

**IN THE COURT OF THE DISTRICT & SPECIAL JUDGE, KOPPAL**  
**AT KOPPAL.**

PRESENT: - Sri. **BASAVARAJ.S.SAPPANNAVAR**

*B.A., LL.M.,*

District & Special Judge, Koppal.

Dated this 18<sup>th</sup> day of March 2015

**POCSO (S.C) No.15/2014**

State of Karnataka through  
Koppal Rural Police Station.

**[Represented by Public Prosecutor]**

Vs.

**ACCUSED:**

Mallikarjuna @ Arjuna s/o. Dundeppa age:  
27years, Labourer, r/o. Kabburu  
Village.Tq:Chikkodi. Belgaum District.

*(Represented by standing counsel Sri. **Ravi. S. Betageri. Adv.,**)*

1	Date of offence.	: 09.01.2014
2	Date of report of offence.	: 20.01.2014
3	Date of arrest of accused	: 13.07.2014
4	Date of release on bail	: Accused is in J.C.
5	Date of filing charge sheet	: 10.10.2014
6	Name of the complainant	: Ramesh s/o. Srinivas Tikanar (Shetter) r/o. Kidadal Tq & Dist: Koppal.
7	Date of recording evidence	: 19.02.2015
8	Date of closing evidence	: 02.03.2015
9	Offences complained of	: 363 & 376 of IPC and under section 6 of POCSO, Act 2012
10	Opinion of the Judge.	: Accused found guilty.

**:: JUDGMENT ::**

This is a charge-sheet submitted by the CPI, Rural Circle Koppal against the accused for the offences punishable under sections 363 and 376 IPC and under section 4 of POCSO Act, 2012.

**2.** The bird's eye view focused on the case of the prosecution finds thus;

That on 20.1.2014, the complainant, who happens to be the brother-in-law of the victim aged 15 years, had lodged a missing complaint with the police alleging that on 9.1.2014 at about 6-30.p.m., the victim had gone to answer to the call of nature and she did not turn up and he has requested the police to find out the victim and thereafter on 28.4.2014, he approached the police and filed a complaint alleging that the victim might have been kidnapped by somebody else basing on which, the case came to be registered for the offence punishable under sections 366-A of IPC by PW-6, who was the PSI of Koppal Rural Police Station and with this, the police chased and ultimately, it was revealed during the course of the investigation that 4-5 days subsequent to 9.1.2014 at Hulagi, the accused kidnapped the victim aged 15 years out of the keeping of her lawful

guardianship assuring her that he would marry her and he would look after well and the accused took her to Davanagere and married her at Prabhulinga temple and then he took her to Kabbur village in Chikkodi Taluka of Belgavi district and kept her in the thatched house situated in his sugarcane field and started committing rape upon her every day and he repeatedly committed aggravated penetrative sexual assault upon the victim and PW-9, who was the CPI of Rural Circle Koppal, having taken the case file for further investigation from PW-6 did the further investigation and having completed the investigation, he has submitted the charge-sheet for the above said offences.

**3.** The accused faced the trial through the standing counsel and the copies were furnished and after hearing, the charge for the offences punishable under sections 363 and 376 of IPC and under section 6 of POCSO Act, 2012 was framed wherein the accused pleaded not guilty and claimed to be tried and thereafter the prosecution has got examined PWs.1 to 12 and has got marked Ex.P-1 to Ex.P-19 and M.Os 1 to 9 and closed its side and thereafter, the statement under Sec.313 of Cr.P.C was recorded wherein the accused denied the evidence appearing against him and he did not choose to lead evidence on his behalf.

**4.** The points for my consideration are;

1) *Does the prosecution prove to the hilt that as on the date of commission of the alleged offences, the victim was minor?*

2) *Does it further prove to the hilt that subsequent to 9.1.2014 at Hulagi, the accused kidnapped the minor victim aged 15 years out the keeping of her lawful guardianship as alleged?*

3) *Does it further prove to the hilt that on the above said date, time and place, the accused having kidnapped the victim took her to Davanagere and married her at Prabhuliga temple and then he took her to Kabbur village of Chikkodi Taluka of Belagavi District and kept her in a thatched house situated in his sugarcane field and during the transit, the accused started committing rape upon the victim as alleged?*

4) *Does it further prove to the hilt that on the above said date, time and place, the accused having kidnapped the victim and having married her and having kept her in the thatched house situated in his sugarcane field at Kabbur village in Chikkodi Taluka of Belagavi district, repeatedly committed the aggravated penetrative sexual assault upon the victim, who was then minor, as alleged?*

5) *What order?*

**5.** My answer to the above points is;

Point No.1 :- In the affirmative,

Point No.2 :- In the affirmative,

Point No.3 :- In the affirmative,

Point No.4 :- In the affirmative,

Point No.5: As per final order, for the following;

## **REASONS**

**6. POINT No.1**:- I have a frugal vision on the oral and documentary evidence available on record. Having peeped into the case of the prosecution, I need to have a look as to the age of the victim at the time of the alleged incident first in point of time. PW-5, who was working as Assistant Teacher in Government Higher Primary School Kidadal, has stated in her evidence that she has taken the application for admission of the victim on 16.5.2014. It has come in the evidence of PW-8 that she was working as Head Master in Government Higher Primary School, Kidadal and on 16.6.2014, one Srinivas had come to her school along with the victim for admission and she filled up the admission form as per the information furnished by Srinivas. The copy of the application for admission has been marked as Ex.P-10 and the copy of the relevant entry made in the Admission Register is marked as Ex.P-11. It has further come in the evidence of PW-5 and 8 that according to Ex.P-10 and Ex.P-11, the victim was born on 28.04.1998. PW-12, who was the Senior Resident, KIMS, Koppal has stated in her evidence that on 13.6.2014 at about 5-30.p.m., the victim was produced before her for examination and she examined the victim physically. Ex.P-14 is the report given by PW-12, which speaks

that the then age of the victim was 15 years. It is very much pivotal to state that there is no specific denial by the defence in the cross-examination of PW-5, PW-8 & PW-12 regarding the age of the victim. This apart, it is not the case of the defence that at the relevant point of time, the victim was not the minor. The evidence of PW-5 and 8 is well braced by Ex.P-10 and Ex.P-11. Hence, it is arduous to deny the evidence of PW-5 and 8 and Ex.P-10, 11 and 14 particularly, when no contrary evidence is placed by the defence to refute the genuineness of the same. Hence, in view of my findings given supra, I arrive at an irresistible conclusion that there is clinching evidence to hold that at the time of the alleged incident, the victim was minor. Hence, I answer point No.1 in the affirmative.

**7. POINT Nos.2 to 4:** PW-1, who is the complainant, has stated in his evidence that the victim is the younger sister of his wife. He speaks that about one year back at about 6-00.p.m., the victim had gone out of his house on the pretext of giving answer to the nature call and since she did not turn up, he searched for her and as she was not secured, he lodged a missing complaint, which is marked as Ex.P-1. It has further come in his evidence that since he suspected that she might have eloped with somebody, he has filed a complaint, which is

marked as Ex.P-2 and basing on the same, a case came to be registered for the offence punishable under section 366-A of IPC. It has further come in his evidence that after nearly five months, the victim herself came to their house and they took her to the police station and upon enquiry made by the police, she revealed the fact that she had gone along with the accused to Kabbur village and lived with him there and now she is staying in the Government Stay Home, Bhagyanagar, Koppal. PW-3 speaks regarding Ex.P-6 i.e., spot panchanama. PW-4, who was the Physician, District Hospital Koppal, speaks about the examination of the accused and he has opined that the accused is capable of performing the sexual intercourse. Further he speaks regarding collection of the under wear, pubic hairs and nail scrapings of the accused, which are marked as M.Os.1 to 3 respectively. The Medical Certificate issued by PW-4 is marked as Ex.P-7. The final opinion issued by him came to be marked as Ex.P-8. PW-7, who was working as ASI in Koppal Rural Police Station, has stated in his evidence that as per the directions of PW-9, who was the CPI of Rural Police Station Koppal, he went to the Government Stay Home along with his staff and he took the victim and they went to Kabbur village in Chikkodi taluka along with the victim where the victim took them to a land, which is situated nearly at a distance of 2.

KM from Kabbur village and the victim showed a hut in the land and informed them that there was sexual intercourse upon her in the said hut and PW-7 having secured the panchas drew up the panchanama as per Ex.P-17. PW-11 being the pancha witness to Ex.P-17 supports the evidence of PW-7. PW-6, who was the PSI of Koppal Rural Police Station, speaks regarding investigation and PW-9 speaks regarding the further investigation and filing of the charge-sheet.

**8.** It has come in the evidence of PW-2, who is the victim, that her mother has expired and she has not seen her father, who has no communication with her of what-so-ever and as a result, she had stayed in the house of PW-1 and CW-7. It may be stated that CW-7 is none other than her elder sister. It has further come in the evidence of the victim that about one year back, CW-7 and PW-1 were ill-treating her in connection with household work and one day at about 6-00.p.m., she left their house and went to Huligemma temple and stayed there for two days by taking food in the temple itself. It has further come in her evidence that while she was staying so in the temple, the accused came there with devotees for preparing the food and he met her and when she was weeping, he came to her and consoled her and induced her that he would take her to his village



and thereafter he took her to Davanagere and both of them stayed in Prabhulinga temple and on the next day, the accused brought the Tali and tied to her neck and thereafter they stayed in the said temple for 15 days and thereafter the accused took her to Kabbur village in Chikkodi taluka and he took her to his hut, which was in his land. It has further come in her evidence that after the accused tied Tali to her neck in the temple at Davanagere, he started committing the sexual intercourse with her on all the 15 days and he continued to commit the sexual intercourse with her every day while staying in the hut in his land. She has made clarified in her evidence that while the accused was committing the sexual intercourse with her in Prabhulinga temple, nobody were there and whenever the parents of the accused, who were also staying in the hut, were not in the hut, the accused used to commit sexual intercourse with her and when the accused used to commit the sexual intercourse with her, she used to request him as not to do the same as she was still a little girl. It has further come in her evidence that thereafter the accused used to come in the drunken condition and he used to torture her physically, which made her to leave the house of the accused and she came to Ukkadagatri and ultimately, she came to the house of PW-1, who took her to the Police Station and upon enquiry made by the police, she

narrated everything before the police of what had happened to her while staying with the accused and the police sent her to the Government Stay Home in Koppal and till then, she has been staying there. The way in which the victim has given the evidence regarding her statement recorded in the Court beckons the fact that she was produced before the Magistrate and she narrated every thing before the Magistrate of what ordeal she faced at the hands of the accused and the same was noted down by the Magistrate. The said statement has been marked as Ex.P-3 and when it was shown to her, she has admitted that she has stated before the Magistrate of what has been contended in Ex.P-3. She has also stated in her evidence that she has been examined by the Medical Officer in the Government Hospital, Koppal. She has further stated that she had taken the police to Kabbur village and she has shown the place of hut to the police where the accused had kept her and he used to intercourse with her.

**9.** It may be stated that when the victim had come to give the evidence, she was accompanied by the House-Mother of the Government Stay Home, Koppal. It has come in the evidence of PW-12 that the hymen of the victim was ruptured. She has stated about issuance of Medical Certificate, which is marked as Ex.P-19. She has

further stated that she has given her final opinion on the back of FSL report marked as Ex.P-9 and her final opinion is marked as Ex.P-9 (a). She has opined that the possibility of sexual intercourse upon the victim prior to her examination cannot be ruled out. She further speaks about the collection of vaginal smear, vaginal swab and cervical smear and cervical swab and pubic hair and nail clippings of the victim, which are marked as M.Os.4 to 9 respectively. PW-10, who was the Senior Civil Judge and C.J.M. Koppal, has stated in his evidence that on 7.10.2014, the Investigating Officer has produced the victim before him to record the statement of the victim under section 164 of Cr.P.C and accordingly, he administered the oath upon the victim and recorded in camera proceedings of what she has stated before him and before her statement being recorded, he made an enquiry with the victim as to whether anybody has tutored or induced her and the victim has said that nobody has induced her to give the statement and she has come to give her statement voluntarily.

**10.** The evidence of PW-1 and 2 is crystal clear to hold that PW-2 had the shelter of only PW-1, who is the husband of her elder sister. Further the evidence of victim makes clear that about one year back she was forced to leave the house of PW-1. The evidence of PW-2

becomes unshakable to hold that she was consoled by the accused when she was weeping being helpless in the temple and she was induced by him to accompany him. It can be surmised that when a minor girl having lost her loved one and having been deserted by every body was in that state of mind of aloofness and having no support in her life, her ordeal in that situation was worst than anything and when the accused found the victim in that situation, he colourfully misused the situation under which, the minor victim was found, by consoling her and he managed to take her to Davanagere and by tying Tali to her neck he got her married there. The further evidence of victim is crystal clear to hold that when she was staying with the accused in the said temple and in the hut of the accused, the accused went on committing the sexual intercourse upon her. The evidence of victim places a clear picture before the Court just like a mirror as to the sufferings faced by her at the hands of the accused while staying with him. The evidence of PW-10 corroborates with the evidence of the victim as to the statement given by the victim under section 164 of Cr.P.C as per Ex.P-3, which spells out the fact that the accused used to commit the sexual intercourse with her in spite of her resistance. The evidence of PW-12 leaves no doubt in holding that the victim was used to sexual intercourse. Absolutely, I find no material

contradictions or material omissions in the evidence of the victim so as to brush aside the trustworthiness of her evidence. It is needless to say that in such cases, the evidence of the victim has prime force and if the victim transpires as to the commission of rape without leaving any loop-holes or doubts, the same deserves to be accepted and this is what I find in the evidence of the victim. The evidence of PW-1 gives brace to the evidence of the victim to the extent that the victim had left his house and the evidence of PW-12 spells out the fact that she was subjected to sexual intercourse and the evidence of PW-10 makes clear that she has uncovered every thing before him, which has been reduced into writing as per Ex.P-3. In view of the unequivocal evidence as discussed while giving my findings on point No.1, the victim at the time of the alleged incident was minor and hence, even if take it as granted for the sake of discussion that the victim had eloped with the accused voluntarily and the accused had an intercourse with her consent, still it amounts to aggravated penetrative sexual assault as defined under the provisions of POCSO Act. The Learned Special Public Prosecutor has relied upon the decision reported in **2004 CRI.L.J. 595** (SUPREME COURT) in the case of Prakash v. State of Haryana. I have gone through the said decision. Their Lordships were pleased to observe that the consent of

the minor is immaterial and my findings given supra are well strengthened by the said principles. Hence, even if there was consent by the victim at the time of staying with the accused, her consent is deserved to be eschewed. As I have earlier stated, the evidence of PW-4 is sufficient to hold that the accused is capable of performing the sexual intercourse. Hence, in order to encapsulate there is a cogent, unshakable and acceptable evidence so as to hold that the victim being a minor had gone along with the accused and the accused got her married and both of them stayed together and she was subjected to continuous sexual intercourse by the accused, who exhibited his crudity upon her. The learned counsel for the accused has relied upon the decision reported in **ILR 2001 KAR 3203** in the case of *Chakravarthy vs. State of Karnataka by Koramangala Police*. I have gone through the said decision. The said decision pertains as to the appreciation of the evidence of panch witnesses. The principles laid down in the said decision are not applicable to the facts of the case on hand as the conviction is being based mainly upon the evidence of the victim, PW.4, PW-10 and PW-12. Since there is no volatility in any manner in the evidence of the victim, the same appeases to me. Hence, in all prospective I accentuate that the prosecution has well established the allegations levelled against the accused and it has

succeeded in bringing home the guilt levelled against the accused to the hilt without leaving any stone unturned. Hence, I answer point Nos.2 to 4 in the affirmative.

**11. POINT No.5:** Hence, In view my findings given supra, I arrive at an irresistible conclusion that the accused is found guilty for the offences punishable under sections 363 and 376 of IPC and under section 6 of POCSO Act, 2012.

In the result, I proceed to pass the following;

### **ORDER**

**The accused is hereby convicted under section 235 (2) of Cr.P.C, for the offences punishable under sections 363 and 376 of IPC and under section 6 of Protection of Children from Sexual Offences Act, 2012.**

**M.Os.1to 9 being worthless are ordered to be destroyed after the appeal period is over and if the appeal is filed, it is subject to the decision of the Hon'ble Appellate Court.**

*(Dictated to J.Wr, transcript computerized by him is corrected by me and then pronounced in the open court on this 18<sup>th</sup> day of March 2015)*

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**(BASAVARAJ.S.SAPPANAVAR)**

Sessions/Special Judge, Koppal.

**Dt/18.3.2015**

**ORDER REGARDING SENTENCE**

The learned counsel for the accused submits that the accused is having the first wife and children and also the old parents and hence, he requests the Court to impose the minimum sentence of imprisonment. Simultaneously, he makes a submission that the accused hails from a poor family and hence, the imposing of fine may be dispensed with.

The Learned Special Public Prosecutor submits that the maximum punishment may be awarded and in addition to this, he has drawn my attention to the provisions of sub-section 1 of section 357-A of Cr.P.C and also Rule-7 of Protection of Children From sexual Offences Rules, 2012 and he submits that in the light of the provisions stated supra, there may be a recommendation by the Court for payment of compensation to the victim.

The case of the prosecution transpires that the accused is coolie, which places a clear picture to hold that the accused hails from a poor family. However, having peeped into the provisions of Section 363 and 376 of I.P.C and section 6 of Protection of Children from Sexual Offences Act, 2012 in respect of which, the accused has been found guilty, it becomes crystal clear that in addition to imposing of the sentence of imprisonment, the sentence of fine also requires to be imposed. Further I accept the submissions made by the Learned Special Public Prosecutor for recommending to the



State Government by exercising the powers vested under sub-section 2 of Section 357-A of Cr.P.C for payment of compensation payable by the State Government as provided under sub-section 1 of Section 357-A of Cr.P.C.

Hence, considering the gravity of the offences in respect of which, the accused is found guilty and keeping in mind the financial status of the accused coupled with the other facts and circumstances of the case on hand, I unhesitatingly hold that the accused may be sentenced to under go Rigorous Imprisonment for **03** years with fine of Rs.**2,000/-** for the offence punishable under section **363** of IPC and further the accused may be sentenced to undergo Rigorous Imprisonment for **07** years with fine of Rs.**2,000/-** for the offence punishable under section **376** of IPC and so also, the accused may be sentenced to under go Rigorous Imprisonment for **10** years with fine of Rs.**2,000/-** for the offence punishable under section **6** of Protection of Children from Sexual Offences Act, 2012, which will suffice the ends of justice.

In the result, I proceed to pass following;

**ORDER**

The accused is hereby sentenced to under go Rigorous Imprisonment for **03** years with fine of Rs.**2,000/-** for the offence punishable under section **363** of IPC and he is further sentenced to undergo Rigorous Imprisonment for **07** years with fine of Rs.**2,000/-** for the offence punishable under section **376** of IPC and he is further sentenced to undergo Rigorous Imprisonment for **10** years with fine of Rs.**2,000/-** for the offence punishable under section **6** of Protection of Children from Sexual Offences Act, 2012.

In default of payment of fine, the accused shall under go Simple Imprisonment for **06** months.

All the sentences shall run concurrently.

The accused is entitled for set-off as provided under section 428 of Cr.P.C.

So far as the award of compensation is concerned, I recommend for grant of compensation in favour of PW-2 i.e., victim by exercising the powers vested with the Court in the light of the provisions of sub-section 2 of Sec.357-A of Cr.P.C, which is payable by the Government as provided under sub-section 1 of Section 357-A of Cr.P.C.

The copy of this judgment be furnished to the accused forthwith with free of cost.

Further the office is directed to send the copy of this judgment to District Legal Services Authority in order to decide the quantum of compensation to be awarded to the victim under sub-section 1 of Section 357-A of Cr.P.C.

*(Dictated to J.Wr, in open court transcript computerized by him is corrected by me and signed on this 18<sup>th</sup> day of March 2015)*

**(BASAVARAJ.S.SAPPANNAVAR)**  
Sessions/Special Judge, Koppal.

**ANNEXURE**

**1. LIST OF WITNESSES EXAMINED FOR PROSECUTION.**

<b>PW-1</b>	<b>CW-1</b>	:	Ramesh s/o. Srinivas Tikaner r/o. Kidadal
<b>PW-2</b>	<b>CW-6</b>	:	Victim age:15 years, r/o.Govt.Stay-Home, Bhagyanagar. Koppal.
<b>PW-3</b>	<b>CW-2</b>	:	Nagaraj s/o.Bodurappa Mundaragi r/o.Kidadal.
<b>PW-4</b>	<b>CW-20</b>	:	Dr.Mahendra S.Veerappa, Physician, District Hospital, Koppal.
<b>PW-5</b>	<b>CW-15</b>	:	Shantavva w/o.Chandrappa Rtd.Teacher r/o. Koppal.
<b>PW-6</b>	<b>CW-24</b>	:	P.B. Neelagar, PSI Koppal Rural.P.S.Koppal
<b>PW-7</b>	<b>CW-23</b>	:	Ramanna s/o.Ramachandra Nayak ASI, Koppal Rural.P.S.
<b>PW-8</b>		:	Smt:Shanta w/o.Hanumanthappa Maradithota Rtd. Head Master, H.P.S.Kidadal.

<b>PW-9</b>	<b>CW-25</b>	:	Satish s/o.Somanagouda Patil, CPI, Koppal Rural Circle.
<b>PW-10</b>		:	Dasharath s/o. Bettappa Senior Civil Judge & CJM Koppal.
<b>PW-11</b>	<b>CW-5</b>	:	A.B.Mulla s/o.Babasab Mulla, r/o.Kabbur Village Dist:Belgavi.
<b>PW-12</b>	<b>CW-21</b>	:	Dr. B.N. Seema w/o. Umesh Rajoor. SSIMS & RC, Davanageri.

## **2. LIST OF WITNESSES EXAMINED FOR DEFENCE.**

- NIL-

## **3. LIST OF DOCUMENTS MARKED FOR PROSECUTION**

Ex.P-1		:	Missing Complaint
Ex.P-1	(a)	:	Signature of CW-1=PW-1 Ramesh
Ex.P-2		:	Complaint.
Ex.P-2	(a)	:	Signature of PW-1
Ex.P-3		:	Statement of victim u/s.164 Cr.P.C.
Ex.P-3	(a)	:	Signature of Victim.
Ex.P-3	(b)	:	Signature of victim.
Ex.P-4	(a)	:	Photo
Ex.P-5		:	Photo
Ex.P-6		:	Spot panchanama.
Ex.P-6	(a)	:	Signature of PW-3 Nagaraj.
Ex.P-7		:	Examination report of accused ( <i>Medical Certificate</i> )
Ex.P-7	(a)	:	Signature of PW-4
Ex.P-8		:	Final opinion.
Ex.P-8	(a)	:	Signature of PW-4
Ex.P-9		:	FSL report.
Ex.P-9	(a)	:	Final opinion
Ex.P-9	(b)	:	Signature of PW-12
Ex.P-10		:	Application for School Admission.
Ex.P-10	(a)	:	Signature of PW-5
Ex.P-10	(b)	:	Signature of Head Master.
Ex.P-11		:	School Admission Register
Ex.P-12		:	Requisition to the Court.
Ex.P-12	(a)	:	Signature of PW-6
Ex.P-13		:	Requisition to Stay Home.

Ex.P-13	(a)	:	Signature of PW-6
Ex.P-14		:	Report of Examination of victim.
Ex.P-14	(a)	:	Signature of PW-6
Ex.P-14	(b)	:	Signature of PW-12
Ex.P-15		:	POCSO requisition to Court.
Ex.P-15	(a)	:	Signature of PW- 6
Ex.P-16		:	Certificate issued by School Authority.
Ex.P-17		:	Spot panchanama where incident took place.
Ex.P-17	(a)	:	Signature of PW-7
Ex.P-17	(b)	:	Signature of PW-11
Ex.P-17	(c)	:	Signature of CW-4
Ex.P-18		:	Sketch map of spot where alleged incident took place.
Ex.P-18	(a)	:	Signature of PW-7
Ex.P-19		:	Medical Certificate of Victim.
Ex.P-19	(a)	:	Signature of PW-12.

**4. LIST OF MATERIAL OBJECT PRODUCED.**

M.O.1		:	White Navy blue colour underwear
M.O.2		:	Pubic hair
M.O.3		:	Nail scrapings
M.O.4		:	Vaginal smear
M.O.5		:	Vaginal swab
M.O.6		:	Cervical smear
M.O.7		:	Cervical swab
M.O.8		:	Public hair
M.O.9		:	Nail clippings

**5. LIST OF DOCUMENTS MARKED FOR DEFENCE.**

			- NIL-
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Place: Koppal.  
Date: 18.3.2015.

Sessions/Special Judge,  
Koppal.

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