



Crl.A.Nos.966 of 2024, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.06.2025

Pronounced on : 23.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.Nos.966 of 2024 & 731 of 2025 and
Crl.MP.No.13117 of 2024 in Crl.A.No.966 of 2024

Crl.A.No.966 of 2024

Lasya

... Appellant

Vs.

1.Siva Aditya

2.State

Rep by Inspector of Police,
W-24, All Women Police Station,
Teynampet,
Chennai
(crime No.6 of 2021)

... Respondents

PRAYER: Criminal Appeal filed under Section 413 of BNSS, praying to set aside the judgment dated 24.04.2024 passed in Spl.CC.No.2 of 2022 on the file of Special Court for POCSO Act, Chennai and resultantly allow this criminal appeal.

For Appellant : Mrs.K.Jayavarthini

For Respondents

For R1 : Mr.A.Ramesh,
Senior Counsel
for M/s.Shah and Shah



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Crl.A.Nos.966 of 2024, etc.

For R2 : Mr.S.Raja Kumar,
Additional Public Prosecutor

Crl.A.No.731 of 2025

State of Tamil Nadu Represented by
The Inspector of Police,
W-24, All Women Police Station,
Teynampet,
Chennai
(crime No.6 of 2021)

... Appellant

Vs.

Siva Aditya

... Respondent

PRAYER: Criminal Appeal filed under Section 378(1) of Cr.P.C.,
praying to call for the records and set aside the order of acquittal
rendered in judgment dated 24.04.2024 made in Special SC.No.2 of 2022
on the file of the learned Sessions Judge, Special Court for Exclusive
Trial of Cases under POCSO Act, Chennai allowing this criminal appeal
and convict the accused as charged.

For Appellant : Mr.S.Raja Kumar,
Additional Public Prosecutor

For Respondent : Mr.A.Ramesh,
Senior Counsel
for M/s.Shah and Shah

Crl.MP.No.13117 of 2024 in Crl.A.No.966 of 2024

Lasya

... Petitioner

Vs.

1.Siva Aditya
2.State
Rep by Inspector of Police,



Crl.A.Nos.966 of 2024, etc.

W-24, All Women Police Station,
Teynampet,
Chennai
(crime No.6 of 2021)

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 391 of Cr.P.C., praying to permit the petitioner/appellant to adduce the additional documentary evidence that it the email sent by the accused to the victim parents admitting the offence committed by him and WhatsApp message sent by the accused to his sister at this stage in Crl.A.No.966 of 2024.

For Petitioner : Mrs.K.Jayavarthini

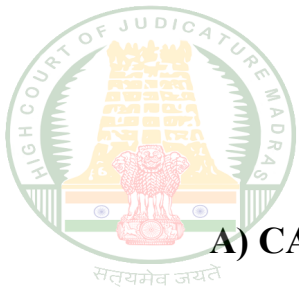
For Respondents

For R1 : Mr.A.Ramesh,
Senior Counsel
for M/s.Shah and Shah

For R2 : Mr.S.Raja Kumar,
Additional Public Prosecutor

**COMMON JUDGMENT in Crl.A.Nos.966 of 2024 & 731 of 2025
&
ORDER in Crl.MP.No.13117 of 2024 in Crl.A.No.966 of 2024**

The criminal appeals in Crl.A.Nos.966 of 2024 and Crl.A.No.731 of 2025 have been preferred against the judgment passed in Special SC.No.2 of 2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, thereby acquitted the first respondent in Crl.A.966 of 2024 from the charges under Sections 10 & 12 of POCSO Act.



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A) CASE OF THE PROSECUTION:

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The case of the prosecution is that the first respondent is the paternal uncle of the minor victim girl. The mother of the victim girl and the wife of the first respondent are sisters. The first respondent and the father of the victim are cousin brothers. Both the family members are living in the same compound in adjacent houses. The children in both the families used to regularly move between the houses. While the victim was studying fourth grade at her age of eight years, the first respondent took her to his portion and he made her to sit on his lap and showed her porn videos and photos for two years from 10.07.2019 to the year 2021. At that time, he used to put his finger on her waist, chest and private part. On 25.04.2021, while the first respondent was showing porn photos and videos to her, she refused to see the photos. So he hugged her tightly and also attempted to touch her private part. Thereafter, the victim child pushed him with her leg and ran to her house. It was informed to her mother on the same day. For the said occurrence, the mother of the victim girl lodged complaint on 15.10.2021. On the complaint, the second respondent registered FIR in crime No.6 of 2021 for the offence punishable under Sections 9(m), 10, 11 (iii), 12 of POCSO Act and Section 67B of Information Technology Act. After completion of



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investigation, they filed final report and the same was taken cognizance by the trial court.

B) ORDER PASSED BY THE TRIAL COURT:

3. Before the trial court, in order to bring the charges to home, the prosecution had examined PW1 to PW9 and marked Ex.P1 to Ex.P13. The prosecution had produced material objects i.e. MO.1 to MO.3. On the side of the first respondent, no one was examined and no documents were marked to disprove the case of the prosecution. On perusal of the oral and documentary evidences, the trial court found the first respondent not guilty for any charge and acquitted him. Aggrieved by the same, the criminal appeal in Crl.A.No.966 of 2024 has been filed by the defacto complainant. The second respondent also filed belated appeal with condone delay petition as against the order of acquittal passed in Spl.SC.No.2 of 2022. While pending the appeal filed by the defacto complainant in Crl.A.No.966 of 2024, she filed application in Crl.MP.No.13117 of 2024 seeking permission to adduce additional documentary evidences such as e-mails and WhatsApp messages sent by the first respondent to his wife, e-mails sent by the first respondent to the parents of the victim, thereby admitting the offence committed by him.



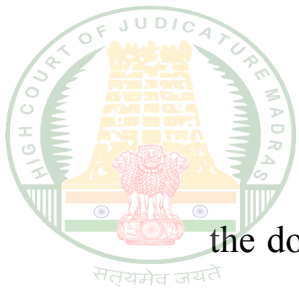
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4. Though the learned counsel for the appellant in

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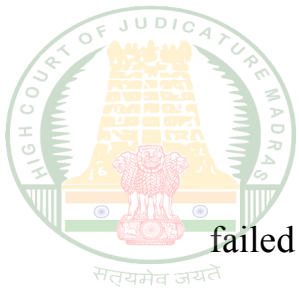
C) SUBMISSIONS OF THE APPELLANT'S COUNSEL:

5. The learned counsel for the appellant in Crl.A.No.966 of 2024 submitted that the victim girl was aged about 8 years. The first respondent is a close relative of the victim girl in both ways i.e. mother side as well as father side. The first respondent who has father figure to the victim, enjoyed maximum trust and authority in the family. However, without being true to it, the first respondent had molested his own niece by showing obscene pictures and videos. He had touched her private parts and when the victim tried to escape, he hugged her tightly and not only restrained her from moving but also inserted his finger into her lower-undergarments. After complaint, the victim was subjected for medical examination and the doctor who examined the child, deposed as PW1. The victim informed the doctor that she was shown porn photos and videos and the first respondent touched her private part. However,



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the doctor opined that there were no internal and external injuries on the private part of the victim child. The defacto complainant was examined as PW2. She categorically deposed about the occurrence as informed by the victim. She further deposed that on enquiry, she found that the first respondent was in the habit of showing nude pictures of foreigners to the victim child. It was happening for the past two years on several occasions. Since her husband was in ship, she could not lodge complaint immediately after the date of occurrence. However, after the occurrence, he inquired the first respondent. From next day i.e. on 26.04.2021, the first respondent had sent an apology. Immediately after the father of the victim returned home, after due deliberation, the complaint was lodged on 15.10.2021. On 26.04.2021, the first respondent sent a detailed email, thereby sought for an apology for the act committed by him. Thereafter on 30.05.2021, he sent an email to his wife and sought for an apology for the act committed by him. That apart, he also sent what app messages to his wife through his phone. These mails and WhatsApp messages clearly proved that the first respondent had committed offence under Sections 9(m), 10, 11 (iii), 12 of POCSO Act and Section 67B of Information Technology Act. However, though the emails and WhatsApp messages were handed over to the second respondent, the prosecution



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failed to mark the same before the trial court. In fact, PW2 had spoken about the e-mail sent by the first respondent in her chief examination.

Unfortunately, the prosecution failed to examine the father of the victim who had received email from the first respondent. Therefore, those are all vital documents to prove the guilt and an application was filed under Section 391 of Cr.P.C. seeking permission to mark those documents in support of the prosecution case.

6. She further submitted that the victim was examined as PW3. She categorically deposed that the first respondent had touched her private part several times and he inserted his fingers into lower undergarments and rubbed her private part making her feel uncomfortable. She was also shown porn videos and photos from the laptop of the first respondent. However, the trial court without considering the above circumstances, mechanically acquitted the first respondent by applying the “test of sterling witness”. In support of her contention, she relied upon the judgment in the case of ***Gaurav Mani Vs. The State of Haryana***¹, which mandates trial courts to proactively consider vital evidence and documents in the hands of prosecution and

¹ 2024 INSC 488



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prevent miscarriage of justice. In the case on hand, the trial court did not even consider the evidence of PW2 and PW3 and acquitted the first respondent herein. In support of her contention to receive additional evidence under Section 391 of Cr.P.C., she relied upon the judgment in the case of *Asim Alias Munmun alias Asif Abdulkarim Solanki Vs. State of Gujarat*², wherein it is held as follows:

“3.The application filed by the appellant in this case is under Section 391 CrPC, which empowers the appellate court to either take evidence by itself or direct the evidence to be taken by a Magistrate or a Court of Session, if it is satisfied that the additional evidence is necessary, after recording reasons. Ms Aastha Mehta, learned counsel appearing for the State of Gujarat submitted that the High Court was right in holding that the application under Section 391 CrPC requires to be decided when the appeal is finally heard.

4. Section 391 CrPC does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal

² (2021) 16 SCC 459



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to be finally heard.”

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7. She also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Zahira Habibulla H. Sheikh Vs. State of Gujarat and Ors.***³, wherein it is held as follows:

...The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the Court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislative intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks

³ MANU/SC/0322/2004



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that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions.

8. She also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Sidhartha Vashisht Vs. State (NCT of Delhi)***⁴, wherein it is held as follows:

47. Section 391 of the Code is another salutary provision which clothes the Courts with the power of effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the

⁴ MANU/SC/0268/2010



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provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislature intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that



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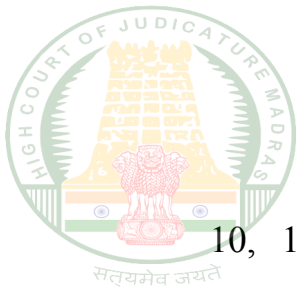


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certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As reiterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions."

Therefore, this Court can receive additional evidence since it is necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. Hence, she prayed for accepting the e-mails and WhatsApp messages as additional evidences and to convict the first respondent for the offences under Sections 9(m),



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10, 11 (iii), 12 of POCSO Act and Section 67B of Information Technology Act.

D) SUBMISSIONS OF THE FIRST RESPONDENT'S COUNSEL:

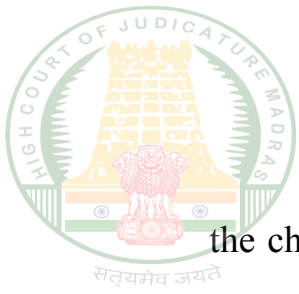
9. Per contra, the learned Senior Counsel appearing for the first respondent submitted that the appellant was examined as PW2. She lodged a cryptic complaint, that too belatedly alleging that the first respondent had shown obscene photographs and videographs since two years and on the date of alleged occurrence, he attempted to touch the private part. Considering the contradictions and improvements made by the witnesses, the trial court rightly acquitted the first respondent from all the charges. The doctor who examined the victim child deposed that there were no internal or external injuries of the victim child. There is no evidence that the first respondent had committed the offence. The respondent was not acquitted under Section 232 of Cr.P.C. He was acquitted under Section 235 of Cr.P.C. which deals with judgments of acquittal or conviction i.e., after the defence evidence and argument, if verdict is entered, it becomes judgment of conviction or acquittal. Therefore, when the trial court after full-fledged trial acquitted the first respondent under Section 235 of Cr.P.C., the appellant cannot challenge



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the order of acquittal judgment when she is not a party or the victim. He further submitted that insofar as the petition filed under Section 391 of Cr.P.C., it should only be exercised exceptionally in circumstances such as, when the party making such a request was prevented from presenting the evidence in the trial despite due diligence being exercised or that facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that now recording of such evidence may lead to failure of justice.

10. He further submitted that the defacto complainant has been part of the entire trial and even the alleged emails and WhatsApp messages were very much available with her. However, she failed to produce the same before the trial court. In fact, the defacto complainant assisted the prosecution after due permission. That apart, the defacto complainant also approached this Court for expeditious disposal of the trial. She engaged a legal team before the trial court and exercised her legal rights. In fact, the prosecution had filed an application to summon additional witness i.e. PW7-Forensic Science Laboratory Report Signatory. Therefore, the claims of the appellant herein were neither brought up during the investigation nor was added to the evidence part of



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the charge sheet. In fact, it was not even whispered in the chief or cross examination. Further, the appellant failed to satisfy the four crucial conditions enumerated under Section 391 of Cr.P.C. Therefore, those e-mails and WhatsApp messages cannot be permitted to be added as additional evidences. Further, even assuming that those emails and WhatsApp messages are vital documents to dispose of the appeal, those are all electronic evidence and it can be admissible only as secondary evidence, and a certificate under Section 65 of the Evidence Act for each document should be given by a such a person in whose possession such device was. Using the words mentioned in sub-section 2 of Section 65B, there is no other requirement fulfilled under sub-section 4 of Section 65B. Therefore, in the absence of fulfilling the same, its relevancy cannot be looked into.

11. He further submitted that insofar acquittal of the first respondent is concerned, the trial court extensively held that the prosecution failed to prove the charges and acquitted the first respondent. Therefore, it does not warrant any interference by this Court. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Ajitsinh Chehuji Rathod Vs. State of*



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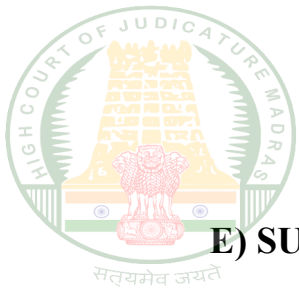
Gujarat and another⁵, wherein it is held as follows:

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16. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.

17. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the *NIA Act* albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf.

⁵ (2024) 4 SCC 453



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E) SUBMISSIONS OF ADDL. PUBLIC PROSECUTOR:

WEB COPY 12. The learned Additional Public Prosecutor submitted that though the victim girl categorically deposed that the first respondent had committed a very serious and heinous offence against the minor victim girl and the same is proved in all aspects, the trial court without considering the same acquitted the first respondent herein. The first respondent had shown the victim girl porn videos and photos for the past two years from 10.07.2019 upto the year 2021. He also put his hands around her waist, chest and private part. In a case of sexual abuse of a child, even in the absence of any corroboration from other eye witnesses, the accused can be convicted with the evidence given by the victim girl. However, the trial court held that the evidence of PW2 as illegitimate and the evidence of PW3 failed to corroborate the evidence of PW2.

13. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Rai Sandeep @ Deepu alias Deepu V. State (NCT of Delhi)***⁶, wherein it is held as follows:

"In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose

⁶ (2012) 8 SCC 21



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version should, therefore, be unassailable. The Court considering the version of such a witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should above test as well as all other such similar tests to be applied, can it be held that such a witness cant be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished.

14. He further submitted that as far as the delay is concerned, not lodging the complaint in case of sexual offence is not always fatal to the case of the prosecution. The delay should be explained with acceptable reasons to the court. In the case on hand, the victim girl was subjected to sexual assault on 25.04.2021. However, the father of the victim girl was in the ship for his work and due to the covid-19 pandemic quarantine, he returned to his house only after quarantine period.



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Therefore, there was delay in lodgment of complaint. When the victim girl's evidence is found to be trustworthy and reliable, her evidence is the best evidence and it is very much enough to convict the first respondent. However, the trial court failed to draw presumption under Section 29 of POCSO Act. When the prosecution has initial burden to prove the fundamental facts, the burden of proof on the side of the prosecution is only to the level of standard of proof of preponderance of probability. Therefore, it is very much enough to succeed in prima facie establishment the charge against the first respondent. Therefore, the trial court ought not have acquitted the first respondent.

15. Heard, the learned counsel appearing on either side and perused, all the materials placed before this Court.

F) FINDINGS:

16. The first respondent was charged for the offences punishable under Section 354(A) of IPC, Sections 9(m) r/w 10, 11 (iii) r/w 12 of POCSO Act and Section 67B of Information Technology Act. The specific case of the prosecution is that the first respondent is none other than the paternal uncle of the victim girl. That apart, the mother of the



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victim girl is the own sister of the wife of the first respondent. The father of the victim girl and the first respondent are cousin brothers. They all are living within the same compound in separate portions. The children of both families used to regularly move between the houses. The father of the victim is working in a ship and he used to come to home once in a while. The complaint was lodged on 15.10.2021 for the occurrence that took place on 25.04.2021. The delay in lodgment of complaint was explained such that, the father of the victim was in ship and as such, he was contacted through message and phone.

17. Further, the first respondent is a close relative and as such, there was delay in lodgment of complaint. The allegation against the first respondent was that on 25.04.2021 the victim was shown pornography videos and photos. The victim was made to sit on the lap of the first respondent and when she attempted to wriggle out, the first respondent held her tightly and also attempted to insert his hands into her lower undergarments and touched her private part. It has happened for the past two years on several occasions in the first respondent's house. At the time of the occurrence, the victim was aged about 8 years. The complaint was marked as Ex.P4. As per the complaint, the first respondent had



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made her to sit on his lap and had shown porn videos and photographs to the victim for the past two years. On the final day of occurrence, when the victim wriggled out from him, he held her tightly and attempted to touch her private part. On receipt of the same, the second respondent registered FIR in crime No.6 of 2021, which was marked as Ex.P12.

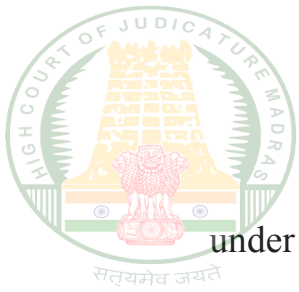
18. After registration of FIR, the victim girl was subjected for medical examination. The doctor who examined the victim girl deposed as PW1. She deposed that there was no history of any external injury on her body including her private part. Further, it was stated that there was no trace of attempt of sexual assault or intercourse. She issued accident register and the same was marked as Ex.P1. The appellant / mother of the victim was examined as PW2 and she deposed that, on 25.04.2021, the victim girl was running from the first respondent's house. She also cried and informed that the first respondent made her sit on his lap and she was shown porn videos and photos. When she wriggled out, he held her tightly and he touched her inappropriately. On the same day, she had sent e-mail to her husband, for which the first respondent also sent his reply. But she failed to submit those emails and WhatsApp messages to the second respondent. Insofar as the delay is concerned, she explained that



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her husband was working in ship and as if there was delay. The victim girl was examined as PW3. She deposed that the first respondent touched her private part. Apparently, he has done it to her brother as well. He was also shown some pictures.

19. The birth certificate of the victim was produced and marked as Ex.P2. and the bonafide certificate issued by the school is marked as Ex.P3. Accordingly, the victim child was born on 31.01.2013 and she was a minor at the time of the alleged occurrence. According to PW2 and PW3, the victim was subjected to sexual harassment for the past two years. However, the victim never whispered anything about the alleged sexual act committed by the first respondent to anyone in the family. Further, PW2 and PW3 deposed that the first respondent touched the victim's vagina but nowhere it was stated that the first respondent inserted his hand into her undergarment. Further, though the statement of the victim was recorded under Section 164 of Cr.P.C. it is not a substantial piece of evidence and it can be used only to either corroborate or contradict the witness with the statement made before the court. The statement was marked as Ex.P5. Perusal of deposition of the victim shows that, the deposition is in contradiction to her statement recorded



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under Section 164 of Cr.P.C. In fact, it was recorded immediately after registration of FIR. The victim also made her version in her deposition. It completely differs from the statement recorded under Section 164 of Cr.P.C.

20. Further, the prosecution also failed to explain with proper reason for delay in lodgment of complaint. Even according to PW2 and PW3, the occurrence took place from 10.07.2019 upto two years and finally on 25.04.2021. However, the complaint was lodged only on 15.10.2021. Of course, the delay in lodgment of complaint for the offence under POCSO Act is immaterial. But the circumstances on which the present case has been prosecuted against the first respondent is doubtful. There is a possibility of embellishment or exaggeration in prosecution's version due to the delay in lodgment of complaint. If the prosecution fails to satisfactorily explain the delay in the lodgment of the complaint for a proceedings initiated against the first respondent, such a delay could become fatal to the case. Even according to the PW2, her husband returned to home in the month of August itself. Even then, the complaint was lodged only on 15.10.2021. There was no explanation for the delay in lodgment of complaint. Further, there had been a

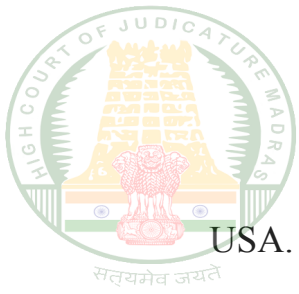


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matrimonial dispute between the first respondent and his wife. Even before lodgment of the present complaint, the cases were pending for which there was a compromise. Though the compromise was held in an advocate office and PW2 also participated in the negotiation, the terms of the compromise was not materialized between the first respondent and his wife. Further, the mother of the victim is a post-graduate and city brought up lady. Therefore, she need not have waited for her husband's arrival for the lodgment of complaint when the first appellant had allegedly committed a very serious offence against the minor girl. In fact, even after the alleged occurrence dated 25.04.2021, they both lived in the same house with the first respondent. Therefore, a false complaint has been foisted against the first respondent in order to wreak vengeance for ongoing matrimonial dispute between the first respondent and his wife and for the same, the victim girl has been tutored accordingly.

21. On perusal of statement given by the first respondent under Section 313 of Cr.P.C., it was revealed that he married own sister of PW2, who is mother of alleged victim. He is a mechanical engineering graduate and he had gotten an employment in the US for three years. Therefore, he along with his wife and her son shifted their family to the



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USA. After 2 ½ years, his wife had returned to India due to an untimely death of her father. However, after ritual, she did not return to the USA due to her family circumstances. Thereafter, the first respondent had returned to India. After joining as a Sales Director of Ford India in Chennai, again he was offered to head the operations in Vietnam or Phillipines. Though it was a very good offer, his wife refused and insisted him not to take up the said assignment. Hence, there was a difference of opinion and dispute arose between them. Therefore, in the month of June 2021, she issued notice for divorce and she also threatened to ruin his life if he did not concede to her demands. During the month of August 2021, she has asked him to meet her and also her sister i.e. PW2 and her husband in her advocate's office at RA Puram Chennai. It was a two hours meeting where she demanded 15 crores in addition to his house where his parents are residing. When it was not agreed by the first respondent, his wife filed divorce petition on the ground of cruelty. She also obtained exparte injunction against the first respondent from travelling out of country. At that juncture, they all decided to lodge the present false complaint to make him concede to their huge demands by tutoring the minor girl. It was done only to threaten the first respondent and to make him comply to their terms and



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conditions. In fact, the defacto complainant and the victim girl did not

even mention the date on which the alleged occurrence took place.

Therefore from the above circumstances, the complaint was lodged on 15.10.2021 for the alleged occurrence that took place on 25.04.2021. It was also duly cross examined with PW2. She also admitted that there was negotiation in the advocate office for the matrimonial dispute between the first respondent and his wife. In these circumstances, the delay in lodgment of complaint is very material not to believe the case of the prosecution. Therefore, it is fatal to the case of the prosecution.

22. Further, no prudent woman would keep quiet when her own minor child complains of a very serious allegation such as this. On 25.04.2021 itself, the PW1 informed about the alleged occurrence to PW2 and even then, PW2 did not take any step to take action against the first respondent. She also did not whisper to anybody about the said occurrence. According to the PW2, she had informed the same to her husband. However, her husband was not examined by the prosecution for the reason best known to them. It shows that her husband being cousin brother of the first respondent, refused to give any false evidence against the first respondent. That apart, the emails which were sent by the first



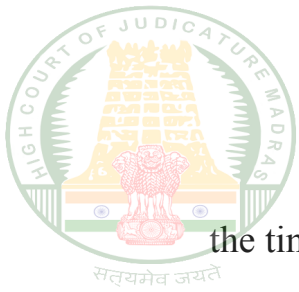
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respondent, produced before this Court to mark as additional evidence

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were also not marked through her husband. As stated supra, PW2 and her family members assisted the prosecution while conducting trial. Even assuming that the second respondent failed to mark those emails and WhatsApp messages, PW2 could have taken steps to mark those emails and WhatsApp messages before the trial court. That apart, the entire house was equipped with CCTV cameras. However, the second respondent failed to produce any of the footages of the CCTV cameras to prove the alleged occurrence. Therefore, in order to wreak vengeance against the first respondent, a false complaint has been foisted against the first respondent. Hence, the prosecution failed to prove the charges and the trial court rightly acquitted the first respondent from all the charges.

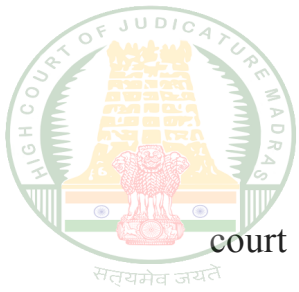
23. Insofar as the petition filed under Section 391 of Cr.P.C, as stated supra, there was delay in lodgment of complaint for about 6 months. However, according to the PW2, on the date of alleged occurrence i.e. 25.04.2021, it was informed to her husband through e-mails immediately and he had sent email to the first respondent seeking a written apology. On perusal of the complaint, which was marked as Ex.P4, she did not whisper about the date of the alleged occurrence and



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the time of the occurrence. Further, victim was examined as PW3 and she also did not even whisper about the date of occurrence. Therefore, PW2 failed to explain that on what basis, the said email was sent to her husband. After creation of those records, a false complaint has been foisted in order to wreak vengeance against the first respondent. On receipt of the same, the first respondent had sent an email on 26.04.2021 and sought for an apology. Subsequently on 26.06.2021, another email was sent to his wife. Thereafter, there were some WhatsApp messages. Now it has to be seen whether those emails and WhatsApp messages are necessary to decide this appeal.

24. This issue is already settled by catena of judgments of the Hon'ble Surpeme Court of India, that the power to record additional evidence under Section 391 of Cr.P.C should only be exercised when the party making such request was prevented from presenting the evidence in the trial court despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non recording of such evidence may lead to failure of justice. As state supra, PW2, who is the appellant herein, did not take any step to mark those emails and WhatsApp messages before the trial



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court though she along with other family members assisted the prosecution while conducting trial. Further, those documents are very much available even on 25.04.2021, 26.04.2021, 28.04.2021 & 30.05.2021. Further, not relying upon those documents may not lead to failure of justice. Furthermore, these documents were not produced with the compliance of provisions under Section 65B(4) of Evidence Act. The electronic evidence can be admissible only as a secondary evidence. For the provisions under Section 65B of the Evidence Act, certificate for each document should be submitted as provided under Section 65B(4) of Evidence Act.

25. It is relevant to extract the provisions under Section 65B(4) of Evidence Act hereunder:

In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be



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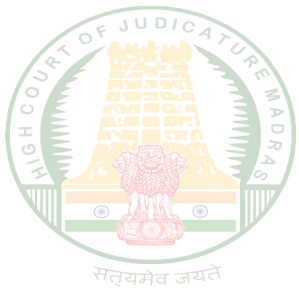


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appropriate for the purpose of showing that the electronic record was produced by a computer;

(c)dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

On perusal of the documents which are produced before this Court, there is no other requirement fulfilled as mentioned under Section 65B(4) except for the words mentioned in sub-section 2 of Section 65B of Evidence act. The date on which all the above documents are made and the date on which certificates for the documents were given are different dates. The certificate does not provide the particulars and details of the device involved in the production of that electronic evidence as required by law. This being the primary requirement, in the absence of the fulfilling the same, its relevancy cannot be looked into.



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26. Further, the specific contention of the learned counsel for the appellant is that the application filed under Section 391 of Cr.P.C has to be ordered first and thereafter appeal should be heard, but the same cannot be considered. It is relevant to extract the provisions under Section 391 of Cr.P.C. hereunder:

391. Appellate Court may take further evidence or direct it to be taken-

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

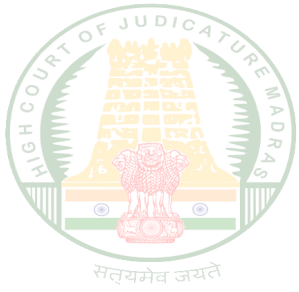
(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.



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WEB COPY 27. The provision under Section 391 of Cr.P.C suggests that the application moved should not be considered in isolation but it can be considered after hearing the parties on merits. If after hearing the parties on merits, the court comes to the conclusion that the additional evidence is necessary, then while deciding the appeal, the application moved under Section 391 of Cr.P.C can be dismissed. Further, if such additional evidence appears necessary regarding decision of the matter and without which the appeal cannot be disposed of, then such additional evidence may be taken on record. As stated supra, in this case, the documents which are now filed before this Court are not necessary to decide this appeal since the prosecution failed to prove the very charges itself beyond any doubt. Therefore, the application filed to receive additional evidence under Section 391 of Cr.P.C. has been filed with ulterior motive to fill the gaps in the prosecution case and nothing else. Hence, this Court is not inclined to entertain the petition filed for seeking permission to adduce additional documentary evidences. Accordingly, the criminal miscellaneous petition in Crl.MP.No.13117 of 2024 is dismissed.



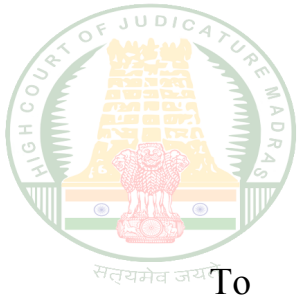
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28. In the result, both the criminal appeals filed against the

order of acquittal are dismissed.

23.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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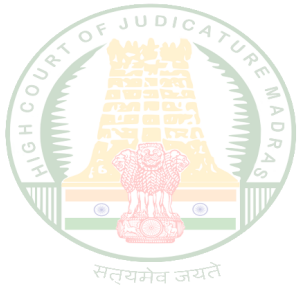
Crl.A.Nos.966 of 2024, etc.

To
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- 1.The learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai
- 2.Inspector of Police,
W-24, All Women Police Station,
Teynampet,
Chennai
- 3.The Public Prosecutor,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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Crl.MP.No.13117 of 2024 in Crl.A.No.966 of 2024

23.07.2025