 after having ascertained the origination of the obscene messages. On 18.2.04 PW12 examined a computer expert PW11 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. PW1 has elaborately spelt out the reason in her evidence for suspecting the involvement of the accused. The evidence of PW1 is creditworthy and PW2 and PW3 in their evidence corroborates the testimony of PW1 especially with reference to the obscene message, warning message given by them. The behavior of the accused and his proposal of marriage alliance with PW1.

Learned Counsel for accused would contend that according to PW1, she has sent warning messages on 10.2.04 by creating an e-mail ID Par-ant2003@Yahoo.Co.in, but in Ex. P2 series which is said to have been taken on 9.2.04, the e-mail ID Par-ant2003@Yahoo.Co.in is found, and the prosecution did not give any explanation for this contradiction. PW1 in her evidence never stated that she took the print out in Ex. P2 series on 9.2.04 itself. With regard to the date found in Ex. P12 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. P9-P12 seems to have been taken on 23.3.04, instead of 14.2.04 as spoken byPW4. It is seen from the evidence of PW4, 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 o 23.3.04, and took computer print out. PW12 has also certified the same under Ex. P32. PW4 in her cross-examination

would that “-----”

Learned Counsel for accused would contend that as per Sec. 65B of Indian Evidence Act, to make an electronic recase ie computer output admissible in evidence, the certificate of the person having lawful control over the use of computer is essential and as such Ex. P1, P2, P6 series, P7 series, P9-P12 cannot be valid documents to be admitted in evidence. So far as Ex. P1, P2 is concerned PW1 herself has taken out the computer output from her system and talks about them in her evidence. Hence separate certificate is no necessary. With regard to Ex. P6 series, P7 series and :P9-P12, as stated earlier, they were stored in the Mo.2. Floppies by PW4 and the computer print outs were taken from the computer system at the office of PW12. He has given the certificate in Ex. P32. Though there is some delay, in producing Ex. P32 before Court, the validity of the said documents cannot be brushed aside on the ground of delay because pw4 has already on 14.2.04 extracted and stored all the incriminating materials in Mo.2 series. PW1 and PW2 confirms in their evidence that Mo.2 series floppies were taken by PW4. 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 obscee messages, 7.2.04 and 9.2.04 have been originated from Mumbai from the IP 202.99.163.33 and 61.11.10.99 as evidenced by Ex. P14, P15.

It is clear that the 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 PW12 that after having examined PW1 ad after having obtained particulars in Ex. P14, P15 he has proceeded to Mumbai on 24.2.04 and reached Mumbai o 25.2.04 and arrested the accused. He has gone to the browsing Centre of

PW8 and PW9 and seized Ex. P23 and 24 registers. It is pertinent to note that PW8 is running his browsing centre at the address mentioned in Ex. P14 and PW9 is running the browsing centre at the address mentioned in Ex. P15. PW12 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 PW8 that his IP No. is 202.88.165.53. He specifically states in his evidence that the accused came to his centre for browsing. PW9 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 'Roselind'. Ex. P25 signature in Ex. P24 confirms the testimony of PW8.

Learned Counsel for the accused contend that because of the threatening unleashed by PW12, that PW8 and PW9 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 PW8 and PW9 would reveal that the said witnesses are telling the truth. The ocular testimony is supported by documentary evidence ie Ex. P23-P25. The accused, PW8 and PW9 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. PW9 was able to recollect and identify the accused, because he wrote his name in the name of a girl viz., Roselind.

This Court hold that because of the meticulous investigation carried on by PW12, 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. P8 from the accused on 25.2.04 by PW12. It is seen from the evidence of PW10 and PW12 that PW12 has taken out hard and soft copy of data available in the Sim Card of Mo. (Cell No. 98210-31271) by using G. S. M. reader at the office of PW12. Ex. P28 series shows the list of phone numbers stored by the accused in Mo.1. The phone no. of PW1 is found in Series No. 9, 51 and 56. Ex. P32 is the documents issued by BSN, Chennai wherein the office phone Nos (044 28275511, 044 282549371 of PW1 is furnished. These numbers are found to have stored in Mo.1. Further, there is SMS message from PW1 seeking to discontinue the relationship.

Learned Counsel for accused would vehemently contend that G. S. M. Reader is a Machine and not a software as spoken by PW1 and in Ex. P28 there is nothing to suggest that it was taken from an instrument called GSM Reader. He further argued that PW12 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 PW12 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 PW10 and PW12 at any rate of imagination cannot be called as Expert Witness 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. . 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 PW12. Further admittedly both PW1 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 PW1 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.

PW12 has recorded the confession statement of the accused on 28.2.04 in the presence of PW10 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. P27. It is seen from the evidence of PW7 that PW12 and his team came to the office of PW7 and they took computer print out and extracted and stored the data in floppies. Ex. P16-P20 are the computer print out taken by the Investigation Officer by using the password 'an rose'. Ex. P21 is the certificate issued by PW7.

It is seen from Ex. P29 series that the accused has transmitted the obscene message on 9.2.04 in the name of PW1 by creating a new e-mail id under the name 'rosean'. PW11 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 PW1 and PW3. The offending messages are seen in Message No. 1791. It is clear from Ex. P20 series that the accused had passed the obscene message in five Yahoo Groups with the forged e-mail id ['rosean'@Yahoo.Co.in](mailto:rosean@Yahoo.Co.in). He has also sent the copy of the e-mail id of PW1 ie roseline antony @rediff.mail.Com. In Ex. P29 series, PW11 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.

PW11 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. P29 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 Ex.husband of PW1 was not examined and the signature in Ex. P24, which is Ex. P25 should have been sent for comparison by taking the specimen signature of the Accused and the divorced husband Jaichand Prajapathi. PW9 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.

PW1 in her evidence would state-----

----- (lines written in Tamil)

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 PW1, PW2 and PW3 or by Jaichand Prajapathi. It is clear that the accused himself has composed and pasted the obscene messages from the browsing centre of PW8 and PW9. 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. PW1 is holding a responsible post in a multinational Company at Chennai. The accused has chosen to post the obscene message for the isple reason that she refused to marry him. He did not behalf like an educated man. Only a family woman can realize the mental suffering 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 PW1 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 offence u/s 469, 509 IPC and u/s 67 of I.T. Act and the accused is convicted and sentenced to undergo Rigorous imprisonment for 2 years U/s 469 IPC and to pay fine of Rs. 500/- I/d to undergo simple imprisonment for one month and for the offence U/s 509 IPC, sentenced to undergo 1 year simple imprisonment and to pay fine of Rs. 500/-. I/d to undergo simple imprisonment for one month and for offence u/s 67 of Information Technology Act 2000, to undergo Rigorous Imprisonment for two years and to pay a fine of Rs. 4,000/-. I/d to undergo S. I for six 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. 5000/-.

Property Order Mo. 1 Nokia Cell Ph one is ordered to be confiscated to State after removing the SIM Card and the Sim Card, Mo2 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 5th day of November, 2004.

ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI.

WITNESSES EXAMINED ON THE SIDE OF THE PROSECUTION.

PW1	Thiramathi Rosalin Raji Antony
PW2	Thiru Antony
PW3	Tmt. Marakatham Antony
PW4	Tmt. Uma Devi

PW5	Thiru Eswar Kumar
PW6	Tmt. Santhia.
PW7	Thiru. John. K. Isaq.
PW8	Thiru. Logesh Vijay Ranadev
PW9	Thiru. Deepak Patel
PW10	Thiru. Raman.
PW11	Thiru. Vijaya Sankar
PW12	Thiru S. Balu

EXHIBITS MARKED ON THE SIDE OF THE PROSECUTION

Ex. P1	Message
Ex. P2	Obscene Message
Ex. P3	Series. Mails.
Ex. P4	Complaint
Ex. P5	I. D. Block.
Ex. P6	Ex. P6 Series. Copy of Warning Message
Ex. P7	Ex. P7 Series. Downward Printouts.
Ex. P8	Mahazar
Ex. P9 to P12	Message Documents
Ex. P13	Requisition of Assistant Commissioner
Ex. P14	Hathway Report Dt; 17/2/04
Ex. P15	Dishnet D. S. L. Report Dt; 24/2/04
Ex. P16	E.mail Print out.
Ex. P17	Inbox Document.
Ex. P18	Series. Per ant Message
Ex. P19	Series. Message Documents.
Ex. P20	Obscene Message Dt: 8/2/04
Ex. P21	Series. Certificate Dt: 28/2/04
Ex. P22	Register
Ex. P23	Police Endorsement in Ex. P22
Ex. P24	Register
Ex. P25	Entry in Ex. P24
Ex. P26	Signature of PW10 in Confession Statement
Ex. P27	Password
Ex. P28	Series. Telephone Nos. List
Ex. P29	Series. Report submitted by PW11
Ex. P30	Signature of PW12 in Ex. P22
Ex. P31	Certificate issued by PW12 Dt; 28.2.04
Ex. P32	B. S. N. L. Letter dt 23.3.;04
Ex. P33	Certificate issued by PW12 dt 23.3.04
Ex. P34	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 F. C.O.P. 964/02.

MATERIAL OBJECTS:

Mo. 1. Nokia Cell Phone. No. 2. Floppies.

ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI.