

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL
MAGISTRATE,PURI.**

Present: Sri Shibasish Giri,M.A. LL.M.
Sub- Divisional Judicial Magistrate,
Puri.

G.R. Case No.1739/2012
T.R.No.21/2013

State Complainant.

Versus.

Jayanta Kumar Das, aged about 53 years,
S/o. Late Narasingh Das
of Satyanagar Sidhamavir Patna,
P.S.: Kumbharapada, Dist:- Pur

...Accused. (on bail)

For the Offences U/s.292/465/469/500 I.P.C. r.w. Section
66(C)/67/67(A) of the Information Technology Act,2008

Counsel for the Prosecution: Learned Spl. P.P., C.I.D., C.B.,CTC.
Sri Khetra Mohan Behera (Chief.Pros.)
& Sri C.R. Kanungo

Counsel for the Defence: Ld. Adv. Sri Prafulla Prasad Gajendra
& his Associates, Puri

Date of conclusion of argument: 03.08.2017

Date of Pronouncement of Judgment: 04.08.2017

J U D G M E N T

Change is the law of nature and is the very soul of creation. Nothing remain constant, no matter how grand it had been. But a new world always rises again like the phoenix and is captivating as the old world. It reminds the famous line of the poem "idylls of the king" by Alfred Tennyson, the famous poet of victorian age i.e. " the old order changeth yielding place to new, And God fulfills himself in many ways lest one good custom should corrupt the world".The phenomena of change will bound to happen to have growth development and prosperity.

Technological advancement becomes the forerunner of such change in the 21st Century where the I.T. sector is taking the leading step towards the comfort, luxury and communication. In the current era

of internet, maximum of the critical information details are processed online which is prone to cyber threats. With the numerous advancement of the internet the crime owing to internet has also widened its route in all directions. Cyber space offers a plethora of opportunity for Cyber Criminals to cause harm to the innocent people. Crimes are as old as man himself and computer crimes are as old as computer themselves. The women find themselves particularly vulnerable in the increasing Cyber Crime become prey of Cyber bullying and cyber stalking. Honour turns to murder in digital space. All the hate materials that the culprit put online disgraced and enraged the victim's family. Being the conscience keeper and the protector of the faith and beliefs of the masses the court has pious duty to condemn the miscreants of such technology user who are using it as a tool or target or as incidental or as associates, for causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, hatred or ill-will to the persons, property and Government. The instant case is of such nature where the present accused is alleged to have used electronic device for threatening the societal image and prestige of the informant as well as his family. For that purpose the accused is alleged to have preferred a woman as a soft target who happens to be the wife of the informant. The accused further alleged to have transmitted obscene messages, text, e-mail containing obscene and obnoxious language for harassing and harming the reputation of the intended victim to whom he has prior enmity. Therefore, the present accused namely Jayanta Kumar Das has to face the ordeal of trial to find out as to whether such allegations are true or false or baseless or fabricated.

1. The present accused, namely, Jayanta Kumar Das stands charged and prosecuted for the commission of offence U/s. 292/465/469/500 I.P.C. r.w. Section 66C/67/67(A) of Information and Technology (Amendment) Act, 2008.

2. The brief fact of the case of the prosecution is that on dtd. 21.03.12 informant Biswajit Pattanaik, lodged the written report in the

Baseli Sahi Police Station, Puri alleging therein that on dtd. 18.03.12 while he was in his home at about 12.42 A.M. he got a telephone message from one mobile phone bearing No. 098419-49018 to his Cell phone bearing No. 9437280744 calling him as “ **Hello Suchitrarani**” “ **Got your listing on desi hunt**”. Thereafter he immediately verified the web site where he found a profile opened in his wife's name Suchitrarani vide member I.D. :-018072 in Desi Hunt.com. He also found another profile was opened in the same website vide No. 15932 as “ **Suchitrarani wife swapping in India, desi couples, Indian**”, wherein his two cell phones No. 94380744 & 98611-69406 were given for contact. Prior to three months back from that date i.e. on 18.03.12 every day the informant used to get numbers of telephonic calls and message out of state, that a profile has been opened in his wife's name in “ **Wife sharing Group**” (**WSG**) and his mobile phone numbers have been attached there. Due to social stigma, prestige he did not disclose the matter to any one.

Being the journalist by profession the informant had published number of news items against the accused Jayant Kumar Das, Managing Partner of one AKJK Enterprisers of Nabakaleba, Puri Town who was lending loans to private persons and has cheated the innocent poor loanee and grabbed their valuable properties for the sake of granting loan. In connection with such cheating and fraudulent practice many criminal cases had been registered against the accused Jayanta Kumar Das in different police stations of Puri Town. Being vindictive towards the informant as well as his family the accused had sent many anonymous petitions against the informant to different Government Officials as well as State Police Head Quarter, Cuttack in order to blame the informant. The accused published many imputations and derogatory posters against the informant and his school going son and pasted them in different conspicuous places of puri town such as Sidha Mahavir Railway Gate, Level crossing and Sarvodaya Nagar Railway Gate, A.T.M. Counter, Kendriya Vidyalaya, Puri and other Government Officials of Puri Town. The accused projected the informant as a fake journalist and branded his son as

Junior Criminal. In such context, the wife of the informant Smt. Suchitrarani Pattanaik had filed number of grievances before the Hon'ble Chief Justice of High Court of Odisha, Hon'ble Lok Pal, Odisha, Hon'ble Chief Minister, Odisha, Copy to Hon'ble Minister of State, Women and Child Welfare Department and D.G. of Police, Odisha, Addl. D.G. to State Human Right Protection Cell, Cuttack, I.G. of Police, Central Range, Cuttack, District Magistrate Puri, S.P. Puri, City D.S.P. Puri and I.I.C., Kumbharapada P.S. for taking necessary action. Being annoyed by the allegation of the wife of the informant miscreant, Jayanta Kumar Das has committed the Cyber Crime to harass the informant as well as his family mentally and emotionally.

In the year 2008 while the informant was working as a reporter of an Oriya daily "THE PRAJATANTRA" a news item was published on 08.05.2008 against the said Jayanta Kumar Das and his money lending firm AKJK Enterprises regarding his fraud and illegal activities. On the very next day i.e. on 09.05.2008 while the informant was coming to his home the accused Jayant Kumar Das suddenly appeared before him behind the Gundicha Temple, Puri at about 2.15 P.M. and showed him a pistol to kill him and hurled slang languages on him. In that connection he had lodged a complaint before the I.I.C., Kumbharapada P.S. which was registered against him vide Kumbharapada P.S. Case No. 102/08. And after completion of investigation charge sheet was submitted the accused which is still pending before the trial court of learned Judicial Magistrate First Class, Puri.

On dtd. 24.03.09 the I.I.C. Kumbharapada Police Station had sent a letter through District Magistrate-Cum-Collector, Puri vide D.R. No. 958 regarding the illegal activities of the accused Jayanta Kumar Das and his partner, Ashok Kumar Ratha and his money lending firm namely, AKJK Enterprises who were using muscle power and different types of coercive method against the innocent borrowers for which the people are taking loan were in severe mental stress. Further, the I.I.C. of Kumbharapada Police Station requested the District Magistrate to cancel his money lending license of Jayanta Kumar Das. Acting upon

such report of police, the District Magistrate, Puri directed the Sub-Collector, Puri to take immediate action as per law against the present accused. In this connection, a news item was published against the accused in the Oriya weekly "The Sambhasa" on dtd. 18.05.2009 in Volume No. 1 issue No. 47 and other news paper like "Prajantra and Ajikali". On the basis of the written report of the informant, the then I.I.C. of Baseli Sahi P.S. registered the F.I.R. vide Baselisahi P.S. Case No. 36 dtd. 02.04.2012 U/s. 292/419 I.P.C. r.w. Section 66(C)/67(A) of Information Technology (Amendment) Act, 2008 and requested the Superintendent of Police, Puri to entrust an Inspector to take up investigation in this case as the present case was related with Cyber Crime. As per order of Addl. D.G. of Police, C.I.D., C.B., Odisha, Crime Branch Cyber Crime Police Station, has taken up the investigation of the above case and registered it as C.I.D., Crime Branch, Cyber Crime P.S. Case No. 5 dtd. 24.08.12 U/s. 292/419 I.P.C. r.w. Section 6(c) / 67(A) Information Technology (Amendment) Act, 2008. On being directed Sri A.K. Nayak, Inspector of Cyber Crime P.S., C.I.D., C.B. took up investigation in this case. The I.O. conducted investigation and gathered sufficient materials under the alleged offences against accused Jayanta Kumar Das. During the course of investigation, the I.O. visited the spot, conducted search and seizure, noticed authenticated offices for the collection of data, information, sought the opinion of the expert and collected many documents for the purpose of documentary evidence. After completion of investigation, the I.O. submitted charge sheet U/s. 292/465/469/500 I.P.C. r.w. Section 66(C)/67/67(A) of the Information Technology (Amendment) Act, 2008 against the present accused Jayanta Kumar Das. Accordingly cognizance is taken. Hence this case.

3. Points for determination are as follows;

(i) Whether on dtd. 18.03.12 and few months prior to then at Sidhamahavir Patna of Kumbharapada P.S. and in different places in the Puri Town the accused Jayanta Kumar Das publicly exhibited and pasted derogatory posters containing obscene and lascivious remarks on the complainant Biswajit Pattanaik and his family in different

conspicuous places of Puri Town with an intention to deprave and defame the complainant and his family and there by, committed an offence U/s. 292 I.P.C.?

(ii) Whether on the alleged date, time and place the accused committed forgery by making false electronics record like creating fake profile/I.D. in the name of the wife of the complainant in a porn website, namely Deshi Hunt. Com website and E-mail Accounts in Yahoo website and transmitted the same for fraudulent purpose and thereby committed the offence U/s. 465 I.P.C.?

(iii) Whether on the relevant date time and place the accused committed forgery by creating forged electronic record for the purpose of harming the reputation of the complainant, Biswajit Pattanaik and his wife and thereby committed the offence U/s. 469 I.P.C.?

(iv) Whether on the relevant date, time and place the accused defamed the complainant as well as his wife and child intending to harm the reputation of them with falsely imputation and thereby committed the offence U/s. 500 I.P.C.

(v) Whether on the relevant date, time and place the accused sent false information i.e. grossly offensive or is minancing character like fake electronic mail message by means of a computer or any electronic device which the accused knew to be false with a purpose for causing annoyance, inconvenience insult and to defame the informant as well as his wife and thereby committed an offence U/s. 66(A) Information Technology (Ammendment) Act, 2008?

(vi) Whether on the relevant date, time and place the accused fraudulently or dishonestly made use of name and details of the complainant and his wife Suchitrarani Pattanaik and opened a fake e-mail account and profile in a porn website like deshi hunt. Com and thereby committed an offence U/s. 66(c) of Information Technology (Ammendment) Act ?

(vii) Whether on the relevant date, time and place the accused transmitted and published various lascivious obscene and malicious e-mail with an intention to assasin the character and reputation of the complainant as well as his wife and thereby committed the offence

U/s. 67 of Information Technology (Amendment) Act, 2008?

(viii) Whether on the relevant date, time and place the accused published and transmitted the e-mails and messages containing sexually explicit material to various users by creating fake I.D./profile in the name of the wife of the complainant namely Suchitra Pattnaik in a porn website such as Deshihunt.com in the electronic form and thereby committed an offence U/s. 67(A) of I.T. Act?

4. In order to prove the case, prosecution has examined as many as 13 witnesses in this case. P.W.1 Biswajit Pattanaik, informant-victim in this case. P.W.2 Sunil Kumar Mishra, one of the seizure witnesses in this case, P.W.3, Suchitrarani Pattanaik, the wife of the informant, also the victim of this case. P.W.4, Anila Ananda who was working as S.I. of Police CID , Crime Branch, Cyber Crime P.S., Cuttack on dtd. 07.09.12 submitted many information to I.O. during the time of investigation, P.W.5, Debi Prasad Mohanty who was working as S.I. of Police Crime Branch, Cuttack on 07.09.12 helped the I.O. in transmitting some necessary documents during the time of investigation. P.W.6, Ashok Kumar Mohapatra who happened to be the ex-service man of Indian Navy is one of the seizure witnesses in this case who was declared hostile on the prayer of the learned Special A.P.P.. P.W.7, Arnab Kumar Parmanik, the Ex- Doctor Din Dayal Upadhaya Hospital, Hari Nagar who had an account in Deshihunt.com in his name and received the communication from Suchitrarani Pattanaik from Orissa containing many abusive languages on dtd. 17.01.12. P.W.8, Brundaban Behera who was working as Divisional Engineer Telecom , Puri on dtd. 07.11.12 who helped the I.O. for creating awareness regarding the broadband connection of the accused. P.W.9, Bharati Rani Das who was working as S.D., Commercial Office D.E.T., BSNL, Puri on 07.11.12 who helped the I.O. for disclosing the fact that he had registered the telephone connection in the name of Rajalaxmi, W/o. Jayant Kumar Das vide No. 06752250056 as per the direction of D.E.T., BSNL, Puri namely Brundaban Behera. P.W.10, Bimal Kumar Mallick, the then Officer-in-charge of Baseli Sahi Police Station who received one grievance letter from Superintendent of Police filed by the

informant Biswajit Pattanaik and he registered such grievance letter treating as F.I.R. as per the direction vide Baseli Sahi P.S. Case No. 36 dtd. 02.04.12. P.W.11, Akshya Kumar Nayak, the I.O. of this case, who conducted investigation as per the direction of Addl. D.G.P., C.I.D., C.B.. P.W.12, Gurudas Mehere was working as General Manager Consumer Mobile Sales and Marketing, BSNL who supplied the user information of a specific I.D. address through e-mail and hard copy after receiving the requisition from Superintendent of Police, Crime Branch, C.I.D. Cuttack. P.W.13 L. Nato Singh the Scientist of C.F.S.L., Kolkata who imaging and analysis of computer hard disc and pend drive. On the other defence has examined two witness in support of his defence. Santosh Kumar Padhi and Amiya Kumar Mohapatra are examined as D.W.1 and D.W.2 respectively.

5. By unfolding the evidences of prosecution witnesses, it reveals from the evidence of P.W.1, Biswajit Pattanaik, the informant that the accused namely Jayanta Kumar Das was very well known to him as the Managing Partner of M/s. A.K.J.K. Enterprises conducting money lending business, lent money to private individuals. It further reveals from his evidence that on dtd. 18.03.12 at about 12.42 A.M. one telephonic message was reached to his mobile phone from a mobile bearing No. 9841949018 through his mobile bearing No. 9437280744. The message was "Hello Suchitrarani, got her listing Deshi hunt.com". After opening his computer and browsing the site desihunt.com, he found the name of his wife Suchitrarani in such website. He also found one personal profile opened in the name of his wife having an I.D. No. 018072 having the address Puri, Odisha. P.W.1 acknowledged that the said website is a porn website having superscribed heading "VOTE FOR SEXY WOMEN". Where his mobile Nos. 9437280744 and 9861169406 were also attached in that site for his contact. The icons in the web page of that site such as "INTEREST SINGLE MEN, MEETING COUPLES," and "SKY IS OUR LIMIT". It was also mentioned in the webpage that "WE LIKE STRONG MEN".

During his testimony of P.W.1 has deposed that since December, 2011 prior to this occurrence he was receiving messages from different

people of different places in India who wanted to have sex with his wife and informed him over phone. They informed him that they got messages through the profile created in his wife's name. He was silent initially by taking his social prestige into consideration. P.W.3, Suchitrarani Pattanaik wife of the complainant Biswajit Pattanaik has also corroborated the evidence of P.W.1. Of course, P.W.3 has not received such obscene messages directly in her mobile phone yet she has been intimated by her husband that one fake account has been created in her name i.e. Suchitrarani in a porn web site namely desihunt.com. Both P.W.1 and P.W.3 deposed to have suspected the accused Jayanta Kumar Das was the master mind behind the creation of such fake I.D.. It is revealed from both the evidence of P.W.1 and P.W.3 that there was enmity between the complainant and the accused. On 08.05.08 the complainant published an article in oriya daily namely " Prajatantra" regarding the money lending business of the accused. On the very next day of publication of the article the accused showed pistol to him behind Gundicha Temple, Puri and abused him in the obscene languages and threatened to kill him. P.W.1 had also lodged an F.I.R. with regard to that incident at Kumbharapada P.S. which was registered vide Kumbharapada P.S. Case No. 102/08. The said case is still pending . It reveals from the evidence of P.W.1 that the accused has the habit of filing of various anonymous petitions against Government officials. The accused also pasted his photographs along with his son at Central School Gate, Puri having derogatory remarks against him and his son such as " BISWAJIT PATTANAİK NAKALI SAMBADIKA, RANDI DALAL, MURKHA BEDHA PILA" and referred his son as Junior criminal in those posters, having fake e-mail I.D. . Those posters pasted at different places like A.T.M. Counters in Puri Town, Railway level crossing, bus stand and in the collectorate building, puri. Both P.W.1 and P.W.2 corroborated the evidence of each other in regards to the above facts. P.W.7 deposed to have found one profile of Suchitrarani Pattanaik in the desihunt-com containing the mobile No. 9437280744. It reveals from his evidence that being an account holder in the desihunt.com he used to receive communication from

suchitrarani Pattanaik from Odisha. After receiving the text and SMS he called to the given mobile NO. 9437280744 and also sent the messages containing “ I am Arnabr”, received your messages from your I.D. in the desihunt.com. It reveals from the evidence of P.W.7 that on his inquiry he came to know that the mobile number which was given for contact in desihunt.com site belong to one Biswajit Pattanaik though the number was attached in the profile of suchitrarani Pattanaik. In his conversation to complainant (P.W.1) he came to know that the profile which was created in the name of Suchitrarani Pattanaik was fake one. P.W.1 deposed to have received 70 Nos. Of messages on his mobile bearing text “ I want to have sex with your wife, Hello Suchitrarani got your listing in wife sharing group(WSG)” . It reveals from the P.W.1 that he transferred those datas containing vulgar messages from his mobile phone to his computer for taking print out. It further reveals from the evidence of P.W.1 that being the sole accessor of computer since 2005 his computer has never undergone any repairing work. P.W.1 has proved the hard copies of SMS seized by the I.O. on his production during the time of investigation vide Ext.8. P.W.11 has corroborated evidence of P.W.1 by stating in his evidence that he seized the hard copy of 70 Nos. Of SMS containing sexually explicit material and appeal for sex with suchitrarani Pattanaik. P.W.11 has also proved his signature in the seizure of hard copy of such obscene messages vide Ext. 7/3. P.W.1 M.O.-I, M.O.-II & M.O.-IV corroborates the evidences of P.W.1, P.W.2, P.W.3, P.W.11 proved the seizure list vide Ext.7 and Ext. 7/1 is his signature thereon.

Being one of the seizure witnesses P.W.2 has also corroborated the seizure list by proving the signature on seizure list (Ext. 7) vide Ext. 7/2. Ext. 7 and Ext. 8 are corroborating the evidences of P.W.1, P.W.2, P.W.3, P.W.7 and P.W.11. Though being one of the seizure witnesses in this case P.W.6 has denied to have any idea regarding the articles seized before him by the Inspector of Crime Branch. Yet he proved his signature on the seizure lists vide Ext. 10A and Ext. 10A/1. Due to his contrary of evidence with respect to his knowledge regarding seizure the prosecution is allowed to declare him hostile

and he was subjected to cross-examination by the prosecution.

It reveals from the evidence of P.W.2 that he was intimidated by the informant that accused pasted posters having defamatory words such as " NAKALI SAMBADIKA" at different conspicuous places of the town and he also came know from the informant that he had received several messages from different persons having defamatory contents from Deshi Hunt.com where a fake profile was created in his wife's name and his two mobile numbers were also attached in that site. In his examination-in-chief he has deposed that on dtd. 31.08.12 at about 11 A.M. to 12 noon he had gone to the house of the informant where he found two police personnels were present there. The informant gave the printed copies of telephonic messages having 7 to 8 sheets and two posters containing defamatory language such as " NAKALI SAMBADIKA". . Then the police seized 7 to 8 sheets of paper containing 60 to 70 number of messages and two posters on the production by the informant. He has further deposed that he had gone through some of the messages which contains messages such as " I want to have sex with you", " I want to meet you" etc. . One Kashyap Ambarish was also present at the spot during seizure.

Being the custodian and recipient of all the letter issued for the report to Deshihut.com, Amazon.com, CERD, Yahoo.co.in, D.G.M., BSNL, Bhubaneswar P.W.4, Anila Ananda the then S.I. of Crime Branch state that on 07.09.12 the I.O.(P.W.11) seized these documents on her production to him in presence of witnesses namely S.I. Deba Prasad Mohanty and A.S.I. ,Ditikrushna Padhi at about 1.10 P.M. at Cyber Crime P.S.. He signed on the seizure list after perusing the contents of the seizure list. He proved the seizure list vide Ext. 10 and Ext. 10/1 is his signature.

It reveals from the evidence of P.W.8 that on dtd. 07.11.12 while he was working as a Divisional Engineer Telecom, Puri at about 12.30 P.M. on the requisition of Inspector of Akshya Kumar Nayak he disclosed all the materials details relating to the Telephone No. 06752

250056 which was connected in the name of Rajalaxmi Das. The original connection application form, demand note, advice note, application form for broad band connection, the copy voter I.D. card issued to the name of Rajalaxmi Das and Jayanta Kumar Das, one copy of sale deed executed in the name of Jayanta Kumar Das application form for change of broadband plan, application form for closure of broadband connection in total 10 items were handed over by him to the I.O., Inspector of Akshya Kumar Nayak. He proved the demand note of broadband connection vide Ext. 11 and the application for change of plan vide Ext. 12. He also proved the advice note provided for broad band connection vide Ext. 13 and the application form for broad band connection vide Ext. 14. He also proved an application for closure of broad band connection vide Ext. 15 and the advice note for telephone connection vide Ext. 17. Besides he also proved the application form for new telephone connection vide Ext. 18. He proved the requisition issued to him for the supply of document by the I.O., Akshya Kumar Nayak vide Ext. 19 and Ext. 19/1 is his signature thereon. He also proved another requisition issued by the I.O. marked as Ext. 20 and Ext. 20/1 is his signature thereon. He proved the seizure list of mentioned document vide Ext. 22 and Ext. 22/1 is his signature thereon. He proved the signature of one Bharati Rani Das and Suresh Kumar Patra vide Ext. 22/3 and Ext. 22/4 respectively which he acquainted with. Both Bharatirani Das and Suresh Kumar Patra were the employees who were present during time of seizure.

6. The prosecution witnesses particularly P.W.8, P.W.9 and P.W.11 deposed to have found the telephone connection bearing NO. 06752250056 allotted in the name of Rajalaxmi Das, wife of accused Jayanta Kumar Das Ext. 11, Ext. 12, Ext. 13, Ext. 14 reveal that an internet connection was extended to the land line telephone No. 06752250056. The evidence of P.W.11 reveals that during the time of search and seizure both the accused and his wife were present in the alleged house. Further the evidence of P.W.11 elicits that the local BSNL(service provider) vide Demand No. 8342 dtd. 13.03.06 was

issued broad band connection under home plan 250 in respect of telephone No. 06752 250056 in favour of Smt. Rajalaxmi Das on payment of Rs. 1476/- by the accused Jayanta Kumar Das. Thereafter the internet broad band connection was provided to him on 21.09.2012. On the perusal of Ext. 11, it has been noticed that such facts have been corroborated in the contents of it (Ext. 11). Ext. 14 also reveals the fact that applicant Rajalaxmi Das, wife of Jayanta Kumar Das has applied broad band connection in her name under her signature against the Telephone No. 06752 250056. Ext. 15 reveals the application for the dis-connection of broad band by Rajalaxmi Das w.e.f 01.11.2012 to her telephone No. 06752 250056. Ext. 18 reveals the application on behalf of Rajalaxmi Das, wife of Jayanta Kumar Das for new telephone connection. The C.D.R. of complainant's Mobile No. 9437280744 sent by BSNL for the period from 01.11.2011 to 24.08.2012 reveals that P.W.1 had received several obscene messages from different phone numbers which tallied with the list of the SMS submitted by the complainant along with F.I.R.. Ext. 37 reveals that the user subscriber details in respect of e-mail account Biswajit 6667 @ yahoo.co.in which was created by accused Jayanta Kumar Das on 07.01.12 through BSNL ISP and the internet connection was extended through Teracom broad band modem vide Mobile No. P2B-GAWVI and the same was seized from accused Jayanta Kumar Das. The said modem was found to be connected to the computer system of the accused for internet connectivity where the signature of accused Jayanta Kumar Das was available. Since the user I.D. is user specific the person who was created the I.D. is the sole operator of such I.D.. Ext. 32 and Ext. 33 reveal the same fact as discussed. The electronic device which was used for committing crime was seized from the exclusive possession of accused Jayanta Kumar Das which indicates his involvement in the crime. From the evidences of P.W.1 to P.W.13 it has been clearly elicited that the accused Jayanta Kumar Das one and same person who used broad band for sending vulgar messages to the complainant by creating a fake I.D. in the name of Suchitrarani Pattanaik, the wife of Biswajit Pattanaik.

7. During the course of argument learned A.P.P. began his argument by dissecting the subject matter reflected in the story of the F.I.R. with the help of both oral evidences as well as documentary evidences adduced on behalf of the prosecution. The learned A.P.P. submitted that all the prosecution witnesses have maintained the consistencies in relating to the alleged offence. The story of the F.I.R. has been well corroborated with both oral and documentary evidences. The A.P.P. argued that the prior enmity of the accused against the informant is the real criminal motive for the commission of alleged offences as the motive to blame the informant in the society is the root cause of the crime.

To substantiate his argument, the learned A.P.P. submitted series of citations to highlight the principles of laws in relation to the standard of proof and knowledge regarding the alleged offence.

In **AIR 2005 S.C. ,44** it is held that the standard of proof required is proved beyond reasonable doubt yet there is no absolute standard of reasonable doubt. The reasonable doubt is a fair doubt based on reason and commonsense.

In **AIR 2000 S.C. 2988 :- 2000 Crl. Law Journal 4047** it is held that burden of proof is a pristinic role that the prosecution has to prove its case beyond reasonable doubt. On the other hand , if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in a pedantic coverage the offender in serious offence would be major beneficiary and on the contrary society would be in casualty.

In **AIR 1990 S.C. , 1459 and 209** it is held that proof does not mean proof to rigid mathematical demonstration because that is impossible in criminal cases it must mean such evidence as would induce a reasonable man to come to conclusion.

By taking the evidence of P.W.11 and P.W.13 the learned A.P.P. argued that the desihunt.com is a pornographic web site. Further, he has stated that the page No. 24 to 49 of Ext. 50 reveals the pornographic image available in the hard disc HBQ3 where a layman can speak about the pornographic image.

The learned A.P.P. submitted that motive is a mental element which cannot be seen or perused, but it can be proved by the help of circumstantial evidence. Motive is the instrumental for the commission of any act. In para 3 P.W.1 has specifically stated that on 08.05.08 he was published one article in Odia daily namely "The Prajatantra" regarding illegal money lending business of the accused. On the very next day of the publication of said articles, the accused showed him pistol and abused him in the obscene languages and threatened to kill him by detaining him behind the Gundicha Temple, Puri for which he lodged the F.I.R. in the Kumbharapada which was registered vide Kumbharapada P.S. vide P.S. Case No. 102/2008. Thereafter, the accused filed various anonymous petitions against the complainant before Government Officials and pasted derogatory photographs in his name and in the name of his family members and also sent many anonymous petitions against the informant to the Government Officials. Therefore, it is obvious that the accused became vindictive and tried to take the revenge against the complainant to cause annoyance and defame him in the society. In searching out an opportunity the accused created a fake e-mail account and proof in the desihunt.com in the name of wife of the complainant to defame the complainant as well as his wife. The ulterior intention and motive of the accused was to cause injuries to the reputation of the informant to satisfy his anger. Finally, the learned A.P.P. submitted that all the prosecution witnesses have clearly and categorically satisfy the ingredients of each alleged offences. There is no point to disbelieve each prosecution witnesses on the ground of contradiction and inconsistency. The prosecution insisted on the conviction of the present accused to prohibit and check the commission of similar type of alleged offences and offenders and to save thousands of Suchitrarani from being victimized by such kind of alleged offences.

8. Per contra, the learned counsel for the defence denied every allegation made against the accused. In his opening stage of his argument, the learned defence counsel submitted that the present case is a false and fabricated case lodged by the informant due to his

previous enmity against him. The learned defence counsel argued that the informant lodged the false case out of his vindictiveness towards the accused. Besides, the evidence of P.W.1 is not trustworthy and credible. In paras 6,13,14 of P.W.1 are sufficient to judge the P.W.1 as a liar. He speaks himself as a journalist and sometime as a press reporter to influence the public officials. The learned defence counsel further alleged against the complainant that he utilized his wife to enhance the gravity of false allegation, though his wife has no mobile phone which P.W.1 has admitted in para-35. Para-42 of P.W.1 reveals that he printed out 70 Nos. of messages from his printer but police has not seized it. In para-52 to 60 of P.W.1 reveal that he has not ascertained the owner of the phone No. 09841-949018.

The learned defence counsel submitted that the evidence of P.W.1 is self contradictory by highlighting the deposition of P.W.1 in Para-6 and Para-14. In para-6, P.W.1 deposed to have stated that he have never visited the money lending office of the accused. He had never applied for loan from the office of the accused. He came to know regarding the illegal transaction by the accused from different victims and public. But in Para-14, P.W.1 has stated that he personally meet the accused for the first time when he took loan from him which he had already paid. He does not remember the exact date on which he took loan of Rs. 15,000/- which he repaid him with all the interest. The learned defence counsel highlighted another fluctuation of the evidence of P.W.1 as found in para-15 wherein P.W.1 has stated that he cannot say whether the accused has proper money lending license when he took loan from him. Further the learned defence counsel argued that the wife of the informant who another victim in this case, has surprisingly, has not received any derogatory message, since she had no mobile phone. Regarding the publication of pasting of posters P.W.1 has admitted in para-44 that he is stating for the first time in the court hall that he had seen the accused pasting posters. The learned defence counsel submitted that though the informant used to get messages from a particular SIM of the informant yet police has not seized that SIM which has been reflected by P.W.1 in para-50. Highlighting the

above contradiction and inconsistency of P.W.1 the learned defence counsel insisted that the evidence of P.W.1 is not credible.

The learned defence counsel questioned the reliability of the seizure witnesses particularly the evidence of P.W.2 who was present along with another Kasyap Ambarish during the time of seizure by the I.O. The seizure was made in the presence of P.W.2, Sunil Kumar Mishra and Kasyap Ambarish. Except P.W.2, the other seizure witness has not been examined. Besides no independent witnesses have been examined as a seizure witness. The learned defence counsel put forth another contradiction between the evidence of P.W.2 and P.W.1 that in para-4 P.W.2 has admitted that his house is at a distance of 6 to 7 K.M. from the place of seizure. He was not called by the informant to his house on the date of occurrence which contradicts the evidence of P.W.1. In para-59 P.W.1 stated that he had invited P.W.2 to be a witness of seizure. Due to such contradiction the evidence of P.W.2 is not reliable as submitted by the learned defence counsel. The I.O. has not reflected in the C.D. as to why he did not seize the mobile and computer which would be the best evidence for the prosecution. Further the learned defence counsel disputed the documentary evidence of Ext. 10A i.e. the number of articles seized from the house of the accused. P.W.6 has denied to have present any such type of article seized from the house of the accused and has not supported the case of the prosecution for which the learned defence counsel prayed to declare him as a hostile and on the permission of the court prosecution was allowed to put leading question U/s. 154 of Indian Evidence Act.

Further the learned defence counsel compared serial No. 7 and Serial No. 12 of Ext. 10A with Ext. 11 for bringing contradiction. In serial No. 7 of Ext. 10A that one teracom BSNL broadband modem having Mobile No. T2-THE GAWVI4U10Y-BI having been seized from the house of the accused. And in Serial No. 12 the date of issuance of connection was cited as 13.03.06. Whereas the date of issuance reflected in Ext. 11 is the same, but, the mobile number is different which was cited as M8342. Further the learned defence counsel compared the documentary evidence of Ext. 20 and Ext. 20/1 for

bringing contradiction. In Serial No. 6 and Serial No. 7 are the questionnaires and the answers are available in Serial No. 4,5 and Serial No. 7 of Ext. 21. But the internet facilities was provided to the land line on dtd. 17.03.06 so also modem was issued on the same date but the type of modem was ADSL Type-I. The learned defence counsel stated that the material differences between the seized modem and modem supply to the customer raised the doubt regarding the involvement of the accused for the commission of crime. The internet connection was issued in favour of the wife of the accused namely, Rajalaxmi Das yet she has neither cited as a co-accused nor has she cited as a charge sheeted witness. P.W.12 G. Mehere who was given certificate which has been exhibited as 32 is not admissible as it has not been complied the provision of Section 65(B)(i) I.T. Act. The learned defence counsel questioned the reliability of the evidence of P.W.11. In para-, P.W.11 has stated that he cannot say as to who is the certifying authority of validation required under I.T. Act and which section of the I.T. Act validates the admission of electronics records. The learned defence counsel questioned the veracity of his evidence by stating that inspite of having vast experience, training and holder of certificate. P.W.11, surprisingly does not remember the section of I.T. which creates doubt regarding the expertise knowledge of I.T. Act. The learned defence counsel submitted that the evidence of P.W.11 is not reliable. The learned defence counsel disregarded the evidences of P.W.12 and P.W.13 as the expert evidence. Because these two witnesses have been examined on the order of the Hon'ble Supreme Court of India. And the report prepared by P.W.12 as exhibited vide Ext. 32 and Ext. 33 bear no valediction certificate as required under I.T. Act.

9. In the answer to the defence argument the learned A.P.P. submitted that the land line connection bearing No. 06752250056 allotted in the name of Rajalaxmi Das. The broadband connection to that land line was applied by Jayanta Das. Moreover, at the time of broad band connection user I.D. of that telephone broadband connection was given as jayantadas 1_puri@bsnl.in. The learned A.P.P. has further submitted that the informant had neither enmity nor had he

known to the wife of the accused namely Rajalaxmi Das. Regarding the seizure witnesses turned hostile, the learned A.P.P. cited one decision i.e. **2010 OCR Vol- 46 page 1002** wherein it is held that if seizure witness turned hostile then there is no ground to reject the evidence of seizure if the same is based on the testimony of the I.O. alone then it is presumed that the I.O. is believed to have performed his official duty diligently U/s. 114 (E) of Indian Evidence Act and he had occasioned to know the accused. Then there is no point of disbelieving the evidence of I.O.. Regarding the argument of seizure of modem contrary to the BSNL authority the learned A.P.P. answered that the I.O. had seized two numbers of Modem one is ADSLCP as mentioned in Serial No. 6 of Ext. 10A and another was Teracom BSNL broad band modem which the I.O. has categorically stated in Page-7 of Para-12 in his deposition. At the time of seizure it was found that one Teracom was found to be connected to the computer system of the accused with internet connectivity and the accused had also put his signature on the said modem. Another modem was issued by the BSNL authority was found disconnected near the computer system and kept near the computer. The learned A.P.P. submitted that defence has suppressed the material fact to mislead the court for concealing truth. In an answer to the question as to why I.O. has not seized computer and mobile set of the informant. the learned A.P.P. submitted that the I.O. had seized hard copies of some messages in presence of witness namely Sunil Kumar Mishra and another. Sunil Kumar Mishra has been examined as P.W.2 who has deposed to have present during the time of seizure. He had gone through some messages which containing messages such as " I want to have sex with you". On the basis of such message the I.O. supported investigation and could know the person who had created fake profile in the deshihunt.com by using e-mail account of yahoo web site. Regarding the enmical relationship of the informant to the accused which the learned defence counsel alleged against the informant for the genesis of the offence, the learned A.P.P. stated that it is rather the enmity of the accused with the informant gives rise to the commission of alleged offences by the accused. Of course, one case was filed by the

accused against the informant for the mis-appropriate of fund taken from the redcross yet the case was ended with the submission of final report by the I.O. And no protest petition was filed by the accused if any kind of such mis-appropriation and truth behind the case.

10. Both the parties stand firm in their own footing . They vehemently objected each other in the course of argument. The learned A.P.P. takes the shelter of the evidence of both oral as well as documentary evidences for bringing the alleged offence home. On the other, the learned defence counsel highlighted many contradictions , omissions, inconsistencies to dilute and discredit the firmness of the evidences adduced in support of the prosecution. The reliability and believability of evidences of prosecution cannot be tested independently unless each evidence puts to test for its veracity corresponding to the alleged offences. It is unworthy to reject or to discard any of the prosecution witnesses on a certain or few points of contradictions, omissions and inconsistencies. Any material omission leads to contradiction provided such omission is vital and major one Minor omission cannot be treated as contradiction.

10. The submission of the learned defence counsel regarding the rejection of evidence of P.W.1 cannot be sustained for the reason provided by him, during the course of his argument. If P.W.1 stated himself as journalist in one instance and in other instance he has deposed himself as a press reporter then such variance would not make P.W.1 as liar. Both journalist and press reporter may have different in orientation of work in a single system, but, both are working in the same field and in same specialised area. Prior enmity is not a ground to disbelieve the allegation against the accused as false and fabricated. . Though P.W.3 did not have mobile phone yet she had been imputed and her chastity was mocked through the creation of fake I.D. in a porn website in Deshiahunt.com. Both P.W.1 and P.W.3 are consistent and corroborative to the evidence of each other. Their evidences are supported by the documents like Ext. 7, Ext.8, Ext.9 and Ext. 10 and Ext. 10A. The defence witnesses particularly D.W.1 and D.W.2 have failed to weighed down the evidence of P.W.1 and P.W.3. Hence both the

evidences of P.W.1 and P.W.3 are believable. There is nothing to disbelieve the evidence of P.W.2 that no such article has been seized in his presence. The defence is not able to discredit the evidence of P.W.2. The evidences of P.W.4, P.W.5 and P.W.7 can be taken for the purpose corroboration to the fact of the case. Though P.W.6 has been cited as one of the two seizure witnesses by the I.O. yet he has not supported the factum of seizure for which on the prayer of learned Special A.P.P. he was declared hostile during the time of trial. But he proved his signature on the seizure list vide Ext. 10A and Ext.10A/1. P.W.6 has denied the suggestion given by the learned A.P.P. for the articles seized before him. But from his evidence it is revealed that he reached at the spot by finding the people gathered in front of the house of the accused Jayanta Das while he was returning from the gym. The denial of the admission of seizure by the P.W.6 cannot discredit the evidence of other seizure witness. But, his presence during the time of seizure cannot be undermined. P.W.8 and P.W.9 provide necessary information wanted by the I.O. during the time of investigation. Their evidences are believable as their evidences are supported by the documentary evidences available on the record particularly Ext. 19 & Ext. 22. P.W.10 the then I.I.C. of Baselisahi P.S. who had registered the F.I.R. after getting the grievance letter from S.P., Puri. The case was initiated after the registration of F.I.R. in such police station. Being the I.O., P.W.11 has deposed each and every fact with the support of the documents what he discovered during the time of investigation.

Whether such documents bear relevancy or not it will be decided during the time of appreciation of such document corresponding to the alleged offence. But, on the perusal of the subject matter deposed by the P.W.11 it has been noticed that his evidence is clear and consistent to the other oral witnesses. Hence, the evidence of P.W.11 is believable. The learned defence counsel raised the question for the admissibility of the evidence of P.W.12 and P.W.13 who are examined as an expert witnesses. On this occasion, the learned defence counsel argued that after the examination of P.W.11 the prosecution has declined the rest of the charge sheeted witnesses. But, in obedience to the order of the

Hon'ble Supreme Court P.W.12 and P.W.13 are examined to patch up the lacuna and to fill up the requirement U/s. 45A of Indian Evidence Act. Whatever may be the situation the prosecution examined both P.W.12 and P.W.13 as an expert evidence and their evidences are supported with the documents particularly, Ext. 32/a, Ext. 34/1, Ext. 49, Ext. 49/1, Ext. 48, Ext. 48/1, Ext. 48/2, Ext. 48/3, Ext. 48/4, Ext. 50 and Ext. 50/1. The relevancy and admissibility of the evidences shall be put to test latter vis-a-vis the alleged offences during the time of appreciation of evidence. But their evidences cannot be discarded on the argument of learned defence counsel. On the point of minor contradiction, and omissions.

Let us discuss each offence as to how far both the parties for able to succeed in their respective stand.

11. As far as the offence U/s. 292 is concerned the primary object of the section is to prevent circulation and traffic in obscene literature. The purpose behind the provision is to preserve such moral values on which there is universal consensus. To attract the offence U/s. 292 there must be public circulation sale or distribution of the alleged obscene writings. Article 19(1) of Constitution guarantees complete freedom of speech and expression. At the same time, however, Clause-(2) of that article makes an exception in favour of existing law which imposes restriction on the exercise of the right in the interest of public decency or morality. The concept of obscenity would differ from country to country, society to society, region to region depending on the standard of morals of contemporary society. The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are opened to such immoral influences and into whose hands a publication of this sort may fall. In the instant case, the accused is alleged to have published derogatory posters on the informant as well as his school boy son projected him as the fake journalist and his son as a junior criminal and pasted those posters in different conspicuous places of Puri town such as Sidhamahavir Railway gate, level crossing, Sarvodayanagar

Railway gate , ATM Counter, Kendriya Vidyalaya, Puri and other Govt. Offices of Puri Town. P.W.1 has deposed same thing in his evidence in Para-3 of his examination-in-chief. The prosecution has exhibited two numbers of posters as M.O.-I wherein the poster publishes “ Nakali Samabadika Biswajit Pattanaik”.

The learned defence counsel in his argument submitted that such M.O. cannot be admitted as a piece of evidence for the reason that the documents are xerox copy can be printed out in any numbers. In absence of any relevancy as to whether such material has been published by the accused in connection to the alleged offence such posters cannot be taken into consideration for admitting as a piece of evidence to prove the alleged offence. Along with publication of such derogatory posters the accused is alleged to have sent several messages having defamatory contents and text to the informant by opening a fake I.D. in a pornographic site i.e. deshihunt.com and attached two mobile numbers of the informant for sending such messages. In para 1 of his deposition P.W.1 stated that on dtd. 18.03.12 at about 12.42 A.M. he got telephonic message on his mobile phone from a mobile bearing No. 9841949018 to his mobile bearing No. 9437280744 where the message contained “ Hello Suchitrarani got to distinct deshihunt.com. In para 3 of page No. 3 P.W.1 has stated in his evidence that the accused used the derogatory remarks on him and on his son in a poster published for pasting in different conspicuous places i.e. “ Biswajit Pattanaik Nakali Sambadika Ranidi Dalal Murkha Bedha Pila” In para-5 of page No. 5 of the deposition of P.W.1 it has been noticed that police had seized hard copies of 70 Nos. of SMS and 3 Nos. of posters on the production of the informant in presence of the witness Sunil Kumar Mishra and Kasyapa Ambarish. P.W.1 proved the seizure list vide Ext. 7 and Ext. 7/1 is his signature thereon. In para-7 P.W.1 has denied the suggestion given by the learned defence counsel that there is no connection in publication of that article and the defamatory act done by the wife leading to this case.

The learned defence counsel tried to discredit the evidence of the P.W.1 in his cross-examination wherein the P.W.1 has stated in

Para-35 that his wife does not have personal mobile. He was receiving the defamatory messages since 2011. He cannot say the exact date when he first receive the said messages. Since 2011 till the date of filing of F.I.R. i.e. on 21.03.12 he had received 70 Nos. of defamatory messages . He had received several calls during those periods but he cannot say the exact number of calls he had received. In para-36 of his evidence P.W.1 has stated that he does not remember whether the phone number from which the messages were sent was available in the said print out or not. In those messages “ Hello Suchitrarani” was mentioned but, he cannot say as how many messages in the name of his wife Suchitrarani Pattanaik was mentioned. Ext. 9 is the seizure of messages sent to the informant.

Here the learned defence counsel argued that the none of the messages in Ext. 8 printed therein contained with sexually explicit subject. But, on the perusal of Ext. 8, it has been noticed that there were some messages wherein the sexually explicit sentence and word are used such as “ I want to have sex with your wife, Hello Suchitrarani got your listing in wife sharing group” All these messages from Serial No. 1 to Serial No. 70 were the messages communicated in the year 2012. Being one of the seizure witness P.W.2 has deposed to have present during the time of seizure of hard copies those messages and those two posters containing defamatory words such as “ Nakali Sambadika” by the I.O.. P.W.1 proved his signature in the seizure list vide Ext. 7/2 and Ext. 8/1. P.W.3 has corroborated the evidence of both P.W.1 and P.W.2 by stating that the accused has pasted posters in the name of his husband and son by saying “ Nakali Sambadika Junior Dalal , AIDs patient in front of Kendriya Vidyalaya and other places in Puri town”. She has further stated that such act had damaged their reputation in the society. Prior to seven to eight months back on dtd. 31.08.12 several messages were coming to the mobile phone of her husband bearing mobile No. 9437280744 containing obscene messages. He was also receiving calls from different places outside Orissa. On being asked her husband informed him that one fake account was created in her name i.e. “Suchitrarani” in a

pornographic website namely deshihunt.com. From the evidence of P.W.3 it has been noticed that she has no direct knowledge about the messages. But, what she has deposed after being informed by her husband. P.W.11 has corroborated the evidence of P.W.1, P.W.2 and P.W.3 by stating that on 31.08.12 he seized hard copy of 70 Nos. of SMS containing sexually explicit materials and the sex with suchitrarani pattanaik and two numbers of posters scribed as Nakalai Sambadika, Biswajit Pattanaik from the house of the informant. He proved the M.O.-I and M.O.-II where those posters are marked as material object.

In para-5 P.W.11 deposed that being the I.I.C., Cyber Crime P.S. he was authorised by S.P., C.I.D., to operate the e-mail account of S.P. C.I.D. The support team of deshihunt.com provided the account details of two fake profiles in the name of suchitrarani and Debaswati. During the course of investigation he further discovered that the accused had registered the profile suchitrarani while using yahoo e-mail account of Biswajitpattanaik6667@ yahoo.in from the I.P. address 117.197.244.155. Thereafter, correspondences were made with yahoo India for the submission of user registration detail of said account. He proved the letter to yahoo India through the Addl. S.P., C.I.D. vide Ext. 27 and Ext. 27/1 is the signature of Addl. S.P. , C.I.D., the Jaysree Kundu which he acquainted with. Para-6 of the deposition of P.W.11 reveals that he received information from yahoo.India on 22.08.12 regarding the 2 Nos. of e-mail accounts namely Swati call girl h.p @ yahoo.in and Biswajit Pattanaik667 @ yahoo.in. From that report it was ascertained that the said profile was created on 07.01.12 at about 13.23.7 GMT which corresponding to the I.P. address 117.197.244.155 belonging to BSNL net service provider. Further correspondence was made to deshihunt.com for providing the date and time of the BSNL fake account which P.W.11 proved vide Ext. 29 and the receipt letter from deshihunt.com on 23.08.12 through the e-mail account of Addl. S.P. C.I.D. which is marked as Ext. 30. Ext. 30 reveals that the profile in the name of suchitrarani pattanaik which was registered on 07.01.12. Further correspondence was made to D.G.M., BSNL for providing user subscription detail and the call details report of the

complainant's mobile for the period from 01.11.11 to 28.08.12 which is marked as Ext. 33.

12. Now the basic question is as to whether these are the messages containing obscene subject sent from the any electronic device of the accused to the informant or not. For that purposes the prosecution has taken the help of P.W.7, P.W.8, P.W.9, P.W.11, P.W.12 and P.W.13. From the evidences of these prosecution witnesses it is elicited that the informant used to get obscene messages in his mobile No. 9437280744. The land line telephone along with internet connection was installed by BSNL in the house of accused Jayanta Kumar Das situated at Sidhamahvir Patna, Kumbharapada P.S., Puri. The documents which has been marked as Exts. 11,12,13,14 are the connecting documents relating to the telephone connection bearing the land line No. 06752250056 which are registered in the name of Ralaxmi Das, the wife of Jayanta Kumar Das. In para-8 P.W.11 stated that during the course of investigation and after verifying the communication made for different website it was found that the accused had created fake profile I.D. in the deshihunt.com using the yahoo server by creating fake e-mail I.D. in the name of the complainant i.e. Biswajit Pattanaik 6667 @ yahoo.co.in which was created on 07.01.12. The I.O. specifically stated in Para-11 of his deposition that during the search and seizure it was ascertained that the accused himself and his wife Rajlaxmi Das were were present in the alleged house. He also ascertained that local BSNL service provider vide demand No. M8342 dtd. 13.03.06 issued broadband connection under Home Plan 250 in respect of the telephone No. 06752 250056 in favour of Smt. Rajlaxmi Das in payment of Rs. 1474/- of accused Jayanta Kumar Das. Thereafter the internet broadband connection was provided to him on 21.09.2012.

It is revealed from evidence of P.W.11 that on 13.03.06 broadband application was made and on 20.05.06 another application was made by Rajlaxmi Das to change the internet plan from 250 to 900. The CDR of complaints mobile No. 943728044 sent by the BSNL

vide Ext. 35 for the period from 01.11.11 to 24.08.2012 which reveals that P.W.1 had received several obscene message from different phone numbers which tallied with the list of SMS submitted by the complainant along with F.I.R. During the course of argument the learned defence counsel raised the point that the I.O. has seized the modem other than the modem connected in the computer system for internet connection. But the learned A.P.P. already answered that the I.O. has not seized one modem, but, two modems among which one of them was used for accessing internet connection.

During the course of argument, the learned A.P.P. cited a decision i.e. **Aveek Sarkar and another Versus State of West Bengal and other reported in 2014 4 S.C.C. ,2567**, wherein it is held that only those sex related materials which have a tendency of exciting lustful thoughts can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.

13. In another decision **S. Khusubu Versus Kanniammal and another which was later clarified in Samaresh Bose Versus Amal Mishra , AIR 1986 Supreme Court 967** where the Hon'ble Supreme Court held that in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author, the judge should try to understand what is it that the author seeks to convey and whether the author conveys has any literary and artistic value, Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have on the minds of the reader. Section 292 I.P.C. does not make knowledge of obscenity an ingredient of the offence but absence of such knowledge may be taken in mitigation. Mens rea will be required before the offence of selling or keeping for sale of an obscenity object can be said to be completed.

In **Ranjit D. Udeshi Versus State , reported in AIR 1965 SC 881** it is held that the circumstances of the case will determine the criminal intent and it will be the matter of proper inference from them.

14. Both the parties has admitted to have enmity prior to the occurrence. The enmity therefore cannot be undermined for the genesis of this case which can be the mens rea for this cause of the offence. The documentary evidence and so also the corroborative oral evidences particularly the evidence of P.W.1, P.W.2, P.W.3, P.W.7 and P.W.11 indicate that the accused is the author of such crime . Sexually explicit subject such as I want to have sex with your wife. "Hello Suchitrarani" got your listing in wife sharing group". Which has been derived from those 70 Nos. Of messages sent from the electronic device by the accused is certainly vulgar and obscene in nature and the use of such obscene word and sentence definitely lascivious in character and the publication and communication or public exhibition and circulation deproved the morals of the victim -informant as well as his family.

15. per the of constitution, it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. This freedom is subjected to reasonable restriction which may thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292 I.P.C. many manifestly embodies such a restriction because the law against obscenity seeks no more than to promote public decency and morality.

With regards to the above discussion the prosecution has successfully proved the offence U/s. 292 I.P.C. beyond reasonable doubt.

16 The essential ingredients of the offence U/s. 465 I.P.C. are as follows;

- (i) The accused prepared a false document or electronic record,
- (ii) He did it with false meaning of written instrument for the purpose of fraud or deceit;
- (iii) The document or electronic record was prepared by the

dishonestly or fraudulently;

(iv) He did it with intention of causing wrongful gain to someone and wrongful loss to another.

17. From the above discussion U/s. 292 I.P.C. it is found that he accused has prepared a false document of electronic record by opening a fake I.D. in favour of the wife of the informant in a porn website i.e. deshihunt. Com. The defence has been found selective in approach for discrediting the allegation made by the complainant. It is the accused who is the master mind as well as the author of creating fake I.D. in the name of wife of informant Suchitrarani in the porn website i.e. deshihunt.com. The learned defence counsel tried to disbelieve the version of the informant by branding him as a lair on the way of argument. Besides, the defence has taken the plea that the prior hostility is the cause of the initiation of false allegation by the informant against the accused. It is admitted that the informant has enmity against the accused but it cannot eliminate the fact that the accused had no enmity against him prior to alleged offence. Another allegation against the informant raised by the defence that the informant is also involved with mis-appropriation of fund from the red cross for which the accused had lodged a criminal case against him. But later on, it is found that case was ended with final report where no protest petition was filed from the side of the accused. Anyone can make any allegation against the anybody. If the result is received contrary to the expectation and the complainant has not taken any step against such result then the allegation seems to be invalid and baseless which is found in case of the allegation of the accused to the informant. Where it is alleged on behalf of the prosecution that a deed is forged it is not sufficient for the prosecution to prove that it is improbable that the deed is genuine but it must prove for certain that the deed is forged. In Para-4 P.W.1 has already admitted that the accused has filed a petition against him before the Collector and Home Secretary alleging the mis-appropriation of money belonging to Redcross. So also he has further deposed that the accused had also filed a false case regarding the mis-appropriation of money at Town P.S. in which final report has been

submitted by the I.O. as a false case. But both the occasion the accused did not file any protest petition against the final reports submitted by the police

18. Ext. 37 reveals that there are two IDs namely Swati call girl hp @ yahoo.in and Biswajit Pattanaik6667@ yahoo.in were created. The evidence of P.W.11 corroborate with Ext. 14 , Ext. 15 and Ext. 18. Ext. 15 reveals that 1st November, 2012 a request letter for dis-connection of broad band from the telephone No. 06752250056 was made from Smt. Rajalaxmi Das, wife of Jayanta Kumar Das. The evidence of P.W.11 corroborates Ext. 30 which reveals that the profile Suchitrarani was registered on 07.01.12. In para-6, P.W.11 stated that from the report of D.G.M. , BSNL, it is revealed that the I.P. address 117.197.244.155 correspondence to Rajalaxmi Das to Kala Bagicha, Sidhamahavirpatna, Puri. The account was used on 07.01.12 from 18.16.33 IST to 22.12.02 IST from one user I.D. Jayant_das_1 puri @ BSNL.in. And the accused Jayanta Kumar Das conected to the internet I.P. address to BSNL ISP from Telephone No. 06752250056 and created the fake e-mail account in the name of Biswajit pattanaik and also created fake profile having I.D. 018072 in deshihunt.com web site. It reveals from the evidence of P.W.11 that on the verification of deshihunt.com web site he found various details regarding sexually explicit material uploaded in that web site. P.W.8 and P.W.9 provided necessary information asked by the I.O. which are marked as Ext. 11, Ext. 12, Ext. 13, Ext. 14, Ext. 15, Ext. 16, Ext. 17, Ext. 18, Ext. 19, Ext. 20, Ext. 21, Ext. 22. From the above discussion, it is noticed that the accused is responsible for the creation of false document or electronic record. In the instant case, the accused is found to have opened forged and fake account in favour of the wife of the informant. He did it dishonestly and fraudulently to harass and shake the reputation of the informant. Since the prior enmity is the cause of the commission of such act so the revengeful intention is the wrongful gain of the accused and the destruction of social prestige and moral of the informant is the wrongful loss of the informant. Thus the prosecution has proved successfully the offence U/s. 465 I.P.C. against the accused.

Since the harming of reputation is caused to the informant through this wrongful act of the accused by forged preparation of fake I.D. the offence U/s. 469 is also proved against the accused.

19. With respect to the offence U/s. 499 I.P.C. the learned A.P.P. cited one decision i.e. **Gobinda Pershad Pandey and another Versus G.L. Garth , reported in 1901 ILR 28 Kolkata 68** wherein it is held that the duty of the court to consider the obscene matter by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in those whose hands the book is likely to fall and in doing so one must not overlook the influences of the book on the social morality of our contemporary society. The learned A.P.P. argued during the time of argument that by knowing all the accused published and created fake profile in the name of the wife of the complainant and more so the complainant mobile number of the complainant to give with intention to cause injury to the reputation of the complainant and in contrary the accused was happy to take revenge against the complainant. The complainant has specifically stated before the court that due to such messages and fake profile he himself and his wife got insulted, annoyed and defamed in the society causing injury to his reputation and thereby the accused is liable U/s. 500 I.P.C..

20. The penal section of 499 is Section 500 I.P.C.. Section 499 constitutes an offence of defamation, for this the law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. In the instant case the informant and his family members are the victim of this case. P.W.1 deposed to have annoyed and insulted after getting the messages in his mobile phone containing the subject such as " I want to have sex with you Hello Suchitrarani". Such messages damaged his name and reputation and fame for being a journalist. It reveals from the evidence of P.W.3 that she also perceived their reputation being damaged in the society by

the wrongful act of the accused. Such as creation of fake account in her name i.e. suchitarani pattanaik in porn website namely deshihunt.com and publication of derogatory posters against the name of her husband and her son. The essential ingredient of the offence i.e the imputation should have been made or published with the intention of harming or with the knowledge or with reason to believe that the imputation will harm the reputation of such person.

In M.C. Verghese Versus T.J. Pannan, reported in AIR1970 S.C. 1876: - 1970 CrL. Law Journal 1651) and in Valmiki Faleiro Versus Lauriana Fernandes 2005 CrL. L.J.2498 (Bom.), it is held that the essence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. The type of defamation and the manner in which the defamation was made are vital for proving this offence.

From the evidence of P.W.13 it is revealed that the person using hard disk has published the defamatory subject and text. The evidence of P.W.12 elicits that the accused was the user of such seized hard disk. The evidences of victims, particularly the evidence of P.W.1 and P.W.3 reveal that such publication of vulgar language cause imputation to their social prestige and image. From the act of the accused it is proved that the intention of the part of him to harm the reputation of the complainant and he had knowledge and belief that the imputation will harm the reputation of the informant and his family. Considering the above facts and circumstances the offence U/s. 500 I.P.C. is proved against the accused.

21. For the sake of convenience in appreciating evidences for the offence U/s. 66(C)/67/67(A) of I.T. Act, 2008 are discussed together. During the course of argument, learned defence counsel questioned the application of mandatory provisions of Section 79A & 80 of I.T. Act Section 45 of Indian Evidence Act, 1972 by the prosecution during the time of investigation.

22. The learned defence counsel challenged the admissibility of the electronic records due to non-compliance of the mandatory provision under I.T. Act. Further the learned defence counsel stated that before the Hon'ble Apex Court the prosecution took the plea that even if the C.F.S.L., Kolkata is not notified as an examiner of electronic evidence U/s. 79 of Information Technology Act. The notification covering U/s. 293 Cr.P.C. in any case serves the purpose. And report of the said laboratory would be admissible to patch the lacunae in Ext. 13 and I.P. address and Ext. 33 C.D.R. The prosecution examined D.G., BSNL as P.W.12 for proving the exhibits. Though the prosecution evidence was closed prior to that. Again the prosecution has also examined L. Nato Singh the Examiner of C.F.S.L., Kolkata as P.W.13. The defence raised the objection of the authenticity of Ext. 32 and Ext. 33 as there is no certificate from the side of the expert available though these are necessary for its admissibility under I.T. Act. By taking the help of provision U/s. 45 A of Evidence Act, the learned counsel for the accused argued that for the purpose of Section 45 A Examiner of electronic evidence shall be an expert from the mandate of Section 79A of Information Technology Act and Section 45A of Indian Evidence Act. It is crystal clear that the purpose of expert of opinion electronic form of evidence before any court the report of examiner of electronic evidence notified by Central Government or State Government is necessary. In absence of such report the evidence cannot be treated as expert opinion in the meaning of these two sections of Information Technology Act and Evidence Act. In the case in hand, Investigating Agency sent the same to the C.F.S.L., Kolkata. But not filed Gazetted notification of Central Government before the court that the said agency as the examiner of electronic evidence in the means of Section 79A of Information Technology Act, 2000 and Section 45 A of Evidence Act. So such opinion of C.F.S.L., Kolkata cannot be the opinion of an expert in the meaning of Information Technology Act and the same is not admissible in evidence. The learned defence counsel further submitted that the compact disc provided by the State Agency NIC, Bhubaneswar for extracting the hard copy is not admissible in the evidence. To

substantiate his argument, the learned defence counsel cited some decisions such as

Anvar P.V. Versus P.K. Basheer and Others, reported in 2014 59 OCR S.C. 744 wherein the Hon'ble Court emphasises that in order to make any electronic record admissible the procedure prescribed U/s. 65 B of Evidence Act needs to be followed.

He has cited another decision i.e. **Dinesh Tiwar Versus State of U.P. and Another, reported in 2014 , 59 OCR (S.C.) 762, Sharat Babu Dgumarti Versus Govt. Of NCT of Delhi , reported in (2017) 6 OCR (SC) 384. Narayan Chandra Nayak Versus State of Orissa, reported in 2012 Supplementary 2 OLR 892.**

23. The learned defence counsel raised the question that the I.O. had no power to seize the electronic device from the house of the accused U/s. 80 of the I.T. Act. To such question, the learned A.P.P. answered that the Section 80 of I.T. Act provides the search and seizure in a public place by an officer not a below the rank of Inspector. The present case the I.O. himself an officer in charge of police. He had power to search and seizure U/s. 102 read with Section 165 Cr.P.C.. Section 80 of the Act itself saves the provision of Criminal Procedure Code, 1973. So the argument of the defence in contrary to I.T. Act and Criminal Procedure Code. So the Inspector, being the I.O., had the authority for search and seizure from the house of the accused Jayanta Kumar Das. The learned A.P.P. further submitted that there is no notification as per the information received by the petitioner state at the same time it is also argued that Ministry of Home Affairs has issued notification dtd. 26.07.13 as per which certain laboratories are notified as an expert laboratory whose evidence admissible in the court of law within purview of Section 45 of the Indian Evidence Act, 1872. The learned A.P.P. further pointed out that C.F.S.L., Kolkata is a laboratory, Delhi authorised as an expert laboratory whose evidence shall be admissible for the purpose of Section 293 Cr.P.C.. Though C.F.S.L, Kolkata not notified as examiner of electronic evidence U/s. 79A of I.T. Act yet it can fulfil the purpose U/s. 293 Cr.P.C.. The opinion of L. Nato Singh, C.F.S.L., Kolkata is admissible U/s. 293 Cr.P.C. read with

Section 45 of Indian Evidence Act as he was an expert U/s. 45 of Indian Evidence Act.

24. Section 45 A of evidence Act (Opinion of Examiner of electronics Evidence) envisages that when in a proceedings, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resources or any other electronics or digital form, the opinion of the Examiner of electronics Evidence referred to in Section 79A of the Information Technology Act, 2000. (21 of 2000) is a relevant fact.

Explanation: For the purpose of this section, Examiner of electronic Evidence shall be an expert.

25. Section 79A of Information Technology Act, 2000: The Central Government to notify Examiner of Electronic Evidence. The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.

Explanation:- For the purposes of this section, “ electronic form evidence” means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.

26. Section 293 Cr.P.C. envisages that (1) Any document purporting to be a report under the hand of a Government Scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this code, may be used as evidence in any inquiry, trial or other proceeding under this code. (2) The court may, if it thinks fit, summon and examine any such expert as to the subject matter of his report.(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant

with the facts of the case and can satisfactorily depose in Court on his behalf. (4) This section applies to the following Government Scientific experts, namely;

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b) the Chief Controller of Explosives;
- (c) the Director of the Finger Print Bureau;
- (d) the Director, Haffkeine Institute, Bombay;
- (e) the Director, (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) the Serologist to the Government;
- (g) any other Government Scientific Expert specified by notification, by the Central Government for this purpose.

27. Certificate U/s. 65(B) of Indian Evidence Act is mandatory. Section 65 (B) of Indian Evidence Act, 1972 makes every electronic record produced in evidence in the inspection to the court. When a document is an electronic record within the definition of Section 2(1)(t) of the Information Technology Act, 2000, it must be fit along with a certificate in compliance of the conditions mentioned in Section 65(B) of the Evidence Act. However, if the original electronic record is produced in the court the compliance of Section -65 (B) is not mandatory. It is settled principle of law that secondary evidence is only admissible in court when the person who prepared the copy of the original document, must have seen the original document itself [**Bank of Baroda, Bombay Versus Shree Moti Industries, Bombay and Others, reported in AIR2008 Bom.201**]

In Rakesh Kumar and Others Versus State, 2008(163) D.L.T. 658, it is held that the computer generated electronic records is admissible at the stage of trial only if proved in the manner specified by Section 65(B) of Indian Evidence Act.

28. In **Herpal Singh @ Chota Versus State of Punjab**, Hon'ble Apex Court reiterated that any electronic records in the form of

secondary evidence cannot be admitted in evidence unless a certificate U/s. 65(B)(4) of the Evidence Act is produced. In **Anvar P.V. Versus P.K. Basheer and others**, the Hon'ble Supreme Court observed that as the prosecution had relied upon secondary evidence in the form of printed copy of call details even assuming that the mandate of Section 65(B)(2) had been complied with, in absence of certificate U/s. 65(B)(4) the same has to be held in admissible in evidence. However, the court added the charges against accused persons, including the appellants, stand proved beyond reasonable doubt even without considering the call detail.

29. The certificate U/s. 65(B) of the Indian Evidence Act is mandatory for the purpose to show that the evidence is genuine. Whoever claims that the computer generated evidence was produced from his computer shall merely have to certify on the document that the relevant record in question is genuine and has been produced from his electronic device. After that he has to sign it. This statement shall be titled as certificate U/s. 65(B) of the Evidence Act. The hard disc which may contain a electronic document also cannot be considered "Primary document". Since it is only a "container" and real electronic document is an expression in binary language which cannot be read by a human being and needs to be interpreted with the assistance of binary reading device(computer operating system + application). Considering the interpretation U/s. 65(B) of Indian Evidence Act the certificate under this section as a matter of fact to the effect that what on the saw what on the reproduced as a computer output faithfully. This can be done by any person who is observing an electronic document in his computer and once it to be produced as an evidence. It is not necessary that a document from yahoo website has to be certified only by a yahoo server administrator. The certificate can be given by any person who can lawfully access the document in electronic form who understand the contains and is considered as an expert in such domain.

30. The evidentiary value of electronic device is widely discussed U/s. 65A/ 65D of Indian Evidence Act, 1972. The sections

provide that any information contained in an electronic record which is printed on paper stored, recorded or copied in an optical and magnetic media produced by a computer is deemed to be a document and become admissible in proceedings without further proof or production of the original.

In State Versus Navajit Sandhu, reported in 2005 11 S.C.C. 600. The Hon'ble Apex Court while examining the provision of newly added Section 65(B) held that it may be that the certificate containing the details in specific (4) of 65(B) is not filed but that does not mean that secondary evidence cannot be given. It was held by the court that the law permits such evidence to be given in the circumstances mentioned in the relevant provisions namely Section 63 and 65 of Indian Evidence Act.

As per the I.T. Act, 2008, Section 79(A) empowers the Central Government to appoint any department, body or agency as an examiner of electronic evidence for providing expert opinion of electronic form of evidence before any court or authority. Electronic form of evidence here means any information of probative value i.e. stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, mobile phones, digital fax machine. Further as per Section 85(B) of Indian Evidence Act there is a presumption as to the authenticity of electronic records in case of secured electronic records.

31. The learned defence counsel argued that the evidence of P.W.13, L. Nato Singh, the Scientific Officer of C.F.S.L., Kolkata is not admissible as it has not complied with the mandatory provision of Section 79(A) of Information Technology Act. He further argued that the C.F.S.L., Kolkata has not been declared or notified either by the Central Government or State Government for examining as an expert required U/s. 79(A) of Information Technology Act. Considering the argument of learned A.P.P. as well as made above in discussion, the argument of the learned defence counsel in this context is not sustained for the reason that the evidence of P.W.13 is admissible as per the provision of U/s. 293 Cr.P.C.. Neither the Central Government nor the State Government

has yet to declared or notified any institution for the purpose of providing expert opinion. It does not mean any type of evidences which are produced as a secondary piece of evidence for which the expert opinion is required and in absence of the notification from the side of the Government such evidences stand uncorroborated and the prosecution shall be bewildered on the context of seeking notification from the side of Government. When the opinion of any Scientific Officer is complied with the provision U/s. 45 of Indian Evidence Act and Section 293 of Cr.P.C. then such opinion can be considered as an expert opinion. Even if, the notification U/s. 79(A) of I.T. Act is not available yet it is admissible and the opinion of the expert complied with Section 45 of the Indian Evidence Act 1872 and Section 293 of Cr.P.C. is a relevant fact. On perusal of the Exts. 32 and 33 it has been noticed that the prosecution has complied the mandatory provision required U/s. 65(B) of the Indian Evidence Act as it was certified by the Nodal Officer, D.G.M., B.S.N.L., Orissa, Bhubaneswar. Having regards to above discussion the evidence of both P.W.12 and P.W.13 are admissible by treating them as the expert.

Let us discuss the basis requirement of the alleged offences U/s. 66(C) /67/67(A) of the Information Technology Act , 2008 are available from the evidence of prosecution witness as well as the documentary evidences or not.

32. Section 66(C) of Information Technology Act covers that whoever fraudulently and dishonestly make use of the electronic signature pass word or any other unique identification feature of any person is punishable under the section. The identity theft or account take overs means the phenomenon of filing another person identity . Identity theft is faster growing sector of crime all over the world.

Section 67 of I.T. Act provides the Commission of a person who publishes or transmit or possessed to the public pornographic or obscene materials in electronic form e.g. , sending of offence and offensive e-mail posting defamatory annoying messages etc.

33. Section 67(A) of Information Technology Act provides the punishment for a person who publishes or transmitted in the electronic

form any material which contains sexually explicit act or conduct.

It reveals from the evidence of P.W.12 that being the General Manager Consumer Mobility Sales and Marketing, B.S.N.L. in the month of September, 2012. he received a request from Superintendent of Police, Crime C.I.D., Cuttack for supplying of user information of a specific I.P. address through 2-mail and hard copy. He has deposed in his evidence that internet is a global net work of computer. On the basis of an application to the service provider a connection of internet is given. The I.P. address is a 32 binary number which required to browse internet. The I.P. address is dynamically provided to the user for the specific fashions which is provided by the internet service provider. The I.P. address can only be used by one user at a time. He has submitted C.D.R. of B.S.N.L. service provided regarding the I.P. address of this case. The evidence of P.W.12 reveals that on dtd. 14.09.12 he has submitted the user I.D. details to the S.P. C.I.D., C.B., Cuttack. The user I.D. required by the Crime Branch reflected that such I.D. was issued to Rajlaxmi Das bearing telephone No. 06752250056. The user I.D. to that telephone broadband connection is jayanta_das_1_puri. In the month of February, 2014 a hard copy was sent to the S.P. C.I.D.,C.B., Cuttack. P.W.12 submitted the CDR of the mobile No. 9337280744. The C.D.R. contains the income and outgoing number of the call duration, digital tower date and time along with I.M.E.I. No. and SIM No.. It further reveals from his evidence that the certificate U/s. 65(B) of the Evidence Act was submitted by him.. He proved his signature on the forwarding letter vide Ext. 32/1 and his signature on the certificate issued by him U/s. 65(B) vide Ext. 34/1. He proved the information detail of I.P. address vide Ext. 49 and Ext. 49/1 is his signature thereon. In para-6 P.W.12, has admitted the suggestion of the learned defence counsel that Ext. 49 contains two land line number vide No. 06752250056 and 01905282203. His Officer Engineer Sri P.K. Das has extracted the print copy of the C.D.R under his supervision in his office. Ext. 49 reveals two I.P. address one is the name of Rajlaxmi Das and another in the name of the Rahul Sudha.

34. The evidence of P.W.13, L. Nato Singh, Scientific Officer, C.F.S.L. , Kolkata it reveals that he received a cloth parcel containing opened and three hard disk such as HDQ1, HDQ2, HDQ3 which are computer hard disk . He also received the pendrives such as PDQ1, RNQ1, RNQ2 one horse controller card i.e. HCQ1 one lan card LCQ1, T.V. toner card i.e. TTQ1 Song card SQ1 and one blank hard disc for imaging and analysis. He subjected these articles for Cyber Forensic Test except RNQ, RNQ2, HCQ1, LCQ1, TTQ1 and HQ1. It further reveals from his evidence that he retrived the data from these devices on the basis on key word search. The relevant datas were compiled with one DVD levelled as ICFQ 1302012 DVD and its verification MD5# value is CID86IBBIBD397F 0574 C9259 F4659E25. Then he forwarded the said DVD along with reports. He proved the report prepared by him vide Ext. 40 and Ext. 48/1 is his signature thereon. He proved the M.O. XVII. M.O. XVII reveals the extraction of the contents of the DVD by P.W.13. The extraction of the DVD were printed out in page form from page-1 to Page 322. And the extraction of such copies are marked as Ext. 50 which the P.W.13 proved. P.W.13 proved his signature in Ext. 50 vide Ext. 50/1. The report of the P.W.13 reveals that the person using hard disc has visited the porn web site i.e. deshihunt.com. During his analysis P.W.13 found that e-mail I.D. BiswajitPattanaik667 @ yahoo.in was used to visit the deshihunt.com which was stored in the hard disc. Page 22 of Ext. 50 reveals the key search word suchitrarani and mobile NO. 9437280744 and 9861169406. Page No. 29 to 49 of Ext. 50 reveals the pornographic image available in the hard disc HDQ3.

On being asked by the learned defence counsel P.W.13 has answered in his cross-examination that he does not know the complainant and the accused involved in this case. He also does not know the name of the I.O. of this case. But he has not admitted the suggestion of the learned defence counsel that the I.O. helped him for extracting the hard copy. He has admitted that C.F.S.L., Kolkata is not notified as electronic examination U/s. 79(A) of I.T. Act by Central Government or nor any of the institute in India has been so notified till date. He has been examined the electronic documents since 2003 as

per the provision under section Indian Evidence Act. Whether P.W.13 is considered as an expert or not, this matter has already been discussed above. And by complying the provision of Section 45 of Indian Evidence Act and the provision U/s. 293 Cr.P.C., P.W.13 is recognized as an expert for giving opinion regarding the electronic record. The evidence of P.W.13 reveals that he is no way inclined to any party. The evidence of P.W.13 is symmetrical to the allegation.

35. The hard disk which P.W.13 has retrieved the imaging and analysis were seized by the I.O. during the time of investigation from the possession of the accused. The learned defence counsel is argument regarding the seizure of computer and mobile phone is irrelevant. Because, order to retrieve the data for imaging and analysis the seizure of total computer system is not at all required. What is the relevant is that the hard disk of the computer which was used for the commission of the alleged offence. Ext. 18 elicits the new telephone connection was made by the accused in the name of his wife. Ext. 43 reveals that in page 78 of CDR which has already been marked as Ext. 33 that there was communication made between P.W.7 and P.W.1. The hard copies of SMSs are marked as Ext. 8. The contents and text of the such SMS like "got your message on wife sharing group", "I want have sex with your life", "Hi CPL sweetie sexy" are vulgar and obscene in nature. The accused fraudulently and dishonestly make use of fake I.D. profile by creating the password "Suchitrarani" the name of the wife of the informant to harass the informant. Page-24 to 49 of Ext. 50 bear with pornographic image which are definitely obscene and vulgar any prudent man can assess. These images are available in the hard disc who browse the porn site i.e. deshihunt.com.

36. Section 292 of I.P.C. comprehensively states the circumstances in which obscenity or obscene material is a offence although neither I.P.C. nor the I.T. Act defines what obscenity is yet. Section 292 I.P.C. and Section 67 of I.T. Act (which correspondence to the Section 292 of I.P.C.) explained obscenity to mean anything which is lascivious or appeals to the prurient interest or if its effect is to deprave and corrupt person. Section 67 of Information Technology Act

lays down the law that obscenity is an offence when it is published or transmitted or caused to be published in any electronic form. Transmission may be address to an intendent receipt for his personal use. But that is not relevant. The act is transmission is sufficient to constitute an offence U/s. 67 of Information Technology Act. Therefore, if any obscene material is published or transmitted in any electronic form it is an offence U/s. 67 of Information Technology Act. Therefore, if any obscene material is published for transmitted in any electronic form it is an offence U/s. 67 of Information Technology Act. In the instant case, the accused used to transmit sexually explicit messages to the informant as revealed in Ext.8. Further the accused opened a fake I.D. in the name of the wife of the informant for its misuse and for the purpose of harming the reputation and image of the informant. The learned defence counsel has failed to discredit the evidence of each prosecution witness that the accused is no way connected to this case. The creation of another account in the name of wife of the informant suchitarani Das by the accused in the deshihunt.com by using yahoo website and the messages receipt by the informant from the same web site connected the fact that the person who created the fake account has used that account in the name of the informant and is also the master mind of this cyber crime. On the careful scrutiny of the documentary evidences as well as the oral evidence adduced on behalf of the prosecution the finger definitely indicates towards the accused who is the author of such crime.

37. Having regards to the above discussion, the prosecution has successfully proved the alleged offences U/s. 66(C)/67/67(A) of I.T. Act beyond reasonable doubt.

38. Considering the evidences adduced on behalf of the prosecution the rival contentions of the defence so also the argument of the learned Special A.P.P. it has been concluded that the accused is the master mind and the author of such nefarious activities of sending unsolicited e-mails which are obscene and lascivious posing the threat to the social security and image of the informant and his family. Accordingly the prosecution succeeds in bringing the alleged offences

U/s. 292/465/469/500 I.P.C. r.w. Section 66(C)/67/67(A) of the Information Technology Act,2008 home.

As a result, the accused Jayanta Kumar Das is found guilty U/s. 292/465/469/500 I.P.C. r.w. Section 66(C)/67/67(A) of the Information Technology Act,2008 and convicted thereon U/s. 248(2) of Cr.P.C.

39. Now the question as to whether the present accused is entitled for the beneficial provision of Probation of Offenders Act or not. The basic objective of the Probation of Offenders Act is to give an opportunity to the offender to prove that he can improvise his conduct in society and live in the same society without doing anything that can harm the society. Quoting the words of Mahamta Gandhi who once said” hate the crime not the crimes” which indicates it needs to eliminate crime and eliminating criminals is not the way to do it. The present convict is taking undue advantage of the cyber space by abusing the system in a counter productive way for disreputing the societal image and prestige of the complainant and his wife. Keeping in view the increasing crime rate and its frightening dimension is assumed that undue emphasis on individual offenders at the cost of the societal security can hardly be appreciated as a sound penal policy In **Dharmapal Versus State of Himanchal Pradesh, reported in 2004 9 S.C.C. 681 and later on in Ajahar Alli Versus State of West Bengal 20 , 1310 S,.C.C. 31**, the Hon'ble Apex Court held that modesty of a woman has to be strongly guarded and the court should not show any leniency to the offenders even if the offenders is a minor. Having regards to the guideline of Hon'ble Apex Court, it is necessary to give primary importance for safeguarding public morality and dissent behaviour. Though incarceration is not the basic moto of the criminal justice system yet when it comes the issue like safety and security of the woman then the court should guard the societal interest first than the interest of the victim.

Considering the nature of the offence , the age and character of the offenders and the circumstances in which the crime was committed, the court is of considered opinion that this is not a fit

circumstance to treat the convict in a lenient manner so as to extend the benefit of Probation of Offender Act 1958. So the convict is denied to have got the relief under this provision.

The judgment is dictated and corrected by me and the same is delivered under my seal and signature and pronounced in the open court on this the 4th day of August, 2017.

Sub- Divisional Judicial Magistrate,
Puri

HEARING ON THE QUESTION OF SENTENCE

Heard. The learned Special A.P.P. and the learned defence Counsel on the question of sentence. The learned A.P.P. submitted that all the offences which are proved against convict, Jayanta Kumar Das are harmful and have huge societal impact on the public morality and the safety and security of the people at large. And the complainant as well as his family being victimized by these offences suffered enough loss to their societal image and prestige. So the learned A.P.P. insisted on the imposition of stringent punishment on the convict to give justice to the victims. On the other, the learned defence counsel contended that the convict has no criminal antecedent. Any type of confinement in the jail custody would cause adversity on the dependants of his family. Further the learned defence counsel submitted that keeping the family responsibility of the convict and the age and the character of the convict, the court may take lenient view while imposing sentence of punishment.

In spite of being the first offender and convicted thereon yet the criminal intent of the convict cannot be undermined. The convict has committed the crime which is worryingly high incident of irresponsible behaviour. The vulnerability and the safety of woman is one of the biggest concern of criminal law. When the women became defenceless in cyber space the court must stand in front for their rescue.

Considering the nature, gravity and societal impact, the convict deserves no leniency regarding the imposition of sentence of punishment. Hence, convict Jayanta Kumar Das is sentenced to undergo R.I. for a term of six months and is liable to pay the fine of Rs. 500/- in default S.I. for 15 days for the commission of offence U/s. 292 I.P.C. Further he is sentenced to undergo R.I. for a term of six months and is liable to pay the fine of Rs. 500/- in default S.I. for 15 days for the commission of offence U/s. 465 I.P.C. Further he is sentenced to undergo R.I. for a term of one year and is liable to pay the fine of Rs. 1,000/- in default S.I. for one month for the commission of offence U/s. 469 I.P.C. Further he is sentenced to undergo S.I. for a term of six months and is liable to pay the fine of Rs. 500/- in default S.I. for 7 days for the commission of offence U/s. 500 I.P.C. Further he is sentenced to undergo R.I. for a term of one year and is liable to pay the fine of Rs. 1,000/- in default S.I. for one month for the commission of offence U/s. 66(C) of I.T. Act, 2008. Further he is sentenced to undergo R.I. for a term of six month and is liable to pay the fine of Rs. 500/- in default S.I. for 15 days for the commission of offence U/s. 67 of I.T. Act, 2008. Further he is sentenced to undergo R.I. for a term of two years and is liable to pay a fine of Rs. 5000/- in default S.I. for two months for the commission of offence U/s. 67(A) of I.T. Act, 2008. However, all the substantive sentences of imprisonment shall run consecutively.

The pre-sentence detention period as an U.T.P. which has already undergone by the convict in this case shall be set off U/s. 428 of Cr.P.C.

The seized properties as well as the M.O.s are destroyed after four months of appeal period, if no appeal is preferred and in case of appeal it is subjected to the direction of the appellate court in case of appeal.

The sentenced is dictated and corrected by me and the same is delivered under my seal and signature and pronounced in the open

court on this the 4th day of August, 2017.

Sub- Divisional Judicial Magistrate,
Puri.

List of witnesses examined on behalf of the prosecution.

P.W.1	Biswajit Pattanaik
P.W.2	Sunil Kumar Mishra
P.W.3	Suchitrarani Pattanaik
P.W.4	Anila Anand
P.W.5	Debaprasad Mohanty
P.W.6	Ashok Kumar Mohapatra
P.W.7	Arnab Arun Kumar Paramanik
P.W.8	Brundaban Behera
P.W.9	Bharatirani Das
P.W.10	Bimal Kumar Mallick
P.W.11	Akshya Kumar Nayak
P.W.12	Gurudas Meher
P.W.13	L. Nato Singh

List of witnesses examined on behalf of the Defence

D.W.1	Santosh Kumar Padhi
D.W.2	Amiya Kumar Mohapatra

List of exhibit marked on behalf of the prosecution

Ext. 1	Authority letter for media persons issued by the Election Commission of India.
Ext. 2	postal registration receipts dtd. 31.01.2011
Ext. 2/1	postal registration receipts dtd. 31.01.2011
Ext. 2/2	postal registration receipts dtd. 31.01.2011
Ext. 2/3	postal registration receipts dtd. 31.01.2011
Ext. 2/4	postal registration receipts dtd. 31.01.2011
Ext.2/5	postal registration receipts dtd. 31.01.2011

- Ext. 2/6 postal registration receipts
dtd. 31.01.2011
- Ext. 3 Grievance letter sent to Chief Minister, Orissa
Ext.3/1 Signature of Suchitrarani Pattanaik on the grievance
letter sent to Chief Minister, Orissa
- Ext. 4 Grievance letter sent to Hon'ble Chief Justice, Orissa
Ext. 4/1 Signature of Suchitrarani Pattanaik on the grievance
letter sent to Hon'ble Chief Justice, Orissa
- Ext. 5 Grievance letter sent to Hon'ble Lokpal, Orissa
Ext.5/1 Signature of suchitrarani Pattanaik on the grievance
letter sent to Hon'ble Lokpal, orissa
- Ext. 6 Certificate of register of oriya weekly daily
Ext. 7 Seizure list dtd. 31.08.12 (70 No. SMS)
Ext. 7/1 Signature of complainant in the seizure list dtd.
31.08.12
- Ext. 7/2 Signature of P.W.2 on Ext. 7
Ext. 7/3 Signature of P.W.11 on Ext. 7
- Ext. 8 Hard copies of SMSs.
- Ext. 9 F.I.R.
Ext.9/1 Signature of complainant (P.W.1) in the F.I.R.
Ext. 9/2 Signature and endorsement of P.W.10 on F.I.R.
- Ext. 10 Seizure list dtd. 07.09.12 at Cyber Crime P.S.
Ext. 10/1 Signature of P.W.4 in the seizure list dtd. 07.09.12
Ext. 10/2 Signatue of P.W.4 in the seizure list dtd. 07.09.12
Ext. 10/3 Signature of P.W.5 in the seizure list dtd. 07.09.12
Ext. 10/4 Signature of P.W.5 in the seizure list dtd. 07.09.12
Ext. 10/5 Signature of A.S.I. Ditikrishna Padhi of C.I.D., C.B.,
in the seizure list dtd. 07.09.12
- Ext. 10/6 Signature of A.S.I. Ditikrishna Padhi of C.I.D., C.B.,
in the seizure list dtd. 07.09.12
- Ext. 10/7 Signature of P.W.11 on Ext. 10
Ext. 10A Seizure list dtd. 18.09.12 from the accused Jayanta
Kumar Das
- Ext.10A(1) Signature of P.W.6 in the seizure list dtd. 18.09.12
Ext.10A(2) Signature of P.W.11 on Ext. 10A
- Ext. 11 Demand note of broad band connection
Ext. 12 Application for change of plan
Ext. 13 Advice note for providing broad band connection.
Ext. 14 Application for broad band connection
Ext. 15 Application for closure of broad band connection
Ext. 16. Advice note for telephone connection
Ext. 17 Demand note for telephone connection
Ext. 18 Application for new telephone connection

- Ext. 19 Requisition by Crime Branch I.O. for supply of documents dtd. 07.11.12
- Ext. 19/1 Signature of P.W.8 on Ext. 19
- Ext. 19/2 Signature of I.O. on Ext. 19
- Ext. 20 Another requisition by Crime Branch, I.O. dtd. 07.11.12
- Ext. 20/1 Signature of P.W.8 on Ext. 20
- Ext. 20/2 Signature of I.O. on Ext. 20
- Ext. 21 Point wise report submitted by D.E.T., Puri dtd. 12.11.12
- Ext. 21/1 Signature of P.W.8 on Ext. 21
- Ext. 22 Seizure list dtd. 07.11.12
- Ext. 22/1 Signature of P.W.8 on Ext. 22
- Ext. 22/2 Signature of P.W.8 on Ext. 22
- Ext. 22/3 Signature of P.W.9 Bharatirani Das on seizure list dtd. 07.11.12
- Ext. 22/4 Signature of Suresh Patra on seizure list dtd. 07.11.12
- Ext. 22/5 Signature of Suresh Patra on seizure list dtd. 07.11.12
- Ext. 22/6 Signature of I.O. on Ext. 22
- Ext. 23 Letter to deshihunt.vide No. 776/CID Cyber P.S. dtd. 26.04.12
- Ext. 23/1 Signature of S.P., C.I.D., C.B. on Ext. 23
- Ext. 24 Letter to deshihunt.vide No. 1277/CID-Cyber P.S. dtd. 21.08.12
- Ext. 24/1 Signature of Addl. D.G. of Police, C.I.D., C.B.
- Ext. 25 Letter to Amazon .com vide No. 777/CID-Cyber P.S. dtd. 26.04.12
- Ext. 25/1 Signature of S.P., C.I.D., C.B. on Ext. 25
- Ext. 26 Report of Deshihunt dtd. 22.08.12
- Ext. 27 Letter to Yahoo India Pvt. Ltd. Vide No. 1279/CID-Cyber P.S. dtd. 22.08.12
- Ext. 27/1 Signature of Addl. S.P., C.I.D., C.B. on Ext. 27
- Ext. 28 Letter to D.G.M.(N.W. & O.P.) Office of the C.G.M.T. BSNL, Bhubaneswar vide No. 1282/CID-Cyber P.S. dtd. 22.08.12
- Ext. 28/1 Signature of S.P., C.I.D., C.B. on Ext. 28
- Ext. 29 Letter to Deshihunt vide No. 1280/CID-Cyber P.S. dtd. 22.08.12
- Ext. 29/1 Signature of Addl. S.P., C.I.D.,C.B. on Ext. 29
- Ext. 30 Report of Deshihunt dtd. 23.08.12
- Ext. 31 Letter to D.G.M (N.W. & O.P.) Office of the C.G.M.T. BSNL, Bhubaneswar vide No. 1385 /CID-Cyber P.S. dtd. 07.09.12

- Ext. 31/1 Signature of S.P., C.I.D., C.B. on Ext. 31
- Ext. 32 Report regarding submission of user subscriber details of I.P. addresses by BSNL.
- Ext. 32/1 Signature of P.W.12
- Ext. 33 Report regarding submission of C.D.R. by BSNL.
- Ext. 34 Certificate U/s. 65 -B of Indian Evidence Act, 1872 submitted by BSNL.
- Ext. 34/1 Signature of P.W.12
- Ext. 35 Letter to General Manager BSNL(Mobile), Bhubaneswar vide No. 1401/Cyber Crime P.S. dtd. 17.09.12
- Ext. 35/1 Signature of S.P. C.I.D., C.B. Orissa Cuttack
- Ext. 36 Letter to D.G.M. (N.W.& O.P.) Office of the C.G.M.T. BSNL, Bhubaneswar vide No. 1410/CID, Cyber P.S. vide dtd. 22.09.12
- Ext. 36/1 Signature of S.P., C.I.D., C.B. Orissa, Cuttack
- Ext. 37 Hard copy of report of Mr. Robin Fernades, Executive Compliance, Yahoo India Pvt. Ltd.
- Ext. 38 Letter to D.G.M. (N.W. & O.P.) Office of the C.G.M.T. BSNL, Bhubaneswar vide No. 1466/CID-Cyber P.S. dtd. 08.10.12
- Ext. 38/1 Signature of S.P., C.I.D., C.B., Orissa, Cuttack
- Ext. 39 Spot map
- Ext. 39/1 Signature of I.O. on Ext. 39
- Ext. 40 Report of Sri J.K., Majhi A.G.M, H.R. (Admn.) BSNL, Bhubaneswar
- Ext. 41 Forwarding to C.F.S.L., Kolkata
- Ext. 41/1 Signature of I.O. on request letter for forwarding of Exhibits.
- Ext. 42 Written authority letter of S.P., C.I.D., C.B. for using official e-mail I.D.
- Ext. 42/1 Signature of S.P. on Ext. 42
- Ext. 43 Page No. 78 of C.D.R. already marked as Ext. 33 showing the communication of P.W.7 and P.W.1
- Ext. 44 Certificate issued from Biju Pattanaik State Police Academy
- Ext. 45 Certificate issued from C.E.R.T., India
- Ext. 46 Certificate issued by National Academy of Customs, Excise Narcotics, Mumbai
- Ext. 47 Certificate issued by Vice Chancellor of National Law School of India, University Bangaluru in Association with National Law University, Orissa
- Ext.48 Opinion report received from C.F.S.L., Kolkata

Ext. 48/1	Signature of Director C.F.S.L., Kolkata
Ext. 49	User information datas
Ext. 49/1	Signature of P.W.12 on Ext. 49
Ext. 50	Extract copies
Ext. 50/1	Signature of P.W.13 on Ext. 50

List of exhibits marked on behalf of the Defence.

Ext. A	Certified copy of order of Hon'ble Apex Court in petition for Special Leave to appeal (Criminal) No. 2955/16
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List of Material Object

M.O.I	Two Nos. Of posters.
M.O.II	Two Nos. Of posters
M.O.III	one C.P.U. Cabinet of I-ball
M.O.III/3	Signature of I.O. on M.O.-III
M.O.IV	one Teracom Modem
M.O.IV/1	Signature of witnesses on M.O.-IV
M.O.IV/2	Signature of witnesses on M.O.IV
M.O.V/1	Signature of witnesses on M.O.V
M.O.V/2	Signature of witnesses on M.O.V
M.O. V/3	Signature of I.O. on M.O. V
M.O. VI	H.P. Power Adapter
M.O.VII	Hard Disc Segate of 160G.B
M.O.VII/1	Signature of I.O. on M.O.VII
M.O. VII/2	Signature of Ashok Kumar Mohapatra on M.O. VII
M.O. VII/3	Signature of Ajaya Kishore Mohapatra on M.O.VII
M.O. VIII	Hard Disc Segate of 500 G.B.
M.O. IX	Hard Disc Segate of 120 G.B.
M.O. X	RAM of 1 G.B.
M.O.XI	Broken RAM
M.O. XII	4 G.B. Transcend pen drive
M.O. XIII	Computer 1394 Card
M.O.XIV	SVB Card
M.O. XV	Gmax PCI TV Tuner

M.O. XVI Intex Sound Card of Yamaha

M.O. XVII DVD submitted with the report of C.F.S.L., Kolkata

Sub- Divisional Judicial Magistrate,
Puri

Status of the accused

Name of the accused/ accused persons	In custody	On bail	Represented U/s. 317 Cr.P.C.	Absent/ Present
Jayanta Kumar Das		20.10.12	present	present