

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.PC.)

- 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. 61.11.10.99, the accused with the intention of harming the reputation of the Complainant Ms.Rosebind, 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

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 e- 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.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.

/19/

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.

IN THE COURT OF THE ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE EGMORE : CHENNAI.

C.C.No. 4680 OF 2004

State : Assistant Commissioner of Police
Cyber Crime Cell,
Central Crime Branch,
Chennai-8

Complainant

Vs

Suhas Katti

Accused

MEMORANDUM OF WRITTEN ARGUMENTS U/S 314 CrPC
ON BEHALF OF THE ACCUSED

The accused above named begs to state as follows:

The accused above named submits the following written submissions in addition to the oral submissions already made before this Hon'ble Court.

1.The accused stands charged for offences under sections 469 , 509 IPC and Section 67 of Information Technology Act 2000.The graveman of the charge is that this accused driven out of malice against the complainant PW1 Ms. Roselind composed obscene messages on 7-2-2004 in the name of PW1 Ms. Roselind as if it is composed by her and posted it to different Yahoo groups so that the people who access the said Yahoo sites could see it .It is the further case of the prosecution that the intention of the accused is that persons who see such message shall send response messages to PW 1 and the same did happen leading to mental agony and injury to the complainant - PW1.The accused is stated to have repeated the posting of the messages once again on 9-2-2004 .Based on the said allegations, the accused was arrested on 25-2-2004 and in due course was remanded to judicial custody. The accused remains to be in custody till today.

2. Based on the final report of the complainant, charges were framed against the accused. He pleaded not guilty to the charges. On behalf of the prosecution PWs 1 to 12 were examined and Exhibits P1 to P34 were marked. On behalf of the accused Ex.D 1 certified copy of the divorce petition filed by PW1 - complainant against her ex-husband Jaichand Prajapathi before the Family Court, Chennai was filed. The accused further to his questioning under section 313 CrPC has also filed a written statement along with certified copy of the counter filed by Jaichand Prajapathi, the ex husband of PW 1 Roselind before the Family Court, Chennai. MO 1 a cell phone and MO 2 floppies (six Nos.) were also marked in court.

3. It is submitted that the prosecution has failed to establish by acceptable evidence the charges against the accused herein. In support of the above the following submissions are made.

I- MO1 ,Exhibit-28

In the final report the Investigation Officer has stated that on 25-2-2004 the accused was arrested and his mobile Phone Number 98210-31271 in which the complainant's phone numbers stored was seized. PW 10 Raman has deposed that on 28-2-2004 the accused was questioned and thereafter from the machine GSM reader which was available in the Commissioner of Police office, the SIM Card of the mobile phone of the accused was inserted in it and a print out was taken. That print out was identified by him as EX P 28(3 Sheets).

The important aspect of his evidence is that GSM Reader is a **machine**. This aspect of PW 10's evidence is fortified by his answer in cross examination wherein he states that in the machine GSM Reader, if the SIM card is inserted, then all the details or datas stored in electronic form in the SIM card will come out. He also has deposed that when he was examined by IO, and his statement u/s.161 CrPC was recorded, he did not specifically state that the details from the SIM card was taken from GSM Reader. In EX P 28 also there is nothing to suggest that it was taken from an instrument called GSM Reader.

On this aspect PW 12 Assistant Commissioner of Police who is the IO in this case has stated in chief that Super GSM Reader a software was used. In Cross examination the IO has stated that in the seizure mahazar for

the seizure of mobile phone, the SIM card was not specifically stated as seized. Further the IO has specifically stated that GSM Reader is only a software.

The above piece of evidence states how the IO has taken personal interest to see that the name -"GSM reader" is not disclosed to the accused to enable him to meet the case of the prosecution in this vital aspect. The IO has specifically avoided the name of GSM Reader throughout the final report and the annexures thereto. He has gone to the extent of stating that it is only a software to create an impression in the mind of this Hon'ble Court that it is not a device or instrument. The accused specifically submits the literature about GSM Reader in this regard. The GSM Reader is a package containing Super GSM Card Reader with USB connector cable, (which is a device or instrument), Super GSM Reader software on CD and a SIM card adapter. The IO has thus suppressed the instrument part of GSM package but has projected as if GSM is wholly a software. The IO cannot be taken to have deposed on this aspect inadvertently. The literature about GSM Reader submitted along with this written submissions, belies the efforts of the IO in this regard. The IO has suppressed this fact with a oblique motive i.e., the GSM reader package can be used to delete Phone numbers, Message etc found in the memory of SIM Card and instead can be used to pump in or store phone numbers, messages, edit them, etc. It is relevant to point out here that the mobile phone and the SIM card were in the custody of the IO from 25-2-2004 when they were first said to be seized till 28-2-2004 when the datas in the SIM card were extracted in the form of printout ie EX P 28.

It is submitted that the conduct of the IO in the above regard is contrary to **gathering** cyber evidence in the light of the development of cyber forensic principle accepted throughout the world. The said principles are submitted below under the next heading of this written submission.

II CYBER FORENSICS AND CYBER EVIDENCE

The Information Technology Act 2000 was passed pursuant to India signing the treaty **UNCITRAL** ie United Nations Commission on International Trade Law. A model law was adopted at the said commission and India being member signatory to the said convention has subsequently passed the IT Act 2000. It is submitted that the law of cyber science is not complete in all aspects in India and one has to look to the principles and laws of other countries also.

The prosecution before letting in cyber evidence ie computer related evidence has to primarily establish what is known as "Chain of Custody". It is an accepted fact that electronic evidence in the form of outputs of computers can be easily altered and hence the necessity of establishing the above chain of custody. Preserving chain of custody for electronic evidence at a **minimum**, requires proving that :

- **No information has been added or changed**
- **A complete copy was made**
- **A reliable copying process was used**
- **All media was secured.**

Proving this chain is unbroken is a **prosecutor's primary tool** in authenticating electronic evidence. The accused submits the concerned literature on this aspect as part and parcel of this written submission for the kind consideration of this Hon'ble Court.

EVIDENCE ON RECORD :-

PW 1 to PW3 has clearly admitted in evidence that on 14-2-2004 when PW 4 SI Uma Devi took them to a cyber café in Kennet Lane at Egmore, Chennai-8 a cyber expert also accompanied them. SI Umadevi however does not accept this.

PW1 states that along with her complaint she gave ExP1 to P7. In none of this exhibits the date on which the printout is said to have been taken is reflected. PW1 also states that about 10 floppies were taken on 14-2-2004 whereas SI Umadevi states about only six floppies were taken. PW2 states that he only got floppies and that the floppies were only 5 to 8 in numbers. PW1 admits that the word Par-ant which was said to have been created by her on 10-2-2004 does not find a mention in EX P 6 printouts.

It is submitted that from the evidence of PW 1 to 3 it is clear that the warning message was given from the computer system of PW1 installed at her house, the blocking of e mail ID of accused was done from the computer system of PW1 installed at her office. The Investigation Officer has not taken the necessary minimum precaution of inspecting the computer system at the residence and office of PW1 nor took any precaution to establish the chain of custody as required in computer forensics.

PW 4 SI Umadevi has taken the printouts marked as EXP 9 to P12 .All these printouts were taken on 23-3-2004 ie long after the arrest of the accused and during investigation. There is no authentic printout with the date 10-2-2004 on which date the warning message is said to have been given by PWs. There is also no authentic record in the form of printouts said to have been taken on 14-2-2004.

The accused is said to have used two cyber cafes with Internet Protocol Numbers .The first No. is 61.11.10.99 of Hello World Center run by PW 9 Deepak Patel .The other IP No.is 202.88.165.53 of Heighten Advertising run by PW 8 Lokesh Vijay Ranadeve. During investigation PW4 Umadevi deposes that on 28-2-2004 after the accused confessed and revealed the pass word, he was taken to PW7 John K.Issac's shop M/s.Link Up where she gained access using the pass word furnished by the accused and took out printouts EX P 16 to P 20 from the mail box of the accused. In EX P 20 series it is seen as if the message was received by the accused on 8-2-2004. The prosecution is not able to explain as to how the message when said to have been given on 7-2-2004 and stored by the accused on 7-2-2004 and opened again on 9-2-2004 for posting it again ,could have found a place in his message box on 8-2-2004.This leads to only one conclusion as has been maintained by the accused from the beginning ,that it was the complainant PW1 ,PW2 and 3 who have posted the message in his box and requested him to help them in posting the warning messages. It is also the reason why the message relating to par-ant were found in his mail box as per EXP 17 and P 18. Further in the first page of EX P 20 series, the title received from with IP No etc is not found whereas in the second page of the same exhibit they are found. No explanation is coming forward from the prosecution as to how the printout could have reflected as above.

AUTHENTICITY OF ELECTRONIC RECORDS :

The IT Act 2000 has made amendments to the Indian Evidence Act 1872 by inserting section 65B as to what are the prerequisites necessary for admitting computer printouts ie outputs in evidence. There has to be a certificate appended to the printout at the foot of the printout to take it as admissible evidence. The prosecution itself has placed EXP 29 the report of Vijayashankar PW 11 with the said certificate. Realizing very late the lapse which is very vital as to the authenticity of the printouts the prosecution has filed a memo to let in the certificates as EX P 31 and 33.It is submitted that

the certificates are not in terms of the wordings of Section 65B of IEA and further the IO is the person who has given this certificate belatedly and there is every chance for him to have prepared this certificates before deposing. The IO also admits that except P 29 the rest of the printouts do not bear the required certificates' at the foot of the printouts.

To establish the chain of custody of electronic records at least the IO ought to have taken the precaution of seizing the floppies MO2 series in the form of proper mahazar with a seal and signatures of the concerned persons on it. This was not done. So also for the SIM card of the mobile number there is no authenticate record to show that the SIM card was seized, was not altered while in the possession of the IO. In fact even with regard to its seizure there are varying versions. The IO has prepared the mahazar for the seizure of the mobile phone EXP8 on 25-2-2004 but the confession dated 28-2-2004 reads as under,

".....You arrested me and told the facts. I handed over the mobile phone in which I have stored the phone numbers of the Roselind....."

Further the Form 95 which is an intimation to the Court as per section 102 CrPC and Police Standing Orders also states that the cell phone was seized only on 28-2-2004.

To establish that the chain of custody has not been properly maintained leading to the alteration or manipulation of the electronic data the following evidence is crucial. **PW1 assertively states that she saw the offending mails and took out printouts. Specifically the prosecution itself has chosen to lead in chief examination that the offending mails EXP2 series printouts were taken by PW1 on 9-2-2004. Later it is the admitted version of PW1 to 3 that the warning message was posted by creation of an ID Par-ant on 10-2-2004. In fact PW1 is emphatic about the fact that par-ant was created only 10-2-2004. If it is true it is common inference that the printouts allegedly taken on 9-2-2004 EXP2 series could not have made a mention about par-ant at all since on that date that name par-ant did not exist at all. On the contrary in EX P 2 on top it is clearly mentioned as par-ant .**

The said Printout does not bear the date. PW1 to 3 admit that a computer expert accompanied them with PW4 Umadevi on 14-2-2004. Till date it is not known as to who is the expert. These tell tale pieces of evidence clearly is another pointer to the fact and contention that the electronic records in this case were cleverly manipulated to fix the accused.

It is further submitted that even leaving aside all the technical aspects of e-crime and e-evidence it is common man's knowledge that Ex P1 to P7 in the absence of date could have been easily manipulated with the help of a computer system and a printer. Once such a manipulation is stored in the system, any number of copies can be taken on any date which will accordingly reflect the same in copies. This is because the computer system can give only that which has been fed into it and stored. It is for this reason that computer forensics insist that the chain of custody should be clearly proved and further law requires as per Section 65B a certificate from a responsible person to admit such documents. In the present case PW7 John K. Issac has clearly deposed that he declined to give a certificate. However he was compelled to give a certificate and the same was marked.

BLOCKING THE E-MAIL ID OF ACCUSED :

Exhibit P5 was marked to establish that PW1 has blocked the e mail ID of accused so that she does not receive messages from him. In the same document immediately after blockage of the ID of Suhas Katti, the accused herein, the e mail ID of Jaichand Prajapathi was also shown as blocked. Why did PW1 block his message ? If as per her version that after divorce from Jaichand Prajapathi there was no contact from him why block his message ? That too after blocking the ID of accused ? The prosecution has no answer to these questions at all.

III. FIRST INFORMATION REPORT

The complaint in this case was said to have been given on 14-2-2004. After receipt of the complaint the following acts were done by the police.

- PWs 1 to 3 were taken to cyber café in Egmore, Chennai-8
- PW4 a subordinate officer of PW12 the IO accompanies PWs 1 to 3

to the cyber café in Egmore.Chennai-8.

- Printouts being electronic records were taken after browsing.
- Floppies in which datas were stored after browsing the facts relating to the case.
- PW12 the IO approaches PW 11 a specialist in cyber related matters according to prosecution on 18-2-2004 and he along with PW12 does a thorough probe and gives all necessary information.
- Requisitions dated 17-2-2004 were given to Ms.Dishnet and Hathway.

After all these steps the IO is said to have registered EX P 34 the printed FIR. and a crime No.107 of 2004 was said to have been assigned for the first time.

The FIR thus in this case is registered during the course of investigation and it cannot be said to be one registered after preliminary enquiry as is claimed by PW 12.Taking definite steps on a complaint disclosing cognizable offence is investigation as per settled law of the land. Further it is a mystery as to how in the letter dated 17-2-2004 to M/s.Dishnet the mention of crime No as 107/04 is there. No witness is ready to give a convincing answer and the prosecution has chosen not to examine the author of Exhibit P 15 one T.Vidhya knowing fully well that the suspicious nature of the case will be exposed by her examination.

The complaint in this case also doubtful since there is no mention of creation of e-mail ID par-ant ,no mention of posting of warning messages etc though all such actions were taken by PW1 before giving the complaint on 14-2-2004.PW1 or the prosecution cannot be allowed to say that the complaint was given in haste as there was nearly 5 to 6 days from the date on which PW1 first saw the message according to her.

IV DOUBTFUL IDENTIFICATION OF ACCUSED

The prosecution in this case apart from the highly advanced and techno savvy electronic evidence has also resorted to its usual conventional

evidence in the form of identification of the accused by the witnesses. Out of this identification the identification by PWs 8 and 9 are relevant.

PW 8 and 9 are intermediary service providers as per section 79 of the Information Technology Act 2000. It is an admitted fact that they are not incorporated companies nor partnerships. There is clear evidence of the IO in this regard apart from the other documentary evidence. As per section 79 of IT Act the intermediary is also liable for the offences committed throughout internet services provided by them unless they are able to show that they have taken reasonable precautions. In particular the section uses the word that they either should prove that the offence was committed without their knowledge or that they have taken all due diligence to prevent the commission of such offence.

It is submitted that there are no regulations framed under the IT Act 2000, governing the functions of intermediary though there are such regulations regarding the service provider as such. Hence whether the intermediary has taken due diligence is one of fact and to be judged from the standard of a reasonable man. A person running a cyber café and provides internet access has no control over the access to anyone in respect of the thousands of sites available across the world. The standard of obscenity or pornography also differs from country to country. It is submitted that for example while depiction of normal adult heterosexual acts in the form pictures is not at all an offence in western countries and such internet sites are easily accessible to anyone who opens the net. In India even depiction by pictures of such adult heterosexual acts are taboo and an offence if a person is in possession of them for exhibiting as per section 292 IPC. So also in western countries child pornography depiction though web sites is an offence and such countries have taken measures to curtail the hosting of such sites. Even then the law breakers in such countries are using measures and means to display such sites or allow access to such sites. Hence the Service Provider and Intermediary are expected to act taking into account the above factual position. A customer of a cyber café pays for it on hourly/monthly basis and gains access to the internet. Once he gains access, there is no way to stop him or her in gaining access to any offending sites which host pornography or in exchanging e mail messages which are obscene. Hence the Intermediary has to allow only customers with their full address and their entry and exit timings has to be noted in a register. This is how he can point his fingers to any wrongdoer in case of subsequent police investigations.

In this case the IO has chosen to warn PW 8 and 9 by drawing their attention to section 85 of IT Act which has nothing to do with the liability of intermediary. The said witnesses deposition also reveals that they were afraid about their lapses when police questioned them. Their evidence also points out that their registers P22 and 24 were not maintained correctly and that the IO warned/advised them to maintain them properly in future. These aspects clearly show that both have their own reason to be apprehensive as their licence is liable to be cancelled if the IO takes appropriate action. It was only under these circumstances they have pointed out their fingers at the accused. Further the accused is alleged to have visited their café only once and how they can remember the accused all along and that too after a lapse of long time ?

The IO has while resorting to conventional evidence in the form of oral evidence has failed to establish by necessary expert evidence that the signature in EXP24 which is P 25 is only that of the accused by taking specimen signatures /writings of the accused and sending it to a handwriting expert. The IO could have easily obtained the signature of Jaichand Prajapathi the ex husband of PW1 from the file of the Hon'ble Family court wherein the said person has signed and filed his counter to the divorce petition filed by PW1 . This signature could have been sent for comparison along with the signature in Ex P 24 i.e EXP25. This was not done. Further the IO has not taken any concrete steps to trace Jaichand Prajapathi to examine him. Instead the prosecution is relying upon the tutored oral evidence of apprehensive witnesses PWs 8 and 9.

V- OTHER VITAL ASPECTS

- The officials of Mumbai police force who accompanied PW 12 at Mumbai were not cited nor examined.
- The station records of the police station where accused is alleged to have been kept after his arrest on 25-2-2004 were not produced nor marked.
- PW7 Issac has already favoured IO Mr.Balu regarding the latter's daughter project preparation for which also he has not charged anything. For assisting in this case also he has not charged anything. In chief he gives an impression as if he knew IO only on 28-2-2004 for the first time but his answers in cross examination exposes him.
- PW10 Raman has attested the confession alleged to have been given by accused containing details of which PW 10 has no personal knowledge. PW10 himself accepts this fact.

- PW 10 states that the IO has approached RPG Cellular company, Nokia Company in writing to help him in extracting the details from the SIM card but IO PW12 flatly denies any such thing.
- PW11 has found out the e-mail ID ro-an on 18-2-2004 itself. IO PW12 is also trained in computer technology and how long it would have taken for him to crack the pass word ? This is all the more possible in the light of PW 12's conduct in suppressing the use of GSM reader and other aspects. Even otherwise PWs 1 to 3 categorically admit that they went to cyber café at Kennet Lane, Egmore, Chennai-8 on 14-2-2004 with SI Uma devi and a computer expert and how long it could have taken for the expert to crack the pass word ?
- Section 85B of the Indian Evidence Act clearly states that only in the case of secure electronic record, the court shall presume that such electronic record has not been **altered**. Hence in the case of other electronic records section 65B of the Indian Evidence Act insists for a certificate. The legislative wisdom itself accepts that electronic records can be altered and hence the certificate. It is unfortunate that PW11 claiming to be a specialist in computers has chosen to avoid this specific question and states that in his opinion the certificate is only a legal requirement. The definition of secure electronic system in Section 2 (ze) states as to when a software, hardware or procedure can be taken as secure system. Even this aspect is not known to the IO.
- The requisition said to have been given by IO to PW11 for his assistance has not been produced by the prosecution.
- PW 11 admits that e-mail ID can be masked, that is, altered
- The prosecution has chosen to let in a weak motive which is an imagination for fixing the accused in this case. The prosecution shows that even while studying in the year 1997 the accused has shown an obscene writing in the train to PW 1 and told her that it is the best way to embarrass a lady. The prosecution while trying to suggest this weak motive has conveniently forgotten that it is was accused who originally advised PW1 from marrying Jaichand Prajapathi (PW3 herself accepts), has stood with PW1 during her testing times of cruelty at the hands of her ex husband, that even after PW1's

divorce, accused used to come and stay with PW1 and her family and even while such staying he never misbehaved with PW1. In fact there is evidence to show that PW1 was freely accompanying accused to all places including Pondicherry.

- The IO has not mentioned either in the remand report filed before the Hon'ble 44th MM Mumbai or in the remand report filed before this Hon'ble Court as to the factum of taking accused after arrest to the cyber cafes in Mumbai. In fact the IO has first stated that he has made mention in the remand report but later has chosen to resile from the said testimony and answered that he has only noted it in his case diary.
- PW12 IO claims that the printouts taken by SI Umadevi have been sent to M/S Hathway and Dishnet for getting particulars but SI Umadevi PW4 has claimed that Exp9 to P21 are the printouts taken by her. On the other hand PW4 SI Umadevi claims that before filling charge sheet since the printouts were not clear new printouts were taken.
- PW12 IO claims that for preparation of floppies a mahazar was prepared. But no such mahazar was either filed in court nor marked.
- PW12 was questioned specifically in cross examination that when SI Umadevi went to cyber café immediately on lodging of complaint along with PW1, whether any cyber expert accompanied them. Instead of denying this fact, he only states that he does not know about it, thereby implying that such expert could have accompanied them as obstinately claimed by PWs 1 to 3.

VI- PLEA OF DEFENCE

The accused was friendly with PW 1 from the year 1997 onwards and has counselled her personally on various issues. PW1 taking wrongly the concern of the accused towards her as love, asked him to marry her. This was turned down by the accused and thereafter she fell in love with Jaichand Prajapathy and married him much against the advice of the accused and the wishes of her parents. The accused as a true friend stood with her in her difficult times and helped her when Prajapathi ill treated her. After her divorce the accused continued to be friendly with her and having recovered from the failure of her first marriage, she again proposed to the accused.

The accused again advised her not to entertain such thoughts and that he is only her friend always. Infuriated by this she has chosen to point her suspecting finger at the accused. The accused is not the originator of the offending message nor he has anything to do with the same. The prosecution has chosen to falsely implicate him at the instance of the PWs 1 to 3.

The accused is also a youngster with a promising career ahead of him. He is suffering and is in incarceration for the past eight months.

Hence it is prayed that this Hon'ble Court may be pleased to acquit him of the charges levelled against him, pass such further or other necessary orders in the circumstances of this case and thus render justice.

Dated at Chennai this the 26th day of October 2004.

COUNSEL FOR ACCUSED

Documents submitted along with the Written Submissions :-

1. Literature on cyber forensics and cyber evidence-some aspects
2. Literature on GSM Reader.