

1 C.C. No. 686/PS/2009 JUDG

**IN THE COURT OF ADDL. CHIEF METROPOLITAN
MAGISTRATE, 37TH COURT, ESPLANADE, MUMBAI
(Presided over by Shri M. R. Natu)**

C.C. NO. 3700686/PS/2009

The State (Cyber Cell) ...Complainant

Yogisha @ Yogesh Pandurang Prabhu
r/o. Vashi. ...Accused

**Offence punishable under sections
509 of Indian Penal Code r/w
sections 67, 67A of Information
Technology Act.**

Appearance :

Ld. APP Mrs. Kiran Bendbhar for State
M/s. Bombay Legal for Accused

J U D G M E N T

(Delivered on 3rd July, 2015)

Prosecution case in brief is as under:

1. One Sonali Asoka Sawai lodged a report in Cyber Cell, Mumbai. Reporter was working in the Debold Systems Private Limited, since February 2009. Company provided her laptop, data cards. Prior to 2009, she was working in Mahindra and Mahindra Company. She is having email id sawaisonali@gmail.com. She is also having profile orkut. She come in contact of accused Yogesha Prabhu through this site, they become friend. Then they meet face-to-face, but later

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period, reporter did not like nature of this Yogesha and she unfriend him.

2. On 03/03/2009 she opened her email account referred above, and found that she received one mail from email id so198021@gmail.com, which was unknown. When she opened this email, which was received about 00:00:18 a.m., she found flimsy and vulgar comment on her, but she neglected to the same. When she come back and opened her email account as usual at about 11 p.m. found same style email. She received such emails having vulgar comment on her on 05/03/2009, 06/03/2009, 08/03/2009. The emails were displaying nude photographs, pornographic postures, So she took out prints of all these emails and reported this fact to cyber cell on 9/4/09. She further reported that when enquiry of her application was made, it was found that the emails were received from 15 IP addresses of Airtel and Reliance company. Physical address of first 12 IP addresses was M/s. Wam Bombay Bulk Handling Equipment Industry Private Limited, Plot No. C- 39, B and C, TTC MIDC Turbhe Mahape Road, New Mumbai and House No. 397, sector 40 Gurgaon , Haryana 122001. She reported that accused works in above referred company and also visits at Haryana for company work. She complained that this accused Yogesha outrage her modesty.

3. On this formed report, crime number 110/2009 was registered in Shivaji Park P.S. for offence under section 509 of Indian Penal Code and 67 and 67A of Information Technology Act.

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4. From perusal of papers, it reveals that investigating officer made enquiry about the IP address then got physical address from the service provider and reached to the accused. He seized laptop provided to accused, got it examined through the expert and obtained its report. He also recorded disclosure statement of accused, wherein he agreed it to open disputed email id wherefrom offending emails were sent accordingly, he opened the email id by using password known to him and offending material was found in outbox of the email id so opened. Printouts of these emails were obtained by IO, and accordingly panchnama was carried out. He also recorded statements of witnesses and come on conclusion that accused Yogesh is author of crime, and accordingly submitted chargesheet in court.

5. My learned predecessor vide Exhibit-3 pleased to frame charge for offence punishable under section 509 of Indian Penal Code and 67 and 67(a) of Information Technology Act. Plea of accused is placed at exhibit-4. Accused denied charge and claimed innocence and trial.

6. From the charge following point arise for determination. My finding thereon follows for the reasons discussed below.

Sr No	POINTS	FINDINGS
1	Does prosecution prove that between 3/3/09 to 9/3/09 at about 22.5, five hours from 101/5, second-floor tulips house, road number three Shivaji ParkDadar West, Mumbai. Accused intending to insult the modesty of complainant's end of scene emails containing obscene message and photographs of pornic postures on email ID of reporter Sonali, intending that she shall see it and thereby committed an offence punishable under section 509 of Indian penal code?	Affirmative.
2	Does prosecution prove that in between above period accused sent obscene and pornographic emails on reporter email id sawaisonali@gmail.com by preparing bogus email id so198021@gmail.com through web and thereby committed an offence punishable under sections 67 and 67-A of information technology act?	Charge under section 67 & 67-A not established for want of proof of publishing but offence under section 66E is established.
3	Whether any other offence is established?	As per final order.

REASONS

7. To establish its case prosecution examined, Sonali Sawai (P.W.1) at Exhibit-4. She brought printouts of offending emails which are placed at Articles A to H. She also brought

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her reports on record vide Exhibits 5, 6 and 7. Second witness is panch, Krishna Purohit (Exhibit 8). He turned hostile. Third witness is Amit popatwala (Exhibit 9). He brought panchnama Exhibit-10 on record. Kundan Raut (P.W.4) at Exhibit 10. He also turned hostile. Anil Vishnu Mandoskar (P.W.5) at Exhibit-11 is employer of accused. So as Ashutosh Singh (P.W.6) at Exhibit-12 was though, is colleague of accused. Sonali Mistry (P.W.7) at Exhibit 14, is a Scientific officer of Forensic Lab. She brought her report Exhibit-15 on record. She also identified laptop, hard disk and allied material vide Articles I and J. Mukund Gopal Pawar (P.W.8) at Exhibit-19, is police officer who investigated this matter. Statement of accused is recorded separately at Exhibit-27.

8. Heard both sides at length. Gone through the case laws referred by defence.

9. At the outset it is required to be noted that this is not offence which took place in face to face presence. It took place through web, in that way there is no eye witness of the offence, but, it entirely dependent on circumstantial evidence as rightly pointed out both the parties. While touching to the evidence on record here it will not to out of place to see ratio relied by defence reported in 1991-EQ(SC)-O-210; Jaharlaldas v/s. State of Orissa. In this case Hon'ble Supreme Court spelled on circumstantial evidence and it's appreciation following in quote:

“It is well settled that circumstantial evidence in order to sustain the conviction must satisfy three conditions:

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1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; 2) those circumstances should be of a definite tendency unerringly pointed out towards the guilt of accused; 3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and it should be also to incapable of explanation on any other hypothesis than that of the the guilt of the accused”.

10. The judgment also quoted caution as given in **Hanumant v/s. State of Madhya Pradesh, 1952 SCR 1091**, quoted “in dealing with circumstantial evidence there is always the danger that conjecture or suspicion may take place of legal proof. It is therefore, right to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency.....

Same is the observation in **State of Uttar Pradesh v/s. Ashokkumar Srivastava, 1992 SCR (1) 37**, so needs no reiteration.

11. In light of above law position as to circumstantial evidence, now I will turn to the evidence available on record. From evidence of Kum Sonali Sawai (PW.1) and defence as

well, it come in admitted category that Kum. Sonali Sawai, the reporter and accused were well acquainted with each other. They come across through face book. They become friend on orkut and the relation reached upto the stage, the accused proposed her for marriage knowing that reporter is elder than him i.e. at that time accused was of 31 years aged so as reporter was of 34 years. So here on face identity of accused at personal level of this reporter and accused is not disputed.

12. Further, if we see the evidence of reporter Sonali Sawai (PW.1), it reveals that since 03/03/2009 she started receiving obscene emails. The further dates are 05/03/2009, 06/03/2009, 08/03/2009 and 09/03/2009 of the emails were sent from email id so198021@ gmail.com. The emails which are placed at Articles A to H. If these emails, on face are seen there is no need of giving any special reason to say that these are vulgar contents wherein alleged sexy look of the reporter is displayed by referring organs, I do not find it necessary to quote the contents of this emails. Summary is as under :

- (i) your bib boobs, sexy ass really your true bomb shell
- (ii) I really want to play with u r big boobs
- (iii) yesterday i masturbate by see u. i massage your boobs very hard. play with u r black nipples they are getting harder and harder. then i tested you pink pussy. u r pussy is too cute with small hairs. then i tested your sexy legs. its really grea feeling.
- (iv) i really want to fuck you hard baby, if you want i can pay u also for the night you spend u r boss is very lucky guy, he might be enjoying with you everyday.

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13. The points which are required to be noted from these emails are that who is the sender appearing on these emails and it described as Su jaz <so198021@gmail.com> and these are sent to email id sawaisonali@gmail.com. As far as receiver email is concerned, it is of reporter Sonali Sawai. She brought it on record through her oral evidence and it is also not disputed by defence. By the way here, how the sender described himself is relevant to this matter Article-A described name Sooraj and who is residing near house of reporter since last one year. Admittedly, it is not case of reporter that accused Yogeesha, is known as Sooraj or like alias name.

14. According to evidence of Sonali Sawai as she started receiving vulgar messages, she took out prints of these emails and lodged report/application in Cyber Cell. She deposed that she also found that her profile is created by accused and messages like Articles A to H were spread over net and she started receiving calls from Taxi Drivers, Rickshaw Drivers on her mobile number and they were asking for sex in view of emails received by them. She deposed that accused created profile by giving name Sana Jazz and put her mobile number on said profile and all these facts relied in investigation made by Cyber Cell. According to her, police detected the fact that accused himself created obscene profile and executed offending acts. In her turn, she claims that obscene emails and pictures were sent from same IP address through the laptop of accused which was provided to him by company. She brings on record Exh.5 and Exh.6. On face of

reading of this Exh.5, it reveals that this Sonali has lodged these report after the facts were detected by Cyber Cell.

15. As already stated the articles which are placed on record i.e. A to H are nothing but vulgar and can be definitely termed as insulting the modesty of woman. The fact that the reporter received these emails, the sender sent these emails with intention to open it and seen by receiver, the aspect like showing words which are of in vulgar nature to intrudes upon the privacy of such woman are complying.

16. Now vital question in this matter is whether the evidence brought on record connect the accused as author of crime and for that purpose scrutiny of relevant evidence needs to be made. Let us do this, effort in up coming discussion.

17. In series, the evidence of police Mukund Gopal Pawar (PW.8), Investigating Officer comes first. According to him he is having training in Cyber Law, Computer Forensic and in Ethical hacker. He attended various seminar in India as well as in America. These facts are brought on record by way of cross-examination and by this facet of cross-examination it can be safely stated that the Investigating Officer is having ample knowledge in respect of cases and its investigation.

18. According to his evidence, he carried out all technical investigation and it revealed that the offending emails are generated from email id s0198021@gmail.com and forwarded to email i.d. sawaisonali@gmail.com and this fact has been already pointed out at the time of discussing the

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contents of Articles A to H, so needs no more discussion. Mukund Pawar (P.W.8) deposed that he issued request email to gmail Server in USA and asked details of disputed email id so198021@gmail.com (herein after mentioned as disputed emails for the purpose of brevity and email id sawaisonali@gmail.com is referred as reporter's email). He brings on record Exh.20 and 21 in respect of this communication made with gmail Server which is made from the official email id officer@cybercellmumbai.com to lisapac@google.com wherein it is clear that such email was sent by this Investigating Officer and he received letter from server which is placed at Exh.21. This being a extract of computer and as received by Investigating Officer can be very well read in discussion. Further, if we see the cross-examination in respect of communication with gmail server, this aspect defence is silent and so I have no hesitation to accept the fact that Investigating Officer made effort to collect information from google search/engine and Exh. 20 and Exh.21 can be very well relied.

19. Investigating Officer Mukund Pawar further deposed that the google search forwarded details of the disputed emails wherein IP addresses were mentioned. 12 IP addresses were belonging to Airtel and 2 IP addresses were belonging to TATA Communication. The data provided by google search is from February, 2009 to March 2009 of various dates and described 12 IP addresses and 2 IP addresses of different service providers i.e. Airtel and TATA Communication.

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He deposed that after receiving communication, he found 12 IP addresses and then he took search of these IP addresses of google search engine, those are Airtel and TATA Communication. He deposed that after finding out these two service providers he issued email to both these service providers vide Exh. 22 and Exh.23. There is also no dispute about issuance of these letters/emails in entire cross-examination. Exh, 22 and Exh,. 23 shows that this Investigating Officer by using official email id of Cyber Cell issued email to M. Patil@Airtel.in and the service provider, provided physical address of this IP addresses. Exh. 24 and Exh. 25 are also same communication with service provider and in reply the service provider gave 2 physical IP addresses 1) Wam Bombay Bulk Handling Equipment Industry Pvt. Ltd., Plot No. C-39, B & C, TTC MIDC, Turbhe Mhape Road, Pawane, Navi Mumbai given by TATA Communication and 2) physical address is house no. 397, sector 40, Gurgaon, Haryana provided by Airtel.

20. He deposed that after getting/collecting this information, he called reporter Sonali Sawai and asked whether she know any person working on above addresses more particularly Wam Bombay and she disclosed that accused Yogesh @ Yogisha Prabhu is working in Wam Bombay and he travel through out India in relation to company's work, and that all other fact of reaching upto the proposal of marriage and then break-up between them. He deposed that he disclosed to Sonali Sawai, reporter about the finding of

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offender and asked her whether she want to proceed further and on consent given by this reporter, the report Exh. 5 and Exh.6 was lodged and crime was registered at Shivaji Park Police Station on her report.

21. He deposed that after registration of crime, he himself carried out further investigation, he visited office of Wam Bombay, made inquiry with Anil Manduskar, called Yogesh Prabhu there, and in inquiry accused confessed his guilt. Technically, though his confession is not admissible on record as it is made to police, it clears the line of investigation of crime. The witness brings on record that then he seized hard-disk of the laptop which was allotted to accused vide Exh. 10, recorded statement of Manduskar as well, arrest accused vide Exh. 26. As far as arrest of accused and seizure of laptop is concerned, it reveals that accused himself in his statement u/s 313 of Criminal Procedure Code do not dispute this fact. He admits his arrest as well as the fact that laptop was seized by police with rider, that because of threats he handed over laptop as it was in office.

22. By taking pause here and discussing further evidence of Mukund Pawar, I will advert my attention towards testimony of witness whose references have been made by this Makund Pawar i.e. Manager Anil Manduskar. The testimony of Anil halfhearted. Though, he confirmed that accused is his employee, he travel for the work of company, laptop and mobile was provided him for the purpose of his job alongwith internet connection. He denied to corroborate the seizure of

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hard disk of laptop provided to accused. Though he was declared hostile and nothing fruitful come on record and the two lines cross-examination of this witness by accused brings on record that the laptop given to accused was used by his group mates in company also and that they all used to avail internet facility.

23. So far as panch on seizure panchanama is concerned, who is Kundan Mahendra Raut (P.W. 4), he deposed that one hard disk was with police and it was seized in conference room of office of Wam Bombay vide Exh. 10. But, he denied to corroborate the fact that the hard disk was given by accused and then it was seized by police. He is also halfhearted, first he identified hard-disk(Article-A) when asked by prosecution and denied to identify firmly when it was asked by accused. If we see the tendency of these witnesses of halfheartedness, it reveals that these two witnesses are winover against prosecution and they did not support prosecution on technical aspect of seizure.

24. Now, I will proceed further to discussed evidence of Mukund Pawar and the investigation carried out by him after seizure of the hard-disk. According to him on 18/04/2009 accused gave disclosure statement Exh. 27 and showed readiness to open the disputed email i.d. by using password known to him and he brought Exh. 27 on record accordingly. He, alas, the panch witness Krishna Verdhaji Purohit does not corroborate the fact that accused facing trial showed readiness to open the disputed email i.d. by using

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password known to him. To attract provision of section 27 of Indian Evidence Act as the word “password” come in category of fact which was only within knowledge of accused who was in custody. This Krishna Verdhaji Purohit simply claims that at Shivaji Park Police Station his two signatures were obtained and nothing like incident of giving statement by accused, opening of disputed email i.d. by using password known to him alone, and extract print-outs from the disputed email id at the office of police.

25. In this connection, if we proceed further with evidence of Mukund Pawar, he claims that the accused opened disputed email id by using password known to him, then inbox and sentbox of email id were searched and in sent box email dated 03/03/2009, 05/03/2009, 09/03/2009 were found which were sent to the reporter's id alongwith the obscene attachments. He deposed that all of these emails, print outs were obtained by using computer and printer provided at office of Crime Branch and he accordingly brought on record Exh.29-A to 29-F. These are printouts of screen shots of disputed email id which shows window like crime 110/09, 9 mails, inbox 30198 and documents, screen shot of sent box which discloses the relevant dates mentioned above and 6 attachments thereto of vulgar photographs and disputed vulgar messages of which mentioned, has been made at the time of discussion of Articles A to H. It is pertinent to note that all these extracts and panchanamas bear signature of accused as well that is to say Exh.27 to Exh.29-F. In this respect testimony of Investigating

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Officer is challenged. It is required to be noted down the suggestion put to witness that “it is not true to say that even though the accused opened email i.d. as disclosed in his disclosure statement, it cannot be said that he did not sent objectionable emails to other end”. If this particular suggestion is read by literal way it does not dispute that accused did give disclosure statement and he opened i.d. If this aspect is seen, hostility of the panch witness on this aspect is washed away. In view of the suggestion what it is suggested that though, accused opened email id, it cannot be said that offending emails are sent by him.

26. In backdrop of above factual aspect brought on record, here, I will like to note that email id are having unique password and it can be known to only profile user or gmail user. If entire tone of cross-examination is seen what is suggested is that the laptop and internet might have been used by other colleagues of accused. It is not case of defence that this particular/disputed email id was used by office staff for carrying out its official work. The disputed email id is not general email id of the office by which it can be expected that its password was available to each of the office member. Besides this, the emails are sent to reporter particularly, it is not case of the prosecution as well as defence that the reporter was working in the Wam Bombay office with accused to have acquaintance with other workers/employees therein who would have been presumed that they know the email address of reporter. Here, the acquaintance of reporter and accused

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strongly suggested that accused is the only person who was knowing email id of reporter and he is having only knowledge about her. If we see the testimony of hostile colleague of the accused in his office, it is not suggested as well to them that the reporter was having any nexus with official staff excluding accused nor it is case of defence that reporter was working in establishment of accused. If all these aspects are clubbed together those, strongly suggested that the accused can be only person who had sent these disputed emails.

27. Now I will turn to the legal aspect of disclosure statement as envisaged in section 27 of Indian Evidence Act. It contemplate that confessional statement leading discovery that to distinct are admissible in evidence. The mischief of section 27 of Indian Evidence Act says that the fact is within exclusive knowledge of the accused and at his instance discovery took place. If we see the unique feature of email id that it is having unique password known only to its user it can be very well said that opening of email id by accused by using unique password known to him alone, satisfy the mischief described in section 27 of Indian Evidence Act. Here, what is the property? Herein case, the property is disputed emails which are placed on articles A to H received by reporter. Considering the entire working pattern of web and email, if the accused would have not sent these disputed emails, there was no reason to find its presences in the disputed id. As already pointed out the disputed property, emails received by reporter i.e. email matches with the discovery i.e. getting print outs from the

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disputed email id on opening it by accused, those are Exh. 29A to 29F and here, the identity of property as envisaged in section 27 of Indian Evidence Act, get complied. The web data cannot accessed, which is of personal nature and that to when it has been sent from particular email id or profile. This aspect justify that accused was having control over the disputed email id and contents therein. From the discussion made above, I have no hesitation to conclude that the testimony given by Mukund Gopal Pawar on aspect of disclosure statement by accused, and thereafter recovery of print-outs from disputed email id, is reliable.

28. As mark of caution, here I will like to quote that the evidence in relation to section 27 of Indian Evidence Act is a weak piece of evidence, so it is necessary to find out whether there is more evidence which will fortify the prosecution case, and for this purpose the technical aspect described by another witness Sonali Mistri (Expert) become relevant.

29. Sonali Mistri brought on record procedure which she carried out with this examination. After receipt of property i.e. Hard Disk from Shivaji Park Police Station, she prepared mirror copy, thereafter calculated hash value of original hard disk and the mirror copy. Both hash value were same. Then she carried out process of reading mirror copy and again hash value was calculated for verification and it again matched with original. In my humble opinion, all these process is required for securing the genuineness of the process and she had complied it.

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30. In next segment she brings on record that she recovered deleted files, found out inherent access history, calculated hash value of each recovered files and then started process of finding out key words. What of this key words can be found in the report sent by Investigating Officer which is placed at Exh. 15. Exh. 15 discloses that traces of disputed email id were found in unallocated cluster which was pointing out that this machine/hard disk, the disputed email was accessed. She has also in tabular manner mentioned the physical sector, logical sector, cluster sector, sector offset and file offset, which she found present by analysis of data made by her. Beside this, the witness also found traces of reporter's email id in same manner, in unallocated cluster, which are also mentioned in tabular form.

31. Most important aspect here in case is that finding of traces of orkut profile in the name of Sonali Sawai with reference to Exh. 2 forwarded to her and Exh. 2 is nothing but, the profile which is disclosing phone number of the reporter. In my humble opinion, there was no reason to find out traces of this orkut profile in the laptop allotted to accused. The report in categorical manner brings out on record that the disputed emails were found in unallocated cluster of the laptop allotted to accused alongwith obscene photographs of pornic postures which are the disputed emails received by reporter Sonali Sawai. It is pertinent to note that the factor like creation of messages and dates of sending those, are also matching. It will not be out of place to see when the files are

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created and when reporter received these images. Column no. 8 describes the dates of 3 pictures images. The files are created on 03/03/2009 at 10:42:46 p.m., 10:41:58 p.m. and 00:00:00. After these dates are tallied with the dates of emails received by the reporter those also confirmed that those are same and which undoubtedly tend to show the allegations made by prosecution. To be more specifically, I will attract my attention towards Article-H, it gives date 09/03/2009 which is disputed date found in the forensic examination.

32. One more circumstance which here needs reference which is related to Gurgaon. As already observed the colleagues of accused have been winover, the relevant evidence which is found reliable can very well be utilised for the purpose of conclusion. If we see evidence of Ashutosh Srivastav (P.W. 6), he do not deny that accused never come at Gurgaon office. His throughout statement is that he do not remember this fact. In my humble opinion, there is no need of giving special reason how he faded the memory of the visit of police officer which is not normal in day to day life that too, in relation of commission of offence. In this backdrop, it will not be out of place to see the statement of accused. He do not dispute that he was having occasion to visit Gurgaon office for his official work. In this back drop, the statement of Investigating Officer Mukund Pawar (P.W.8) becomes important and as well reliable that police machinery that dugged out this fact that accused visited Gurgaon office, of which IP address is found in the communication made by gmail server.

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33. Now I will turn to facet which have been highlighted by defence in cross-examination as well as at the time of argument one by one. The important witnesses are reporter, Investigating Officer and Forensic Expert. The discussion as to relationship between accused and this reporter has been already made, so needs no reiteration. She strongly denied that she is having any friend by name Su-Jazz on orkut. She also denied that because of break-up she lodged report and that accused did not commit offence. She categorically explains that in application she did not give any name of any person though, she was knowing email i.d. of accused as admitted that she did not make any reference that she is having any complaint against accused. If we see this aspect, the cross-examination does not bring the prosecution case in category of reasonable doubt. If we turn to the common question to Investigating Officer and Forensic Expert, in relation to identity of accused they admit that technology cannot point out accused that at particular time, this particular person would have used internet or accessed web. In my humble opinion, technology is creation of human mind to assist to come on conclusion and the inferences are required to be drawn by human by applying reason and so the submission of Ld. Advocate for defence that this admission washed out technical report and create doubt about the authorship of crime are not appealing to my mind. The technology help us to find out the circumstances and the human as to apply reason to it and has to draw inferences and come on conclusion and that is the only part of the technology which can be utilised in

judicial proceeding.

34. Another objection raised by defence is that because of break-up accused is implicated in case. Defence submitted that this enmity cannot be ruled out and of this fact benefit goes to accused. For this purpose defence relied on verdict of Hon'ble Patna High Court in **Cri. Misc. Appln. No. 550/09 Gladdy Jousa v/s. State of Bihar**; wherein on the basis of enmity submitted before Hon'ble High Court, Hon'ble High Court has quashed the proceeding. First of all, I will like to note that this court is not having inherent jurisdiction to quash the complaint. Further, the facts in referred case, are related to initial stage of filing complaint and now this court is dealing with the matter after full-fledged trial that is to say the court is appreciating entire material given on record by prosecution and its witnesses. The relevant part of this judgment which are utilised here in only whether enmity or break-up between the reporter and the accused can be the reason to file this complaint.

35. For this purpose the initial stage of filing application will be helping to come on conclusion. For this purpose I will attract my attention towards the first approach of reporter to police vide Exhibit-7 and the evidence laid down by Investigating Officer as well. The reporter Sonali Sawai nowhere claims that she initial stage itself filed report against accused facing trial. What she claims that after filing application, the cyber cell investigated the matter and reached upto the end of accused and then formal report Exh. 5 and 6

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were lodged by her. In my humble opinion, if the reporter was having any reason to grind vengeance against accused because of alleged break-up at initial stage itself she would have named this accused facing trial and not after the digging out roots of mater of Cyber Cell and this fact has been well corroborated by Investigating Officer Mukund Gopal Pawar. The police also did not book the accused directly, they have made efforts to reach upto the proper end by making technical investigation, making communication with service provider and then he again call the reporter and at this juncture she disclosed relation with accused who was working at Wam Bombay at which end the police officer reached, and then the reporter consented for prosecuting accused. This facet rules-out, the fact of enmity raised by defence that only because of break-up the accused has been implicated in this case.

36. From the discussion of facts and circumstances coming on record, the entire episode of this incident can be summarized as under:

37. The reporter and accused were having friendly relationship and then relationship break-up which reached upto the marriage proposal and then the disputed episode started. The reporter received emails on the given dates, the reporter approached investigating machinery, investigating machinery after making inquiries and technical investigation reached to the end of accused, the Investigating Officer further carried out technical investigation, forwarded investigation like seizure of hard-disk, where from the disputed emails were

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sent, got it the confirmed that traces of disputed emails are found out in it. In this course, the disclosure statement given by accused, opening the disputed email having unique password which can be only within knowledge of accused, the investigating officer discovered fact that the disputed emails were sent from this email id and its traces were found in sent box of the email id open by the accused which he was having exclusive control. If all these circumstances are considered together, I find that it is created un-broken chain of circumstances which is pointing out towards guilt of accused while committing the offence punishable under section 509 of Indian Penal Code, by use of web and technology related to it.

38. Here, it can be gathered from evidence that accused intentionally and knowingly intervened privacy of reporter which attracts provisions of section 66E of Information Technology Act. As far as charge under section 67 and 67-A is concerned, I find that evidence as to publishing open sexual desire is short in present case to lead any other person than reporter so I hold that offence under section 67 and 67-A is not established beyond reasonable doubt but it attracts 66E as referred above. Though charge under section 66-E is not framed specifically, I find that offence under section 66-E being having less punishment than punishment in sections 67 and 67A, accused can be dealt for said charge. Here I find that by charge of section 509 of Indian Penal Code, accused was having knowledge about his defence and so by holding him guilty for offence under section 66E, no prejudice will cause to

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defence. Hence, I answer point no. 1 in affirmative and point no. 2, as offence under section 67 and 67-A is not proved but offence under section 66-E of Information Technology Act is established. So I hold that prosecution has established offence punishable under section 509 of Indian Penal Code and section 66 (E) of Information Technology Act, I hold accused in guilt of above said offences and convict him.

39. Advocate Farzana for accused present in court at 12.20 p.m.. Accused is absent. So further dictation on point of hearing on sentence will proceed. Advocate Farzana submitted that accused is coming at 01.00 p.m., so further dictation is deferred.

Mumbai

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40. At 01.00 accused present in court and judgment continued.

41. Heard accused on the point of sentence. He submitted that he is the only earning member in his family. His family i.e. his wife, mother and father are dependent on him, so leniency may be shown to him. Ld. Advocate for accused submitted that accused is Engineer by conviction his life will be spoiled and by taking lenient view, accused may be punished imposing fine only. Ld. APP submitted that the offence has been committed by use of web, cyber crimes are increasing and so to curb out tendency of committing offence by using the

technology, deterrent punishment is necessary.

42. Upon hearing either parties on point of sentence and looking in the peculiar circumstances of this case, that privacy of woman has been intruded by the accused here required some substantial sentence. But, if we see the mitigating circumstance as to fact that there were relationship between reporter and accused which reached upto the extent of giving proposal of marriage and the fact that now both are leading independent marital life, the accused being Engineer and bread winner of his family, in my humble opinion following sentence will suffice purpose of justice. In result, I proceed to pass the following order:

ORDER

1. Accused Yogisha @ Yogesh Pandurang Prabhu is convicted for offence punishable under section 509 of Indian Penal Code and section 66(E) of Information Technology Act, vide section 248(2) of Code of Criminal Procedure.
2. Accused is sentenced to suffer simple imprisonment for 1 (one) month for offence punishable under section 509 of Indian Penal Code and to pay fine of Rs. 5,000/- (Rs. Five Thousand only) in default to suffer simple imprisonment for one (1) month.

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3. Accused is sentenced to suffer simple imprisonment for 3 (three) months for offence punishable under section 66(E) of Information Technology Act and to pay fine of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer simple imprisonment for 2 (two) months.
4. Both the substantive sentences shall run concurrently.
5. Accused shall surrender his bail bond in court.
6. Property hard disk shall be returned to the Anil Vishnu Mandoskar who is the Managing Director of Wam Bombay. Order as to disposal of property shall operate after appeal period is over.
7. Copy of this judgment be provided to accused free of cost.
8. Pronounced in open court.

Mumbai

Date : 03/07/2015

(M.R. Natu)

Addl. Chief Metropolitan Magistrate
37th Court, Esplanade, Mumbai