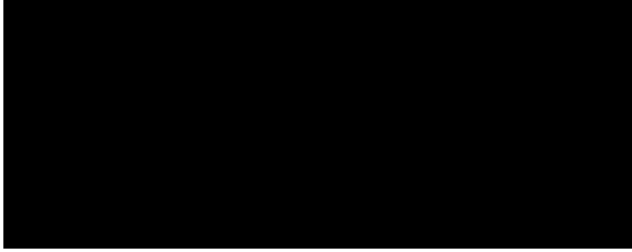


IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL PUBLIC INTEREST LITIGATION NO. 1 OF 2016



Petitioner

Versus

1. The State of Maharashtra
Through its Chief Secretary
Mantralaya Mumbai 32.
2. The Secretary,
Home Department,
Mantralaya, Mumbai 32.
3. The Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.
4. The Secretary,
Women and Child Welfare
Department, Mantralaya,
Mumbai.
5. The Secretary
Social Justice and Special
Assist Department,
Mantralaya, Mumbai 32.
6. The Chief Director
of Police, Maharashtra State
Mumbai 35.
7. The Collector,
Collectorate, Ahmednagar.

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8. The Superintendent of Police
Ahmednagar.

9. The District Women and
Child Development Officer,
Ahmednagar.

Respondents

Mr. A.D. Ostwal, Advocate (appointed) for the petitioner.
Mr. S.J. Salgare, APP for all respondents.

**CORAM : T.V. Nalawade &
M.G. Sewlikar, JJ.**

RESERVED ON : 7th December, 2020.
PRONOUNCED ON : 19th January, 2021.

JUDGMENT : (PER M. G. SEWLIKAR, J.)

1. Rule. Rule made returnable forthwith.

2. By consent, heard both the sides for final disposal at admission stage.

3. This Public Interest Litigation is filed by the petitioner seeking direction to the Print and Electronic Media that the name or identity of the rape victim should not be disclosed.

4. Facts leading to this Public Interest Litigation are that the petitioner is the real mother of the victim. First Information Report No. I-336/2010 was registered with Tofkhana Police Station,

District Ahmednagar, under Sections 363 and 366 of the Indian Penal Code and after arrest of the accused, Section 376 was added. It is however, alleged that despite having made the provisions under Section 228-A of the Indian Penal Code and despite having the directions been issued by the Honourable Supreme Court in the case of Nipun Saxena and another Vs. Union of India and others reported in (2019) 2 Supreme Court Cases 703, the Print and Electronic Media are publishing the details of the crime in such a manner that the identity of the victim is invariably disclosed. The petitioner has alleged that in this case also the local newspapers of Ahmednagar district i.e. Daily Sarvamat dated 23.02.2011 and 06.07.2015 highlighted the news in such a manner that the identity of her daughter was disclosed. Similarly, in Daily Punyanagari, Daily Sakal, Daily Divya Marathi and other newspapers the identity of the victim (not related to the victim i.e. daughter of the petitioner), is disclosed. The petitioner has alleged that because of the offence of rape, the victim suffers physical and mental trauma and publication of the news thereby disclosing the identity of the victim, causes severe mental agony to the victim. The petitioner had made several representations to find out whether there are any guidelines and whether any training is imparted to the media in this regard. She

has further sought directions to the media not to disclose the details revealing the identity of the victim in the case of rape.

5. Learned counsel Shri A.D. Ostwal was appointed as *amicus curiae* to assist the Court in this matter. He argued that the Honourable Supreme Court in the case of Nipun Saxena (supra) has issued various guidelines. Guidelines in this regard are also issued by the Delhi High Court. Kolkata High Court has also issued directions in the case of **Bijoy @ Guddu Das Vs. State of West Bengal** reported in (2017) 2 Cal LJ 224. These guidelines indicate that in no case name of the victim should either be disclosed nor the details revealing her identity shall be published. He argued that despite these directions, the Print Media and the Electronic Media give the details of the crime, relation of accused with the victim, details as regards the parents of the victim thereby revealing the identity of the victim. He has furnished proposed guidelines for the consideration of this Court.

6. It is true that the victim of sex offence undergoes not only physical trauma but also mental trauma. She has to undergo these agonies for no fault of hers. Keeping this object in view, Section

228-A of the Indian Penal Code was enacted which mandates that the identity of the victim in offences under Sections 376, 376-A, 376-B, 376-C, 376-D or 376-E should not be disclosed. Section 228-A of the Indian Penal Code reads thus :-

228-A Disclosure of identity of the victim of certain offences, etc.-

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [offence under section 376, section 376-A, section 376-B, section 376-C, section 376-D or section 376-E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is -

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next-of-kin of the victim.

Provided that no such authorisation shall be given by the next-of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation – For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation - The printing or publication of the judgment of any High Court or the Supreme court does not amount to an offence within the meaning of this section.

7. The Honourable Supreme Court in the case of Nipun Saxena (supra) has held as under :-

10. What is however, permitted under sub-section (2) of Section 228-A IPC is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a court with respect to such an offence, without the permission of the court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or

the Supreme Court will not amount to any offence within the meaning of IPC

11. Neither IPC nor CrPC define the phrase “identity of any person”. Section 228-A IPC clearly prohibits the printing or publishing “the name or any matter which may make known the identity of the person”. It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase “matter which may make known the identity of the person” does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law-makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harshness in the future.

12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim

is blurred but the faces of her relatives, her neighbours, the name of the village etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

13. Sub-section (2) of Section 228-A IPC makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. We are not oblivious to the fact that in the first information report (for short "FIR") the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. We are of the opinion that the police officers investigating such cases and officers should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. We make it clear that the copy of an FIR relating to the offence of rape against a women or offence against children falling within the purview of POCSO shall not be put in the the public domain to prevent the name and identity of the victim from being disclosed. The Sessions Judge/Magistrate/Special Court can for reasons to be recorded in writing and keeping in view the interest of the victim permit the copy of the FIR to be given to some person(s). Some examples of matters where her identity will have to be disclosed are when samples are taken from her body, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school, etc. However, in these cases also the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought. We

make it clear that the authorities to which the name is disclosed when such samples are sent, are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. There can be no hard-and-fast rule in this behalf but the police should definitely ensure that the correspondence or memos exchanged or issued wherein the name of the victim is disclosed are kept in a sealed cover and are not disclosed to the public at large. They should not be disclosed to the media and they shall also not be furnished to any person under the Right to Information Act, 2015. We direct that the police officials should keep all the documents in which the name of the victim is disclosed in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised by a large number of people. The sealed cover can be filed in the court along with the report filed under Section 173 CrPC.

14. As far as clause (b) of sub-section (2) of Section 228-A IPC is concerned, if an adult victim has no objection to her name being published or identity being disclosed, she can obviously authorise any person in writing to disclose her name. This has to be a voluntary and conscious act of the victim. There are some victims who are strong enough and willing to face society even after their names are disclosed. Some of them, in fact, help other victims of rape and they become a source of inspiration to other rape victims. Nobody can have any objection to the victim disclosing her name as long as the victim is a major.

15. Coming to clause (c) of sub-section (2) of Section 228-A IPC, we are of the opinion that

where the victim is a minor, Section 228-A will no longer apply because of the enactment of POCSO which deals specifically with minors. In fact, the words “or minor” should for all intents and purposes be deemed to be deleted from clause (c) of sub-section (2) of Section 228-A IPC.

16. The vexatious issue which troubles us is with regard to the next of kin of the victim giving an authority to the Chairman or the Secretary of recognised welfare institutions or organisations to declare the name. As per the materials placed before us till date neither the Central Government nor any State Government has recognised any such social welfare institutions or organisations to whom the next of kin should give the authorisation.

8. The Honourable Supreme Court in the case of Nipun Saxena (supra), after considering Section 228-A of the Indian Penal Code and various provisions of Protection of Children from Sexual Offences Act, has issued following guidelines :-

50.1 No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

50.2 In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorisation of the next of kin, unless

circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

50.3 FIRs relating to offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E IPC and the offences under POCSO shall not be put in the public domain.

50.4 In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

50.5 The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

50.6 All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

50.7 An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations.

50.8 In case of minor victims under POCSO,

disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

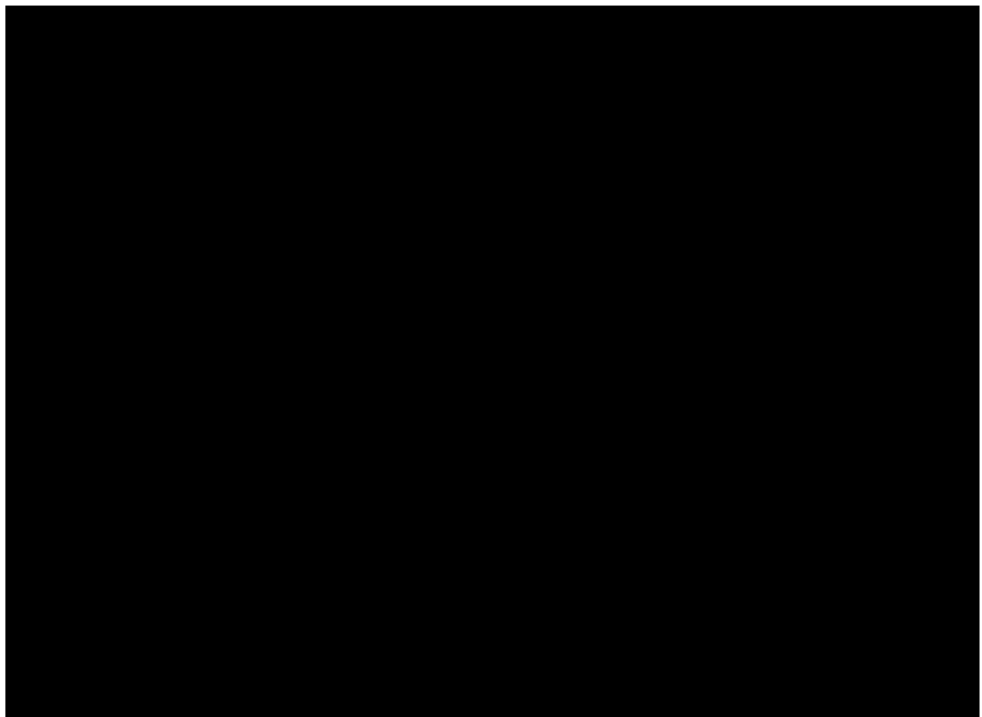
50.9 All the States/Union Territories are requested to set up at least one “One-Stop Centre” in every district within one year from today.

9. Despite issuance of these guidelines, the Print Media and Electronic Media are reporting these offences in such a manner that the identity of the victim is established directly or indirectly. Learned counsel Shri Ostwal argued that the electronic media holds interviews of the victim/relatives of the victim which lead to revealing the identity of the victim. He argued that the victim or the relatives of the victim are least aware that by giving such interviews they are exposing themselves to the revelation of the identity of the victim.

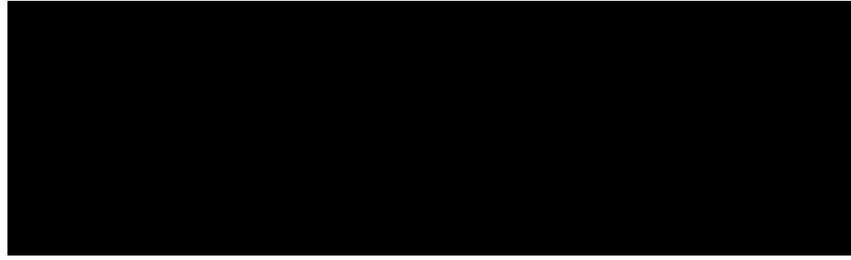
10. It is true that the electronic media and the print media publish news items giving details of the crime in such a manner that by reading the news item, one can easily establish identity of the victim. The electronic media holds interviews of the victims or relatives of the victims. The victim or relatives of the victim, most of the time, are not aware that by giving such interview they are revealing the identity of the victim. If the victim who is major or the relatives of such a victim voluntarily consent for disclosing her

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identity, in that case, no one can have any objection. The question arises when the victim or relatives of the victim do not want the identity to be revealed. In such cases, the media should act with circumspection and is expected to observe restraint. Publishing news item in detail thereby disclosing identity of the victim itself indicates that the media does not observe self-restraint. We do not mean to say that the media does it deliberately. But in their zeal to publish the news item fast, appropriate care is not taken in some cases and the news is reported by which the victim's identity becomes known to the readers/viewers. To illustrate, we can take by way of sample the news items published in reference to the offence committed against the daughter of the petitioner. Daily Sarvamat in its edition dated 23.02.2011 has reported the news item as under :-

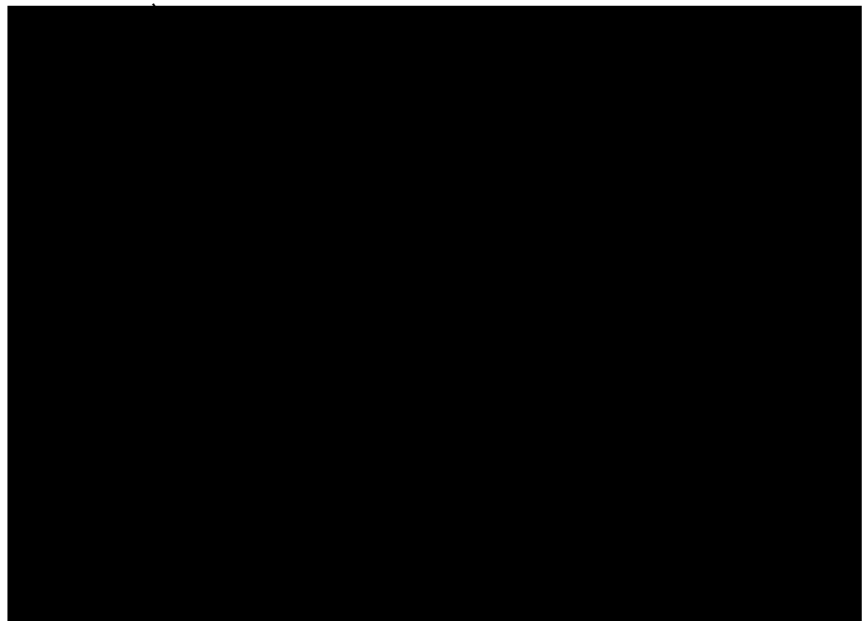


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This news item clearly establishes the identity of the victim. It mentions the name of the petitioner (i.e. the mother of the victim) and address of the petitioner. It also mentions name and residence of the accused as well. The only thing left is the name of the victim. By this news item, one can easily establish the identity of the victim especially those who know the family of the victim.

11. In another news item, the identity of the victim is disclosed. It is reported in Daily Lokmat. Said news item reads as under :-





This clearly indicates that the identity of the victim is established. In this news item, all the details by which the identity of the victim can be established are given though the name of the accused and the name of the victim is not mentioned.

12. On the basis of the judgment of the Honourable Supreme Court in the case of Nipun Saxena (supra) the Government of India, vide letter dated 16.01.2019, communicated the directions of the Honourable Supreme Court for their strict compliance. Despite this, the directions are followed in breach.

13. Having considered the news item, it is evident that without mentioning the name of the victim, the identity of the victim can be established by giving the details as regards the name of parents of the victim or other relations of the victim, relation of the accused with the victim, residential address of the accused and the victim and other details. Learned counsel Shri Ostwal has produced a circular issued by the Special Additional Deputy Inspector of Police

(Training and Special Squad) Maharashtra State, Mumbai. The said circular states that the petitioner had brought to the notice that because of lack of policy with the police department while releasing the information as regards sex offences, care is not taken that the identity of the victim is not disclosed. The said circular mentions that in the course of training subject as regards non-disclosure of identity of the victim should be included.

14. Despite clear directions by the Honourable Supreme Court, restricting/restraining media from disclosure of such information leading to identification of victim, media continues to indulge into giving details of the crime in such a manner that the victim can be identified easily. There are instances in which the news items mention the place of work of the victim or of the accused with reference to which identity of the victim is easily possible can be readily available or made known.

15. The Honourable Supreme Court has dealt with the aspect of disclosure of the identity of the victim while preferring appeal. However, there can be disclosure of identity of victim while recording evidence during trial, recording statement of the accused

under Section 313 of the Code of Criminal Procedure, framing charge, submitting remand report by the police. To avoid disclosure of identity of victim in the same, we propose, in addition to the directions of the Honourable Supreme Court in Nipun Saxena (supra), to issue the following directions to the print media, the electronic media, the people using social media such as WhatsApp, Facebook, Internet, Twitter etc.

The print media, the electronic media, the people using social media such as WhatsApp, Facebook, Internet, Twitter etc. while giving information / circulating information relating to offences under section 376, 376-A, 376-B, 376-C, 376-D or 376-E of the Indian Penal Code and the offences under Protection of Children from Sexual Offences Act, shall not publish/discard following information in such a manner that the victim will be identified directly or indirectly :-

- i) The names of the parents or relatives of the victim.
- ii) Relation of the accused with the victim.
- iii) Residential/occupational/work address of the accused and the victim and the village at which the victim and/ or accused live.
- iv) Occupation of the parents or other relations of

the victim and place of work of the victim and accused /their parents or any other relative in such a manner that the victim will be identified.

- v) If the victim is a student, name of the school or college or any other educational institution or private coaching class or classes which the victim has joined for pursuing her hobbies such as music, drawing, dance, stitching, cooking etc.
- vi) Details of family background of the victim.

16. It is noticed that while framing of charge, recording evidence, recording statement of accused under section 313 of the Code of Criminal Procedure, name of the victim is disclosed. Therefore, while framing charge, mentioning name of the victim should be avoided. Instead he/she should be referred to as 'X' or any other alphabet the Court deems fit and proper. While recording evidence if the witness mentions the name of the victim, the Court shall record that "the witness stated the name of the victim but to conceal her identity, her name is not recorded." And the victim should be referred to in the same manner as is done during the framing of charge.

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17. If the witness is a victim, his/her name should not be disclosed while recording evidence. Her name, place of residence, age, occupation shall be kept in a sealed cover and in the name column, she can be referred in the same manner described while framing charge keeping the address column, occupation column blank.

18. The same procedure should be followed while recording statement under section 313 of the Code of Criminal Procedure. While recording statement under section 313 of the Code of Criminal Procedure, the Court shall refer the victim in the manner she is referred to while framing charge.

19. While forwarding remand report to the Magistrate or to the court dealing with remand, mentioning of name of the victim should be avoided. Instead she should be referred as 'X' or any other alphabet the Investigating Officer deems fit and proper.

20. According to Shri Ostwal, learned *Amicus Curiae*, the electronic media holds interviews of the victim or his/her relations. He submitted that because of these interviews, though care is taken

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to blur the face of the victim or his/her relations, identity of the victim can be disclosed by his/her voice. We hope that the electronic media will show restraint in holding interviews of the victims and/or their relatives and would take all precautions to avoid and prevent disclosure of the identity of the victim.

21. In view of above directions, instant Public Interest Litigation is disposed of. Rule made absolute in above terms. We record our appreciation for the assistance rendered by Shri Ostwal, learned *Amicus Curiae* and learned APP Shri Salgare. Fees of the appointed counsel is quantified at Rs.15,000/- and it should be paid through the High Court Legal Services Authority, Sub-Committee at Aurangabad.

22. The Registrar (Judicial) is directed to bring these directions to the notice of : The Registrar General of this Court for circulating to all the subordinate Courts; the Principal Secretary, Home Department, Government of Maharashtra; the Principal Secretary & R.L.A., Law and Judiciary Department; the Secretary, Indian Broadcasting Foundation, New Delhi and, the Secretary, Press Council of India, New Delhi.

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23. Learned counsel Shri Ostwal stated that his fees shall be credited to the Chief Minister's Relief Fund (for Covid-19).

(M. G. SEWLIKAR)
Judge

(T.V. NALAWADE)
Judge

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