

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

Judgment Reserved on: November 09, 2016

% *Judgment Delivered on: August 08, 2018*

+ **CRL.A. 951/2015**

ANAND VISHWA @ BISHWA

..... Appellant

Represented by: Mr. Abhishek Vikram with Ms.
Vasundara Chauhan, Advs.

Versus

THE CBI

..... Respondent

Represented by: Mr. Sanjeev Bhandari, SPP with
Mr. Manoj Bhandari, Adv.

+ **CRL.A. 684/2016**

CENTRAL BUREAU OF INVESTIGATION

..... Appellant

Represented by: Mr. Sanjeev Bhandari, SPP with
Mr. Manoj Bhandari, Adv.

Versus

ANAND VISHWA @ BISHWA & ANR

..... Respondents

Represented by: Mr. Abhishek Vikram with Ms.
Vasundara Chauhan, Advs. for
R-1.

Mr. Jivesh Tiwari with Ms.
Suman Chauhan, Adv. for R-2.

+ **CRL.A. 1286/2014**

FARIS SHUJA JALALI @ ANUP

..... Appellant

Mr. Jivesh Tiwari with Ms.
Suman Chauhan, Adv. for R-2.

Versus

THE CBI

..... Respondent

Represented by: Mr. Sanjeev Bhandari, SPP with
Mr. Manoj Bhandari, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J.

1. Vide impugned judgment dated July 07, 2014, Anand Vishwa @ Bishwa, the appellant in CrI.A.951/2015 and Faris Shuja Jalali @ Anup, the appellant in CrI.A.1284/2014 were convicted for offence punishable under Section 5 of Immoral Traffic (Prevention) Act (in short 'ITP Act'). Anand Vishwa @ Bishwa was acquitted for the offences punishable Section 120B read with Section 420/366/372/373 IPC and substantive offences punishable under Sections 420/366A/372 IPC. Faris Shuja Jalali @ Anup was acquitted for the offences punishable Section 120B read with Section 420/366/372/373 IPC and substantive offence punishable under Section 373 IPC. Vide order on sentence dated July 10, 2014, they were sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹2,000/- each for offence punishable under Section 5 of ITP Act. CrI.A. 684/2016 has been filed by the Central Bureau of Investigation against the aforesaid impugned judgment acquitting the respondents for IPC offence and in CrI.A.Nos.951/2015 and 1284/2014, Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup challenge their conviction and sentence for offence punishable under section 5 of the ITP Act.

2. Learned counsel for Anand Vishwa @ Bishwa submits that the victim (PW-15) was not a minor at the time of alleged occurrence on 13th April, 2012 and ingredients of offence punishable under Sections 366A/372 IPC are not made out. The CBI failed to prove the date of birth of the victim through the birth certificate or any other document except the certificate

Ex.PW-13/A which had been issued by Kishan Gurung (PW-13), the school teacher only on 11th June, 2012 i.e. after the alleged incident. Kishan Gurung issued the said certificate when the headmistress was on leave and further the said certificate is not even a certified copy of the admission register. No original admission register has been proved by the prosecution. The certificate issued by Kishan Gurung cannot be held to be an entry in any public register or official book made in discharge of the official duty. Reliance is placed on the decision reported as (2006) 5 SCC 584 Ravinder Singh Gorkhi Vs. State of UP. Further, Kishan Gurung also stated that no birth certificate was provided by the parents of the victim at the time of admission nor was any signed form provided by the parents. The victim in the train ticket, which was used by her to travel from Darjeeling to Delhi, herself mentioned her age as 19 years. Witnesses, i.e. husband of the victim (PW-12), father of the victim (PW-14) and the victim (PW-15) have deposed falsely in respect of the date of birth at the instance of the CBI. No overt act has been attributed to the appellant Anand Vishwa @ Bishwa nor any evidence of conspiracy between the two accused led. The ingredients of Section 420 IPC are also not satisfied. There is no transfer of any property or valuable security. The victim herself deposed that she had come to New Delhi after she herself had called the respondent No.1 on numerous occasions asking him to find a job for her in New Delhi as she was having quarrels in her matrimonial home and Anand Vishwa @ Bishwa only wanted to help her to get a job to save her from cruelty at the hands of her husband and in-laws. The conversation between the two accused in the immediate presence of the police officers is hit by Section 26 of the Indian Evidence Act and hence cannot be relied upon. Further, the mobile phone

which was used to record the conversation was not seized nor the owner of the mobile phone produced as a witness. Further, the conviction of Anand Vishwa @ Bishwa for offence punishable under Section 5 of the ITP Act is also not made out as no role has been attributed to the appellant for procuring/inducing or taking the victim for prostitution and therefore, he be acquitted of the charge of Section 5 of the ITP Act also. Hence, there being no merit in CrI.A.684/2016, the same be dismissed. Reliance is also placed on the decision reported in AIR 2000 SC 3323 State of Kerala Vs. P.Sugathan & Anr. and AIR 2009 SC 2717 S.V.L.Murthy Vs. State, Rep. by CBI, Hyderabad.

3. Adopting the arguments on behalf of learned counsel for Anand Vishwa @ Bishwa learned counsel for Faris Shuja Jalali @ Anup submits that no investigation has been carried out to show that Faris Shuja Jalali @ Anup was involved in any prostitution racket. Faris Shuja Jalali @ Anup was arrested in RC 3 on 13th April, 2012 and on 16th April, 2012 search was conducted at his flat whereafter he was implicated in the present case.

4. Learned SPP for the CBI submits that Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup hatched a conspiracy in the month of March-April, 2012 at Delhi to induce and procure minor girls for the purpose of sale and purchase for prostitution. In furtherance of the said conspiracy on 13th April, 2012, Anand Vishwa @ Bishwa sold the minor girl i.e. the victim at Lajpat Nagar bus stop near red light to Faris Shuja Jalali @ Anup for monetary consideration and thus Anand Vishwa @ Bishwa committed offence punishable under Section 372 IPC. Since the victim was dishonestly induced to come to Delhi from Darjeeling on the false pretext of providing her a suitable job in Delhi, conspiracy to commit offence punishable under

section 420 IPC has been committed by Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup. Further, called on the false pretext of providing her suitable job at Delhi knowingly that she will be sold for the purpose of prostitution, Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup are also liable for offence punishable under Section 366-A IPC. Faris Shuja Jalali @ Anup having purchased the victim 'A' for the purpose of prostitution committed offence punishable under Section 373 IPC and since the girl was procured and induced for the purpose of prostitution, an offence under Section 5 of the ITP Act also stood committed. To prove its case, prosecution examined Abhishek Kumar Singh (PW-1), a friend of Faris Shuja Jalali @ Anup, who stated that Faris Shuja Jalali @ Anup was involved in commercial sexual activities and thus he kept distance from him and that his knowledge was personal on this count. Tej Kishan (PW-2) deposed about the recovery made pursuant to the search conducted. Further, Sardar Harvinder Singh (PW-3) was an independent witness who deposed about the confession of Anand Vishwa @ Bishwa. Vishal Gaurav (PW-4), Nodal Officer Bharti Airtel and Isar Babu (PW-5), Nodal Officer, Vodafone Mobile service produced the call details of the relevant phone numbers. Jaipal (PW-6) the landlord of the premises where Faris Shuja Jalali @ Anup was staying as a tenant also deposed against him that there were complaints against Faris Shuja Jalali @ Anup from neighbours that number of ladies used to visit his flat at odd hours. Sanjay Sharma (PW-8), Executive in J&K Bank provided the statement of account of Faris Shuja Jalali @ Anup showing that approximately ₹22 lakh were deposited in his account during the period 25th June, 2010 to 25th June, 2012. Besides, the complicity of Anand Vishwa @ Bishwa was proved by husband of the victim (PW-12)

and father of the victim (PW-14). The contention that victim was not proved to be a minor is also incorrect. Further, the victim in her testimony has given the detailed version how she was lured for coming to Delhi and then sold for prostitution. Considering the extensive evidence led by the prosecution, the conviction of the appellant for offences punishable under Section 5 of the ITP Act be maintained and they be convicted for the offences acquitted by the learned Trial Court.

5. Briefly, the facts of the instant case are RC 5 (S) 2012, SC-I, CBI, New Delhi was registered by CBI on 2th May, 2012 under Section 120B IPC read with Section 420/366A/372/373 IPC read with Section 5 of the ITP Act against Anand Vishwa @ Bishwa, Faris Shuja Jalali @ Anup and others on the basis of written complaint [Ex.PW-24/D] submitted By Insp. Seema Pahuja. In the complaint, she stated that on 13th April, 2012, while she was investigating RC 3 (S) 2012, SC-I, CBI, New Delhi, she arrested Anand Vishwa @ Bishwa and recorded his statement [Ex.PW-3/A] wherein he disclosed that he had called a girl 'A' (victim herein) from Darjeeling to Delhi for the purpose of helping her in getting a proper job. He contacted Faris Shuja Jalali @ Anup over his mobile number 9818636752 for selling 'A' for the purpose of prostitution as he knew that Faris Shuja Jalali @ Anup was running a brothel in his premises at Srinivasपुरi, New Delhi. The deal was fixed between them over their mobile phones bearing numbers 9582543633 (number of Anand Vishwa @ Bishwa) and 9818636752 (number of Faris Shuja Jalali @ Anup). Thereafter, CBI Team, 'A' and Anand Vishwa @ Bishwa went to Lajpat Nagar bus stand where they were allowed to proceed forward towards a grey Indica car. Thereafter, Faris Shuja Jalali @ Anup gave Anand Vishwa @ Bishwa some money (₹9,500)

and asked the girl to sit in the car. Immediately thereafter, the CBI officers came there and caught both the appellants.

6. Statement of 'A' [Ex.PW-24/A] was recorded and her supplementary statement [Ex.PW-24/C] was also recorded. Investigation was handed over to Insp. Vijay Kumar. He prepared the arrest memo [Ex.PW-23/A] of Faris Shuja Jalali @ Anup and conducted his personal search vide memo Ex.PW-23/B. He also conducted the search of the place (House No. SQ-24, H-Block, Saket) where Faris Shuja Jalali @ Anup was living on rent. During the search, certificates of J.P. Institute, where Faris Shuja Jalali @ Anup was studying, 45 CD's, lease agreement etc. were recovered. The certificates recovered were Ex. PW-18/B-1 to Ex. PW-18/B-12. He also conducted the search at House No. S-39, Srinivaspuri, another rented accommodation of Faris Shuja Jalali @ Anup and during the search, a search list was prepared [Ex.PW-2/A]. The articles included padded bra Ex.P-1, red top zebra Ex.P-2, black top padded at breast area Ex.P-3, green lady top Ex.P-4, USB Internet pluggy Ex.P-5, mood condoms Ex.P-6, man force condom Ex.P-7, kamasutra condom Ex.P-8, sanitary napkin Ex.P-9, notebook Ex.P-10, pair of red heel sandals Ex.P-11 and tablets Ex.P-12. Indica car belonging to Faris Shuja Jalali @ Anup was also included in the search list [Ex.PW-23/D]. Conversation between Faris Shuja Jalali @ Anup and Anand Vishwa @ Bishwa was recorded and transcripts of recorded conversation were prepared [Ex.PW-23/E and Ex.PW-23/F]. Thereafter, the investigation of the case was handed over to Insp. R.D. Sharma. During the investigation, he obtained the lease deed Ex. PW-6/A in favour of Faris Shuja Jalali @ Anup in respect of property number S-39, Srinivaspuri. He also obtained the lease deed [Ex.PW-26/A] in the name of Faris Shuja Jalali @ Anup with regard to

property in Vasant Vihar. Statement of bank account of Faris Shuja Jalali @ Anup was also collected [Ex.PW-8/C (colly)]. Voice sample of both the appellants were collected and sent to CFSL.

7. 'A' (victim) was examined as PW-15. She stated that her date of birth is 13th May, 1994. She studied in a Primary School, Mirik Municipality at Darjeeling. She came to Delhi in the year 2010 along with her husband in search of work. They used to sell momos in Delhi. They remained in Delhi for about six months. During that period, they came to know Anand Vishwa @ Bishwa who used to visit their shop to eat momos. In January 2011, she met 'R' in the winter camp at Darjeeling and they became friends. 'R' told her that she was beaten by her father and she used to show the victim her injuries. 'R' requested her for finding some work relating to household or childcare. Consequently, she spoke to Anand Vishwa @ Bishwa about work for 'R'. He told her that there was a requirement of a women for child care and that 'R' can come to Delhi. Later on, she came to know that Anand Vishwa @ Bishwa had come to Darjeeling to take 'R' to Delhi. Thereafter, she spoke to both of them wherein she was informed that 'R' will get the job of child care in a day or two. She again called up Anand Vishwa @ Bishwa who stated that 'R' had run away with a Nepali boy. She further stated that in April, 2012, she again spoke to Anand Vishwa @ Bishwa to enquire if any work was available for her. He told her to come to Old Delhi Railway Station as work was available. She came to Delhi on 13th April 2012 around 7:00 A.M. and met Anand Vishwa @ Bishwa at Old Delhi Railway Station from where she was apprehended by CBI along with Anand Vishwa @ Bishwa. She stated that in CBI office, Anand Vishwa @ Bishwa told them that he had earlier sold 'R' to Faris Shuja Jalali @ Anup for ₹40,000/-

for the purpose of prostitution. She stated that she was not aware of the nature of work Anand Vishwa @ Bishwa was involved in.

8. Harvinder Singh (PW-3) stated that on 13th April 2012, he went to CBI Office having been summoned to be a witness and was introduced to Anand Vishwa @ Bishwa wherein it was disclosed by Anand Vishwa @ Bishwa that he was involved in commercial sexual activities and sale/purchase of girls for last about two years. He further told that he had brought one minor girl from new Jalpai Guri on the pretext of providing job to her, after which she was raped by him and was then sold for ₹18,000/- in Laxmi Nagar Area and also received ₹,5,000/- as part payment. He also disclosed that he had brought another girl ('A') on the pretext of providing her job in Delhi and already had a deal of sale to one Faris Shuja Jalali @ Anup for ₹40,000/-. That girl came to Delhi on 13th April, 2012.

9. Jai Pal (PW-6) stated that he was the owner of the house no. S-39, Sri Niwas Puri. He stated that in the year 2012, he had lent one of his flats to Faris Shuja Jalali @ Anup. Before letting out the said flat on rent, he executed a lease agreement [Ex.PW-6/A]. He had never seen him going for any work. He was informed by the neighbours that number of girls used to visit the flat and they informed that all were students. He also noticed that number of boys and girls used to visit the flat in the morning as well as in the evening. He came to know that Faris Shuja Jalali @ Anup was running commercial sexual activities from the said flat when a raid was conducted by CBI.

10. Rajesh Chauhan (PW-9) stated that he was residing as a tenant at S-39, First Floor, Private Colony, Srinivasपुरi. In February, 2012, Faris Shuja Jalali @ Anup came to reside there as a tenant in another flat on the first

floor of the house. He did not know what was his business or work. Some girls and boys used to visit Faris Shuja Jalali @ Anup.

11. Abhishek Kumar Singh (PW-1) stated that he came to Delhi in 2002 to prepare for IIT Entrance Exam and through a common friend Shahid, he had met Faris Shuja Jalali @ Anup. He further stated that he came to know through his friends that Faris Shuja Jalali @ Anup was involved in commercial sexual activities after which he kept a distance from him. He stated that he had seen Faris Shuja Jalali @ Anup with a girl. In his cross examination, he stated that since Faris Shuja Jalali @ Anup owed him money so he used to call him.

12. Shahid Akhtar (PW-19) stated that he knew Faris Shuja Jalali @ Anup as he was his neighbor who had come to stay for preparation of a competitive exam towards the end of year 2004. He stated that after studying in the same institute for some time, Faris Shuja Jalali @ Anup stopped coming to the institute in Noida. He stated that even after he left they continued to be friends but he wasn't aware about the nature of work that Faris Shuja was doing. In January 2012, he came to know that he was involved in prostitution after which he convinced him not to indulge in the same to which Faris Shuja admitted that he was involved in prostitution but he didn't give importance to his suggestion. He stated that once he went to the place of Faris Shuja Jalali @ Anup, he found a girl named 'X' who used to work for Faris Shuja for prostitution.

13. Vishal Gaurav (PW-4), Nodal Officer, Bharati Airtel Ltd, provided a certified copy of customer application form [Ex.PW-4/B] for the mobile no. 9818636752 which was in the name of Faris Shuja Jalali @ Anup. The call detail records for the aforesaid number were proved vide Ex.PW-4/C and the

certificate under Section 65B of Evidence Act vide Ex.PW-4/D.

14. Israr Babu (PW-5), Alternate Nodal Officer, Vodafone provided a certified copy of customer application form [Ex.PW-5/B] for the mobile no. 9582543633 which was in the name of Deepali Talukdar. The call detail records for the aforesaid number were proved vide Ex.PW-5/C and the certificate under Section 65B of Evidence Act vide Ex.PW-5/D.

15. Deepali Talukdar (PW-7) stated that she never obtained any mobile connection on the basis of her identity card Ex.PW-7/A. She stated she had provided the photocopy of her election card Ex.PW-7/A and her photograph to Anand Vishwa @ Bishwa since he made a request that he wanted to obtain a mobile connection. She stated that she provided the photocopy of her identity card and her photograph to him with a view to help him in obtaining mobile connection.

16. Sanjay Sharma (PW-8), Executive in Jammu and Kashmir Bank, stated that he had provided the certified copies of statement of account of account no. 0408040100002488 in the name of Faris Shuja Jalali @ Anup exhibited as Ex.PW-8/C. He stated that approximately ₹22 Lacs were deposited in this account during the period 25th June 2010 to 25th June 2012.

17. PW-14, father of 'A', stated that date of birth of 'A' is 13th May 1994 and she had studied in Primary School, Mirik Municipality at Darjeeling.

18. Kishan Gurung (PW-13) stated that he was a teacher in Primary School, Mirik Municipality at Darjeeling since year 1998. He had seen the school certificate [Ex.PW-13/A] relating to 'A' which he had signed and which was handed over to CBI officials. In his cross examination, he deposed that no details of the date of birth were provided by the parents of

‘A’. He further stated that ‘A’ got admission in Infant Section of the school and studied from class I to class III. The date of birth and the name given in the certificate Ex.PW-13/A was as per the admission register of the school.

19. Dr. Rajinder Singh (PW-17), Director, CFSL, stated that he had received three parcels namely parcel Q-1, compact disc stated to have contained voice recording of Faris Shuja Jalali @ Anup and Anand Vishwa @ Bishwa, parcel S-1, compact disc stated to have contained specimen voice of Anand Vishwa @ Bishwa and Parcel S-2, compact disc stated to have contained specimen voice of Faris Shuja Jalali @ Anup. His report was proved as Ex. PW-17/B.

20. In defence, Faris Shuja Jalali @ Anup examined Sabir Ali (DW-2) who stated that he knew Faris Shuja Jalali @ Anup as he had been supplying parts of voltage stabilizers to Suja Jalali, father of Faris Shuja Jalali @ Anup since 2008. He stated that Faris Shuja Jalali @ Anup used to visit his shop and make payments. In his cross examination, he stated that it was correct that he had never met the father of Faris Shuja Jalali @ Anup since all the orders were taken on telephone. Faris Shuja Jalali @ Anup had visited his shop on several occasions in the year 2009 and 2010. He stated that he didn’t know the nature of work Faris Shuja Jalali @ Anup was doing in Delhi and he was only aware that he was studying somewhere.

21. Anand Vishwa @ Bishwa has been acquitted for offences punishable under Sections 366A and 372 IPC and Faris Shuja Jalali @ Anup for offence punishable under Section 373 IPC. The three provisions punish an accused for offences for procreation of minor girl, selling and buying minor for purpose of prostitution etc. Thus, the most essential ingredient for the prosecution to prove in the present case was that the victim ‘A’ was a minor

on the date of alleged offence. As noted above, victim 'A' came to Delhi at the Railway Station on 13th April, 2012. Case of the prosecution is that 'A' was born on 13th May, 1994 as per the certificate exhibited by Kishan Gurung (PW-13). Learned Trial Court noted that Kishan Gurung was not the headmistress of the school and had issued the certificate Exhibit PW-13/A on 11th June, 2012 when the headmistress of the school was on leave.

22. Be that as it may, with the certificate, the original register showing the date of birth of 'A' in the record was not brought. Further, name of 'A' was mentioned as 'P' in the school record and Kishan Gurung did not know personally that 'A' was the same girl as 'P' for the reason he had joined the school as an Assistant Teacher in 1998 whereas 'P' had studied in the year 1999 and Kishan Gurung in his cross-examination admitted that he was mentioning the duration of 'P' as a student in the school on the basis of admission in the Infant Section of the school that she studied from class-I to class-III. Further, the testimony of husband and father of 'A' was oral in nature and was not backed by any documentary proof qua her age as against 'A' herself giving her age as 19 years for the train ticket. The finding of the learned Trial Court on the evidence of the prosecution that it has not been proved beyond reasonable doubt that 'A' was 17 years and 11 months old on the date of the alleged offence cannot be said to be perverse for the reason the prosecution has not been able to establish that the certificate in the name of 'P' was actually of 'A' and that the date of birth 13th May, 1994 was actually noted in the school register. Hence, this Court finds no ground to interfere with the acquittal of respondent Anand Vishwa @ Bishwa under Section 366 A IPC and 372 IPC and of Faris Shuja Jalali @ Anup for offence punishable under Section 373 IPC.

23. With regard to offences punishable under Section 120B read with Section 420/366A/372/373 IPC though the prosecution has been able to prove that after 'A' spoke to Anand Vishwa @ Bishwa for getting her a job in Delhi he called her to New Delhi Railway Station however, there is no evidence on record that the said procreation for the purpose of selling was in conspiracy and with connivance of Faris Shuja Jalali @ Anup, where 'A' was induced to come to Delhi.

24. As regards Section 5 of the ITP Act is concerned, the evidence led by the prosecution is in the form of testimony of Harvinder Singh (PW-3) who was summoned as a witness and was introduced to Anand Vishwa @ Bishwa who informed that Anand Vishwa @ Bishwa had brought one girl from New Jalpaigudi on the pretext of providing job and after she was raped, he sold her for ₹18,000/- for which he received ₹5,000/-. He also disclosed about another girl 'A' who had been called to Delhi on the pretext of providing her a job when a deal for sale to one Faris Shuja Jalali @ Anup had already been struck.

25. Though statement of Anand Vishwa @ Bishwa to Harvinder Singh is not admissible in evidence as it was made in the presence of the police, however, the transcript regarding the conversation of Faris Shuja Jalali @ Anup which has been duly proved by the Director, FSL Dr.Rajinder Singh (PW-17) to be in his voice, there being no tampering in the recording and also the fact that it has been proved that phone No.9818636752 to which call was made and also the call records thereof were proved belonged to Faris Shuja Jalali @ Anup is sufficient to prove the case of the prosecution and Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup have rightly been convicted for the offence punishable under Section 5 of the ITP Act.

26. Consequently, this Court finds no error in the impugned judgment acquitting Anand Vishwa @ Bishwa and Faris Shuja Jalali @ Anup for offences punishable under Section 120B read with Sections 420/366/372/373 IPC or the substantive offences thereof and convicting and sentencing the two for offence punishable under section 5 of the ITP Act.

27. Appellant Anand Vishwa @ Bishwa was undergoing sentence in RC-3(S)/2012 SC-1/CBI under Sections 120B/420/344/363/366A/376 IPC and Section 5 of the ITP Act and when his sentence was suspended by this Court vide order dated 12th February, 2016, however, he continued to remain in custody for the reason he was undergoing sentence in another conviction. In case Anand Vishwa @ Bishwa has been released pursuant to the sentence undergone in the other conviction, he will surrender to custody and undergo the remaining sentence. Sentence of appellant Faris Shuja Jalali @ Anup was suspended vide order dated 21st August, 2015. He will also surrender to custody and undergo the remaining sentence.

28. Appeals are accordingly dismissed.

29. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

30. TCR be returned.

(MUKTA GUPTA)
JUDGE

AUGUST 08, 2018
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