

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th March, 2013

Pronounced on: 8th April, 2013

+ CRL.REV.P. 18/2013

FARIS SHUJA JALAI @ ANUP

..... Petitioner

Through: Mr. Mohit Mathur, Mr. Jivesh Tiwari &
Ms. Suman, Advocates

versus

CBI

..... Respondent

Through: Mr. P.K.Sharma, Standing Counsel with
Mr. Anil Kr. Singh, Advocates for CBI

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. By virtue of this Revision Petition, the Petitioner impugns the framing of the charges under Section 120B read with Sections 420/366-A/372/373 IPC and Section 5 of the Immoral Traffic(Prevention) Act, 1956 (the Act) and substantive offences under Section 373 IPC and Section 5 of the Act.
2. The learned counsel for the Petitioner urges that infact initially the Petitioner was arrested in a connected case bearing RC No.S1/1/2012/S0005 which related to procurement of another girl Riya Lama @ Riya Mothey. It is urged by the learned counsel for the

Petitioner that the certificate relied upon by the prosecution to show that Pranisha @ Alisha Gurang was less than 18 years is doubtful as the name of Pranisha has been later on introduced by the prosecution and in her statement under Section 164 Cr.P.C. recorded by the Magistrate, she had given her age as 18 years. It is contended that there is no evidence collected by the CBI which could be converted into legal evidence during the course of the trial. Thus, the Petitioner is entitled to be discharged. It is contended that the prosecuting agency is relying on the conversation recorded between the Petitioner and the co-accused Anand Vishwa in the other case which cannot be used against him. Moreover, the same is not admissible in evidence as at the time the conversation took place, co-accused Anand Vishwa was in police custody. Thus, the statement made by him or for that matter conversation in immediate presence of the police officer which was in the shape of an incriminating statement would be hit by Section 26 of the Indian Evidence Act, 1872.

3. On the other hand, the learned Standing Counsel for the CBI supports the order of framing of charges urging that the appreciation of evidence is not required to be done at the stage of framing of the charge and that a strong suspicion that the accused has committed the offence is enough for the purpose of framing the charges.
4. A complaint dated 24.02.2012 was made by Inspector Seema Pahuja against the Petitioner and his co-accused. Relevant para of the complaint is extracted hereunder:

“On 13.4.2012 accused Anand Vishwa @ Bishwa S/o Late Kajiman Bishwa was arrested in the instant case. During

his custodial interrogation he, in presence of independent witnesses, disclosed that he had called Mrs. Alisha Gurung (aged 17 years 11 months) w/o Sh. Pawan r/o. Vill. Frymal, below Govt. College, Darjeeling to Delhi for the purpose of helping her to get proper job. He further disclosed that he contacted one Anup @ Faris Shuja Jalali r/o Srinivaspuri, N Delhi over his mobile No. 9818636752 for selling him Mrs. Alisha Gurung for the purpose of prostitution, as he (Anand Vishwa @ Bishwa) already knew that Anup @ Faris was running brother from his premises at Srinivaspuri, New Delhi. Accordingly, the deal was fixed up between accused Anand Bishwa and Anup @ Faris Shuja Jalali over their mobile Nos. 9582543633 & 9818636752l respectively at about 4.40 p.m. on 13.04.2012 at Lajpat Nagar Bus Stand for selling/purchasing of Mrs. Alisha for the purpose of subjecting her to sexual exploitation.

In pursuance of above accused Anand Vishwa @ Bishwa accused Anup @ Faris Shuja Jalali S/o Syed Shuja Jalali were caught red handed while accused Anand Vishwa @ Bishwa sold the said girl to accused Anup @ Faris Shuja Jalali and paid ₹9,500/- to accused Anand Vishwa.

The aforesaid facts and circumstances revealed that both the above named accused persons are deeply and actively involved in the immoral trafficking of minor girls/girls for their commercial sexual exploitation. The said fact is proved form the statements of Ms. Alisha Gurung and Pointing Out-cum-Recovery Memo on the disclosure of accused Anand Vishwa @ Bishwa. Copies of these documents are self-explanatory and enclosed herewith.”

5. As per prosecution case, co-accused Anand Vishwa was already in the CBI custody in connection with investigation of another case when he made a disclosure statement about the arrival of the prosecutrix from Jalpaiguri by Brahmaputra Mail and that she was to be used for prostitution and sold out to the Petitioner herein. There is no gainsaying that a confession made to a police officer except where much of the information distinctly relates to discovery of a fact is inadmissible in evidence. It is not in dispute that the Petitioner was not in police custody at the time the conversation took place between the Petitioner and his co-accused Anand Vishwa. I have before me the transcript of the conversation between the Petitioner and the co-accused. So, even if the portion attributed to the co-accused (who was in police custody) is excluded from the conversation, the same would be admissible as against the Petitioner as he was not in police custody. The conversation between the Petitioner and the co-accused is corroborated by recovery of the mobile phone and the sim card belonging to the Petitioner. The conversation allegedly took place in presence of a police officer and an independent witness. The Respondent CBI relies on a certificate(D-17) which shows that the prosecutrix was less than 18 years on the date she was allegedly sold by the co-accused to the Petitioner. As per statement of Tapan Gurung, (prosecutrix's father) the prosecutrix was also known as Pranisha. As stated above, the truthness, veracity and the value to be attached to the evidence collected by the prosecution is to be gone into only at the time of the trial. In *State. V. S. Bangarappa (2001) 1 SCC 369* while relying on *State of M.P. v. Dr. Krishna Chandra Saksena, (1996) 11*

SCC 439, the Supreme Court held that *at the stage of framing of the charge, the Court should not enter upon a process of evaluating the evidence by deciding its worth and credibility. The limited exercise during that stage is to find out the material offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed further.*

6. No precedent has been laid before me to show that any statement recorded by the police cannot be used in any other case even if it is relied upon by the prosecution in the case where it is sought to be used. I am of the opinion that the admissible portion of the conversation can be used by the CBI in this case as the same was relied upon by it.
7. On the basis of evidence collected by the prosecution, the learned Additional Sessions Judge rightly came to the conclusion that there was a prima facie case for the offence punishable under Section 120B read with Sections 420/366-A/372/373 IPC and Section 5 of the Act and substantive offences under Section 373 IPC and Section 5 of the Act against the Petitioner.
8. The Petition is, therefore, devoid of any merit; the same is accordingly dismissed.
9. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 08, 2013
pst