

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Decided on: 20.08.2020

1. CRA-S No.2903-SB of 2018 (O&M)

Mohd Ashraf Mir

....Appellant

Versus

CBI Chandigarh

....Respondent

2. CRA-S No.2901-SB of 2018 (O&M)

Shabbir Ahmed Langoo @ Lone and another

....Appellants

Versus

CBI Chandigarh

....Respondent

3. CRA-S No.2945-SB of 2018 (O&M)

Shabbir Ahmad Laway @ Shabbir Kala

....Appellant

Versus

CBI Chandigarh

....Respondent

4. CRA-S No.2668-SB of 2018 (O&M)

K.C. Padhi

....Appellant

Versus

CBI Chandigarh

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Bipan Ghai, Sr. Advocate
with Mr. Paras Talwar, Advocate
and Mr. Deepanshu Mehta, Advocate
for the appellant(s).
(in CRA-S Nos.2903-SB, 2901-SB and 2668-SB of 2018)

Mr. Rajat Khanna, Advocate
for the appellant. (in CRA-S-2945-SB-2018)

Mr. Sumeet Goel, Advocate
for the respondent – CBI, Chandigarh.
(in all the cases)

ARVIND SINGH SANGWAN, J.

These appeals have been re-listed as per the order of Hon'ble the Chief Justice dated 18.07.2020. It is also worth noticing that the Hon'ble Supreme Court in SLP (Criminal) No.3402 of 2019 on 22.04.2019 directed that the main appeals be decided within a period of 01 year i.e. upto 31.03.2020, however in the meantime, due to COVID-19 pandemic, the cases were de-listed and are re-listed again as per the direction of Hon'ble the Chief Justice dated 18.07.2020.

This judgment will dispose of CRA-S Nos.2903-SB, 2901-SB, 2945-SB, and 2668-SB of 2018, as these have emerged out of the same judgment of conviction and order of sentence passed by the trial Court and identical questions of law and facts are involved for adjudication.

For the sake of consistency and to avoid any confusion, all the appellants and the other accused, who stand acquitted or the accused against whom the proceedings stood abated on account of their death, are hereby referred to as '(A-1) to (A-9)' as per Memo of Parties of the trial Court judgment dated 30.05.2018.

All these 04 appeals are arising out of a judgment of conviction dated 30.05.2018 and order of sentence dated 06.06.2018 vide which the appellants and the other accused (hereinafter to be referred as '(A-1) to (A-8)' i.e. (A-1) Shabbir Ahmad Laway @ Shabbir Kala, (A-3) Shabbir Ahmed Langoo @ Lone, (A-4) Masood Ahmad @ Maqsood, (A-5) Mohd. Ashraf Mir, (A-6) K.C. Padhi, were held guilty for committing the offence punishable under Section 376(1) of the Ranbir Penal Code and they were convicted to undergo the following

sentence:-

Convict – Shabbir Ahmad Laway @ Shabbir Kala (A-1)				
Sr. No.	Offence under Section	Imprisonment	Fine	In default of payment of fine
1	Section 376(1) of Ranbir Penal Code, Svt. 1989	10 years Rigorous Imprisonment	Rs.50,000/-	06 months Rigorous Imprisonment
Convict – Shabbir Ahmed Langoo @ Lone (A-3)				
Sr. No.	Offence under Section	Imprisonment	Fine	In default of payment of fine
1	Section 376(1) of Ranbir Penal Code, Svt. 1989	10 years Rigorous Imprisonment	Rs.50,000/-	06 months RI
Convict – Masood Ahmad @ Maqsood (A-4)				
Sr. No.	Offence under Section	Imprisonment	Fine	In default of payment of fine
1	Section 376(1) of Ranbir Penal Code, Svt. 1989	10 years Rigorous Imprisonment	Rs.50,000/-	06 months RI
Convict – Mohd Ashraf Mir (A-5)				
Sr. No.	Offence under Section	Imprisonment	Fine	In default of payment of fine
1	Section 376(1) of Ranbir Penal Code, Svt. 1989	10 years Rigorous Imprisonment	Rs.1,00,000/-	01 year RI
Convict – K.C. Padhi (A-6)				
Sr. No.	Offence under Section	Imprisonment	Fine	In default of payment of fine
1	Section 376(1) of Ranbir Penal Code, Svt. 1989	10 years Rigorous Imprisonment	Rs.1,00,000/-	01 year RI

It is worth noticing that the trial Court acquitted accused

(A-2) Meharaj-ud-din Malik and accused (A-7) Anil Sethi, however, the proceedings against accused (A-8) Sabeena and (A-9) Abdhul Hamid Bhullah stood abated as they died during the pendency of the trial.

This judgment consists two parts i.e. Investigation and Main Judgment.

The first part is referred to as the proceedings initiated during the investigation by the Jammu & Kashmir Police as well as the CBI till submission of challan and the second part is the main judgment.

The need to reproduce the investigation part of this case which is referred to as 'J&K Sex Scandal Case' is for two reasons. Firstly, the trial of this case was transferred to Chandigarh by the Hon'ble Supreme Court of India and secondly, the learned senior counsel for the appellants has raised arguments of false and coercive implication of accused and has referred to the investigation part before submission of charge-sheet by CBI for this purpose as discussed in the main judgment.

INVESTIGATION

The complete details of the investigation are extracted from a Division Bench judgment of Jammu & Kashmir High Court (in short 'the PIL Bench') titled as ***“Suo Moto Proceedings in Flesh Trade vs State and others”***, which is a reported judgment as **2007(30) RCR (Criminal) 576**.

It is also worth noticing that though in the judgment, the PIL Bench has disclosed the name of all the girls/victims, despite directions of the Hon'ble Supreme Court in ***“State of Karnataka vs Puttaraja”***, 2003(8) SCC 364, that to prevent social victimization or

ostarism of a victim of sexual offence, it would be appropriate that in judgment, by the Supreme Court, High Court or trial Court, name of victim should not be indicated. Therefore, in reproduction part also, the names are not disclosed. Similarly, in the main judgment their names are not disclosed and they are referred to as PWs by their number even by trial Court.

The details of the investigation and the monitoring done by the PIL Bench as per the judgment dated 08.10.2007, are reproduced as under:-

“On 02.05.2006, this court initiated suo moto proceedings in the matter in following terms:

"1. For a couple of preceding days, painful reports regarding inducement, and blackmail of teen-aged girls to lure and coerce them into immoral physical submission have appeared in press. What makes the reports alarming are allegations that some persons highly placed in different spheres are directly involved therein. Ex-facie the occurrences reported are so horrifying that even a fraction only thereof would be a complete horror in itself.

2. Pushing innocent minor girls in flesh trade is an extremely treacherous act and if constitutionally acknowledged social and moral commitments mean anything, the traders of this treachery have to be brought to account, irrespective of their placement and position, for which this Court perhaps cannot avoid indulgence, particularly while cases registered in the matter weeks back are reportedly lying without any headway in the investigation.

3. Accordingly, while initiating proceedings suo moto, I direct Registrar Judicial to seek orders in the matter for its appropriate listing under rules preferably

during current week."

Few days after this on 09.05.06, High Court Bar Association, also instituted writ petition OWP No. 300/06, and pleading that sexual exploitation of girls including minors has been going on in the city at large scale since long with active patronage of influential people, sought indulgence for having the matter dealt with under law. Meanwhile, state Govt. had ordered investigation of the case by CBI which took it over from local police on 11.05.2006; and recommenced the same.

2. On 12.05.2006, the matter came up before a Single Bench of this court, which while opining that the matter involved public interest sought listing of the matter before a larger bench with following observations:-

"The matter relates sensational sex scandal which has been unearthed very recently, Srinagar City has been rocked by the demonstrations which are still going on. The allegations are grave. Involvement of high officials, bureaucrats, police personals and influential persons is alleged. It was in view of the issues raised in the case and to enable the Court to come to the conclusion as to whether the case should be heard by this Bench or referred to a larger Bench that this court on 10.05.2006 issued notices to the Chief Secretary and the Director General of Police to file their reply as well as the status report of the case.

Keeping in view the sensitivity of the issue involved, sensibilities of the public and nature of the facts alleged I find it a fit case which should be heard by a larger Bench of this court. Accordingly I direct the Registrar Judicial to place the matter before Hon'ble Chief Justice for appropriate orders. In view of the urgency involved let the matter be placed before the Hon'ble Chief Justice today for orders..."

3. Ultimately the case was listed before this Bench on 15.05.2006, when proceeding were initiated as follows:-

"We have considered the petitions. We have also considered the material on file.

Since the State Government has now assigned the investigation of the case to CBI, who have reportedly taken over the job, we feel CBI is a necessary party in the case. We therefore direct arraying CBI through its Director as Respondent No.5 in the case. Registry to make necessary changes in the cause title.

In view of the issues raised in the petition and the submissions made the petitions are admitted to hearing.

....."

Keeping in view the issues raised we direct as under:-

a/. The investigation of the case as being conducted by the CBI shall henceforth be monitored by this Court.

b/. Report about the progress in the investigation shall be submitted by C.B.I. team conducting the investigation to this Court under a confidential cover, daily till further orders. To start with the status report of investigation conducted so far by C.B.I. shall be submitted by 12.30 P.M. tomorrow.

c/. The investigation team shall subject to other requirements of law record the statement of the two girls who are reportedly under interrogation with the CBI before a Magistrate U/S 164 Cr.P.C. The statements they tender be kept confidential and the girls giving such statement shall be given due protection.

d/. It is reported that the names of some of the girls are mischievously being circulated by un-known persons giving an impression that they are involved in the matter. Let Director General of Police report about the fact and take necessary steps in this behalf to stop it.

All Station House Officers (SHO) of the City Police Stations shall ensure that such acts are not repeated in their area for which they shall be personally responsible. Ladies whose names have thus been circulated are presumed to be innocent till guilt is proved against them. Hence no person, press and media shall take note of such lists. The police shall ensure the safety of such ladies and may provide necessary security to them if asked for.

It shall be made known to the general public that such lists are being mischievously circulated. Stern warning is given to those who are indulging in such activities. Any person found doing such act shall be prosecuted under law besides, the act would amount to contempt of the orders of this Court and shall be punishable accordingly.

The Court desires that the press/Media may exercise self restraint in this behalf. No hearsay or unconfirmed reports be published which are likely to hamper the investigation or cause undue harm/injury to any innocent person.

It is submitted by the Investigating officer of CBI, who is present in the Court that the case diaries maintained by the State Police are in Urdu and needs to translated into English for which they have written to the I.G.P. Kashmir. Let IGP Kashmir look into this aspect and ensure that the needful done within two days. Mr. Koul I.O. who was earlier investigating the case, may, as requested by the CBI Investigating Officer, assist the CBI team in this behalf.

Since the matter is still under investigation and at a crucial stage, any bail application or application for release of any seized articles in the case if made shall not be disposed of by the any Court below unless the fact is brought to the notice of this Court..."

On following date i.e 16.05.2006, further instructions were issued as under:

"On perusal of the report as well as the case diaries we find that the statement of Y..... has been recorded in part on 14.5.2006. Why it was left half way and why the statement of such an important witness has not been concluded in the same sitting is not clear from the case diaries. Investigating Officer states that the investigating team is on it and the statement will be completed very soon.

From the case diaries we further find that S..... was interrogated on 12.5.2006. Investigating Officer CBI states that they wanted to record her statement but they could not do so as the police remand of S..... expired and she was sent to judicial custody by the concerned Magistrate on 13.5.2006. The Investigating Officer, however, could not give the reason as to why the statement was not recorded on 12th May itself when she was available with them.

Let the CBI proceed with case and complete the statement of Y..... now without any further delay.

Investigating Officer, CBI states that the statement of S..... is also required to be taken for which they will approach the Magistrate for necessary orders. Let the CBI proceed in the matter in accordance with law when approached in this behalf the Magistrate concerned shall, without any delay, issue necessary orders as required by law.

Petitioner Mr. Mian Abdul Qayoom, stated that the CBI was not conducting the investigation properly as the politicians and some high ranking Police Officers were involved in the affair. He referred to the reply submitted by the Director General of Police and pleaded that the persons who are named in the statement of Y..... should be got arrested as they are influencing the investigation and

that since they occupy high positions, petitioner cannot expect a fair investigation in the case.

Perusal of the case diaries reveals that as claimed by the Director General of Police the girls has named some persons allegedly involved at the same time since the CBI is recording the statement of the girls which is yet incomplete so this aspect of the matter would be considered on next hearing.

Keeping in view the submissions made, the nature of allegations and seriousness of the issue we direct that the remaining part of the statement of Y..... and the statement of S....., as required by the Investigating Officer CBI, be completed within two days in presence of Mr. Molvi Javid Ahmad Principal District & Session Judge, Anantnag. Mr. Javid shall only remain present at the time and shall in no way participate in the process of investigation.

Chief Judicial Magistrate, Srinagar/Budgam are directed to submit records of all cases pending in the Courts of two Districts pertaining to the matter in question. Javid Koul SDPO, Shaheed Gunj, and I.Os of all other concerned cases to remain present in the Court. Advocate General to remain personally present to assist the Court.

List on 19.5.2006 at 10.30 A.M.,"

4. By 19th of May, CBI had recorded statement of Ab. Hamid in full with part statements of Sabeena and while perusing case diaries furnished for perusal by I.O, instructions were issued for speedy and focused investigation of the case. Developments following were reflected in the interim orders of 19.05.2006, 24.05.2006 and 29.5.2006 as under;

"In the facts and circumstances we direct the CBI that the persons whose names have been mentioned by Y..... in her statement be got identified by Tuesday in

presence of Judicial Magistrate. After identity of the person is confirmed, the Investigating Officer shall take steps in furtherance of the investigation. Director General of the State Police to give all assistance to the CBI in this behalf. Any person arrested by the CBI in-furtherance of the investigation shall not be bailed out, without permission of this Court.

.....Investigating Officer CBI shall complete statement of S..... and shall take steps for recording the statements of other girls whose names have been given either by S..... or Y..... . Care should be taken in providing protection to such girls wherever required if necessary by lodging them in protective homes. CBI may come with a proposal in this behalf and the State Government in that case shall provide every assistance to the CBI and extend every protection to the said girls.....

.....The Investigating Officer CBI is directed to investigate the management personnel of Hotels/Guest Houses and other places the names of which have been mentioned by S..... and Y..... and shall take steps in this behalf under Immoral Traffic (Prevention) Act, 1956.....

.....CBI has prayed for further time to complete the process of identification. We extend the time till 29.5.2006. The identification be done as directed earlier in presence of a Judicial Magistrate to be nominated by the Chief Judicial Magistrate, Srinagar. As prayed by the Investigating Officer CBI Sr. Superintendent of Police, Srinagar is directed to keep four teams each comprising 3 to 4 Police Officers at the disposal of CBI to assist them in the process. Any Police Officer failing to provide requisite assistance to CBI would be viewed as willfully acting to shield the culprits. We reiterate that further requisite steps be taken regarding persons whose names have come in the statements of girls examined so far after their identity is

confirmed.

.....The complete statement of S..... be also produced before the Court on next date. Further investigation be done regarding Hotels/Guest House etc. in terms of previous order.

.....Perusal of the case diaries maintained by the State Police and the statement of Y..... before the CBI shows that the girl has disclosed names of certain persons out of whom only a few have been interrogated so far. Rest of the persons have not been interrogated so far either by the Police or by the CBI even though sufficient time was available to the Investigating agency for the purpose. We may impress upon the agency that delay in the matter is likely to defeat the investigation.....

.....In such circumstances while extending the time for Identification of the persons till next date, we direct the CBI to complete the identification of all persons named by Y.... before the next date. For smooth and effective investigation the CBI shall be at liberty to conduct custodial interrogation of any among them before or after the identification, statement of S..... also be completed by the next date of hearing. Besides the CBI is free to proceed against any person failing or refusing to report for Identification and interrogate them.....

.....It was brought to the notice of the court by the petitioners that names of some highly influential people have appeared in the press in connection with case, who allegedly are involved in the act and that a CD also is claimed to have been prepared in this behalf as reported in a section of the press. Since CBI is investigating the case, let it take note of these reports and proceed in the matter as required by law and the procedure.....

.....CBI shall also make enquires about hotels/Guest houses and recorded statement of other girls named by

Y..... and S....., as directed earlier. For this purpose the CBI may constitute themselves at least into four different teams so as to conduct the investigation effectively in all limbs of the case and complete expeditiously.....

.....From the circumstances appearing, we are also of the view that no person be allowed access to Y..... including her parents till the investigation is complete. We direct accordingly

.....CBI is further directed to complete the part of investigation regarding the BSF officer named by Y....., against whom certain material facts are reported to have come on record and take further requisite steps for his effective interrogation....."

5. Between 25.5.2006 and 6.6.2006, investigating agency recorded another eleven statements of one Jamsheed Khan, manger of Imperial Hotel, Naseer Zarger (charge sheeted) Mohd Yousuf Mir Dy.SP (charge sheeted), Mohd Sultan Sheikh, manager of Hilltop Hotel Gulmarg, one Shamima, Dy SP Ab. Hamid Bhat, Masood Ahmed (Interrogation report) Moniba @ Rahila, further statement of S..... in three sittings, Gulshan @ Pepsi, and one Naseer Ahmed.

6. On 06.06.2006, Director General of CBI appeared in the court on asking and assured fair investigation of the case, whereupon proceedings continued as follows;

"Director General of CBI is present in person, who informed about the future course of action and assured fair, speedy and effective investigation.

On behalf of the Advocates team Mr. Syed Manzoor filed a report in the open Court. Copy of the report be given to Investigating Officer for his response.

We have perused the case diary according to which identification of Mohd. Ashraf Mir Dy. SP is complete and

who has reportedly been arrested. Further statement of S..... has been recorded in part. Investigating Officer of CBI seeks further time to complete the statement. He may do so and complete the statement by next date of hearing.

The Investigating Officer shall also complete the investigation regarding Hotels/Guest houses stated to have been used during course of occurrence which have been identified so far.

Investigating Officer is further directed to record statement of the witnesses/accused in presence of Mr. Molvi Javid (Principal District & Session Judge) Anantnag as already directed.

Investigation Officer shall also take further effective steps towards completion of investigation in respect of persons mentioned and corroborated in various statements recorded so far

..... We find that though the Investigating Officer has taken certain substantial steps in furtherance of the investigation, they could not record the statement of two other girls as Ld. Principal District & Session Judge, Anantnag was not available due to illness. In addition to him we also nominate Principal District Judge, Pulwama Shri Abdul Wahid as the judicial officer in whose presence the statement of the girls be recorded. I.O. may contact any one among them. Investigating Officer informed about certain other important steps which the CBI is contemplating to take in the case. We direct that effective steps be taken in this behalf and report about the same be submitted. We also direct the CBI to complete their investigation/interrogation in respect of Hotels/Guest houses as directed earlier, by next date and submit its report alongwith steps taken towards compliance of directions issued in previous orders..."

7. By 20.06.2006, CBI had recorded statements of

another seven persons, besides disclosure and further statement of Gulshan @ Pepsi. They are Y..../N....., lady constable N...., S...., A..... of Park View Hotel, one Nissar Ahmed, and Mohd Yousuf Malik the receptionist of the Govt Circuit house, and since the area of investigation was apparently enlarged so to equip CBI with proper authority the following order was passed;

"Perusal of case dairies would reveal that statements of some witnesses have been recorded and partial steps have been taken in furtherance of the investigation. Some arrests have also been made. The CBI is directed to proceed with the investigation in light of the statements on record and complete the same expeditiously. They shall be at liberty to conduct the lawful custodial interrogation of any person, substantially accused by any victim of being involved in this occurrence, and report progress in this behalf by the next date of hearing.

*While going through the files pertaining to **FIR No.5/2004, Police Station, Magam, titled State v. Syed Sajad**" and **FIR No. 80/2004, Police Station Maharaj Gunj, Srinagar, titled State v. Jagbir Singh**", we find that these cases need further investigation particularly in view of disclosures made by the girls in the present case, and the apparent links between those and this case. We direct re-investigation of both these cases, and cancel the bail bonds of all accused therein. Since this case is already under investigation with the CBI, these two cases shall also stand assigned to them for further investigation. They shall be at liberty to arrest any of the accused for further custodial interrogation.*

We reiterate that in case any petition for bail is filed before any subordinate court in this behalf in the present case or in the above two matters i.e, FIR No. 5/2004, Police Station, Magam and FIR No. 80/2004, Police

Station Maharaj Gunj, Srinagar, this court shall be kept informed about the same.

In view of the submissions made at the bar, we direct the State to provide sufficient protection/security to the victims, whose statements have been recorded/are likely to be recorded by the CBI.

We have also considered the issue relating to the rehabilitation of the victims involved in the present case. We feel that appropriate measures should be taken in this behalf. We therefore, direct the Director, Social Welfare Department Government of J&K, to remain personally present before this Court on the next date of hearing, so that the matter is properly addressed.

It was brought to our notice that some persons having information about the episode are willing to give information to the authorities. We direct that in case any person is desirous to disclose any information, which is likely to help the CBI in the process of investigation, he may contact the CBI for the purpose.

It is submitted by the Investigating Officer, CBI that the preliminary challan in respect of some of the accused persons is near completion and will be filed before the court of law shortly. In case the challan as such, is filed before the next date fixed in the matter, the CBI shall take all lawful steps to assure safety of witnesses and to prevent unverified allegations from being misused.

Mr. Rathore, counsel for the State, informed the court that keeping in view the nature of the case, safety of witnesses and the accused as well as the general convenience, it will be proper to create a temporary Special Court of Sessions for the trial of this case and other connected cases. He submits that the matter is under active consideration of the Government and the Government would come up with a proposal in this behalf

very shortly. Mr. Rathore, may inform the court about the progress in this behalf by the next date of hearing."

8. By 23rd of June, 2006, the statements of another six persons namely; M....., Sl....., Sz....., Sm....., Z....., and Af..... had been recorded in view whereof together with perusal of case diaries we found that despite a good amount of materials against certain people no action had been taken whereupon order of 23.06.2006, was passed as under.

"1. On previous date after going through case diaries we had observed that the CBI would be at liberty to conduct lawful custodial interrogation of all persons substantially accused by any victims of being involved in the occurrence and had also asked them to take due care regarding safety of the victims/witnesses in case they happen to file preliminary challan in the case and also prevent the unverified allegations/information from being misused in any manner whatsoever.

2. Today while the matter came up, the CBI has produced the case diaries till date where from, it percolates, that some more partial statements have been recorded. Besides that the requisite follow up procedural action in case of arrested persons has been taken. After hearing both sides, and while reiterating the earlier directions passed in the matter, we further direct that the investigating agency shall continue the investigation more speedily and take affective steps in furtherance of investigation including lawful custodial interrogation of all persons substantially accused of being involved in the occurrence.

3. During submissions the petitioners have alleged that involvement of highly placed people from politics, administration and police is perhaps hindering the pace of investigation and reportedly some of them are using their official position to threaten the witnesses/victims. The

Investigating agency requires to take note of that. In the interest of investigation they may also seek shifting of such persons by the competent authority so that they are not in positions to hamper the process of investigation or tamper with the evidence. If required the Court would also examine the advisability of assessing the level of accusations and requisite action in each case and pass appropriate orders.

4. We have also noticed that no action has been taken in cases of Hotels and Places stated to have been used for commission of the occurrence nor has any reason been furnished for that omission. The CBI may, therefore, take all necessary lawful steps in respect of these Hotels and Places and persons associated with them.

5. We are also informed that some of the accused persons arrested by CBI perhaps face difficulty in having the service of counsel for defending them. If that be so, such persons shall be at liberty to seek appropriate legal help, either from concerned court or if necessary from this Court.

6. Perusal of the case diaries also reveal that some of the arrested officers have been lodged in Central Jail, Srinagar. In view of the fact that other inmates of different hues are also lodged in the said Jail, all requisite precautions be taken for assuring safety of the accused persons/officers etc. arrested in connection with this case and lodged in Srinagar Central Jail. Requisite steps for their medicare may also be taken wherever sought.

7. The Director of Social Welfare department who was summoned under the previous order has been asked to prepare a comprehensive rehabilitation programme for rehabilitation of the victims in the instant case who has undertaken to do the same and furnish the requisite report within one week from now.

8. *In connection therewith, however, the Administrative Head of the Psychiatric Disease Hospital, Srinagar is also directed to be present in the court when the matter comes up next to supplement the aforesaid rehabilitation programme from his side."*

9. *During the period intervening between 23rd of June and 6th of July 2006, the statements of Nissar Bhat, (Driver of Ghulam Ahmed Mir MLA, former minister), Rasikh Mir, SHO, further statement of M. M.Y. Mir Dy. SP, statements of three ladies named R....., N....., Nu....., So..... and U.... were recorded. Accordingly the order of 6.7.2006, was passed as follows:*

"Learned counsel for the CBI seeks more time for further investigation. In view of the submissions made we grant further one week to CBI with a direction to collect further evidence to concretise action against all persons accused of involvement in the case and complete the investigation, as far as practicable, by next date.

It was brought to our notice by learned counsel that media is publishing unconfirmed report(s) which has resulted in undue harassment to concerned people. In this behalf press cutting of "Daily Tameeli Irshad" dated 4.7.2006 was produced, carrying a news item relating to the present case. DIG CBI present in the Court has denied having given any such statement to the press. Notice be issued to the editor and publisher of said daily for his appearance in the Court to furnish requisite clarification regarding said news item. We may reiterate our observation dated 15.5.2006 that the media should abstain from publishing unconfirmed and unverified reports regarding the case.

The Director Social Welfare and In-charge Psychiatry Hospital present in person. Learned Advocate General submitted at the bar that Government would

consider the issue of rehabilitating victims, and in this behalf would constitute a high level Committee of experts to suggest short term and long term measures for the purpose. Advocate General may take steps in this behalf by next date of hearing and furnish a detailed report in the Court..."

10. By 17.07.2006, statements of only two more persons namely one Dr. Javed and Nissar Sheikh, came on record, and this court noticed that the speed of investigation, which as precisely made known to the agency was of essence, had diminished, which necessitated the following order,

"1. We have perused the latest case diaries produced by Investigating Officer of CBI in Chambers and retained the set of previous case diaries for further perusal alongwith statements purporting to have been recorded so far. The latest case diaries reveal that no substantial headway has been made in the investigation from where it stood on the previous date, even though scope appears to exist for the same in view of the materials on record. While expressing satisfaction on the quality of investigation conducted so far, we impress upon the investigating agency to notice the sensitivities involved in this case which constitutes a chain of occurrences and the social perspective attending it which becomes more pronounced in view of the involvement of people holding high positions in different spheres. Even presently lack of lawful action against some highly placed persons regarding whom materials exist in case diaries leaves much to be done in the interests of investigation itself. Accordingly while posting the matter for further proceedings, we pass the following directions:-

i. The Investigating agency shall proceed ahead with investigation with enhanced speed and collect evidence

regarding all aspects of the matter and in light thereof together with the materials existing on record take all lawful steps against all those found substantially involved. Regarding any of them evading participation in the investigation process, all lawful steps to compel his attendance before the Investigating Officer for lawful interrogation be taken without any further delay. The latest status report in the matter alongwith the case diary file be furnished when the matter comes up next. On that date the I.O shall among other things also indicate the proposed line of action for further investigation covering all aspects of the matter.

ii. The State shall arrange adequate and secure accommodation for Ms. Y..... , the alleged minor victim of the offence within a week from now and if required provide her with a PSO to assure her personal safety till further order.

iii. The Advocate General who had previously informed that the Government has constituted a High Level Committee for rehabilitation of the victims of occurrence in this case, shall on the next date furnish a status report regarding measures initiated by the said Committee.

iv. We are informed that one case in connection with the present matter has been committed to court of Sessions. We accordingly instruct that all lawful steps be taken to assure assistance of counsel to the accused persons, if necessary at state expense wherever required or requested for. At the same time all lawful measures be also taken to assure safety of the prosecution witnesses and the accused persons facing trial. For this, it shall be permissible for the trial court to choose the venue of trial for which the Government shall be bound to render all requisite assistance.

v. From current case diaries we have also noticed

that requisite assistance has not been provided to CBI by local police due to which attendance of certain wanted persons could not be procured, for failure of concerned officers to provide the vehicle to the officer deputed for the job. We accordingly direct that whole Police Organisation shall render all possible assistance to the CBI so that they conduct the investigation without any hindrance.

vi. We reiterate all earlier directions passed in the matter for speeding up the investigation and taking affective steps in furtherance thereof, including lawful custodial interrogation of all persons substantially involved in the occurrence. If in the interest of investigation it becomes necessary for the investigating agency to seek shifting of any such person from a place of authority who appears to hamper the smooth conduct of investigation, they shall be at liberty to approach the competent authority for the same. Requisite lawful action be also taken regarding Hotels and other places stated to have been used in commission of the offence.

vii. Mr. M.A. Rathore, AAG, appearing for Home Department shall assure the presence of all Investigating Officers who have investigated the cases, files whereof have been summoned and are presently a part of the record of this case on the date of next hearing for rendering necessary assistance regarding those cases and the persons involved therein.

viii. The CBI shall inform on the next date about progress, if any, made in respect of the cases FIR No. 80 of 2004 of Police Station, M.R.Gunj and case FIR No. 5 of 2004 of Police Station Magam, which were entrusted to them for reinvestigation. 2. We have also perused the reply furnished by Editor, Printer and Publisher of daily Tameel-i-Irshad regarding publication of news item mentioned in the previous order. Orders regarding same would be

passed when the matter comes up next.."

11. By 25th July statements of one Sr.... and Ab..... had been added to the record which necessitated the following order on 25.07.2006;

"1. We have perused the set of latest case diaries produced by CBI and heard learned counsel appearing in the matter. Perusal of case diaries reveals that statements of some more witnesses have been recorded which as per contents are indicative of the involvement of few more persons in the occurrence. The investigating agency has also out lined a follow up plan in terms of materials on record regarding some of the individuals allegedly involved, for prompt follow up action in terms thereof. Accordingly in view of the case diaries and submissions made at bar while reiterating all the previous directions made from time to time, we further pass following directions-

i. The Investigating agency shall proceed ahead with the investigating in light of materials on record and intimate action among other things in accordance with the proposed action plan regarding those mentioned therein and others figuring in the statements so far recorded particularly in view of the satisfaction as recorded by the Investigating Officer in certain cases. Further all lawful action be taken in respect of all those found to be substantially involved in the matter.

ii. Regarding provision of adequate and secure accommodation for Y....., the minor victim of alleged offence, the Advocate General informs that Government has allotted two rooms in a particular premises for her lodgment. The Investigating Officer concerned is directed to inspect the said premises in company of Registrar Judicial of this Court to assess its feasibility for her lodgment in view of the elements of security, investigation

and trial involved in the matter and furnish report when the matter comes up next. In the meanwhile Advocate General may also explore the possibility of lodging her in a more suitable place sufficiently secured and adequate for the purpose in light of aforesaid aspects.

iii. The Advocate General has also informed that the High Level Committee constituted for rehabilitation of the victims of occurrence is working out an elaborate rehabilitation plan which includes imparting of sufficient vocational training to them besides financial and other assistance to earn their livelihood honourably. He is directed to furnish a detailed blue print of proposed rehabilitation plan in the Court by next date.

iv.

v.

vi. The CBI informs that they have registered cases in respect of FIR No. 80/2004 P/S M.R.Gunj and FIR No.5/2004 of P/S Magam and are about to commence investigation thereof alongwith the investigation going on currently. They are directed to conclude the same with due promptitude. They shall also be at liberty to conduct custodial interrogation of any person found involved in these cases including those currently in custody in connection with other cases.

2. The matter be listed before this Bench at 2.30 PM on 31st of July, 2006. On that date the latest diaries alongwith the status report be filed in the Court.

Before proceeding ahead it would be appropriate to mention that on 21.7.2006, the CBI formulated a "line of action" which if necessary may be quoted in due course and submitted copy thereof to court assuring that for effective investigation it intends to proceed ahead in accordance with that only. Till 11th of August 2006, however, statements, further statements and disclosures of

few more persons namely Nr...., Sz...., Aijaz, Dy. SP, Farooq Reshi and Ab.... were recorded."

12. Despite formulation of action plan however no action concretized which persuaded this court to pass the following order on 11.8.06;

"1. We have perused the latest set of case diaries produced by Investigating Officers and heard learned counsel. Before advertng to current case diaries, it would be appropriate to recapitulate that right from its registration with the CBI this case is being monitored by this court for around three months now during which period CBI has arrested as many as 18 persons including two sitting Legislators who have been former Ministers, a DIG of BSF, an IAS officer, a former Additional Advocate General of the State and two Dy. SPs of the State Police, after having been found involved. The CBI has also instituted cases against 14 of them in competent courts of law and currently as revealed from the case diaries the investigation revolves round others about whom incriminating statements are reported have come on record including some persons highly positioned in different echelons of administration which fact requires a more speedy and focused attention by Investigating Agency to pin down the guilty. Conversely, however, during couple of preceding weeks the pace of lawful follow up action, on materials collected during course of investigation appears to have slowed down for which no plausible explanation has been forth coming from the investigating agency.

2. It requires to be understood that alleged involvement of highly placed people in this case recommends an effective and sustained action on basis of materials available on record so that there is no room for the possible misunderstanding that involvement of powerful people is in any manner impeding the course or

cause of investigation, which is bound to adversely effect public faith in law enforcing institutions. If any component or functionary of the constitutional machinery acts in contravention of law/norms, he not only brings disgrace to the system but also impairs the credibility of systematic institutions/offices, which can only contribute to subversion of the system as lawfully established. Needless to say that loss of public faith in constitutional machinery and systematic institutions can only breed anarchy which is an antithesis of the rule of law and rule of law, that must prevail at all costs, if the State, the society and system has to survive hardly needs be stressed; thus an onerous responsibility that lies on the shoulders of CBI which is investigating this case, that involves delicate questions touching, the individual human dignity and protection maintenance of lawfully established system and moral fabric of society, efficacy and credibility of administrative institution, and prevention of crime perpetrated and patronised at high level.

3. We, therefore, genuinely expect that the investigating team of CBI would take all the right steps in right direction to conclude this case with reasonable speed and save the agency from being seen as suffering from self imposed inertia. With that, while reiterating all directions passed in the matter from time to time we make the following directions/observations:-

(1) The CBI shall without any further loss of time concretizes action including custodial interrogation against all persons found involved in terms of materials on record regardless of their position and placement to take process of investigation to logical end and prevent the witnesses who have exposed themselves by giving reportedly incriminating statements against powerful culprits, from being harassed or subjected to unlawful

pressures etc.

The Investigating officer of the case shall be at liberty to seek appropriate directions from this court if required for effective and lawful investigation of the case as aforesaid, and shall not act on any incompetent instruction whatsoever; nor shall any authority issue any direction/instruction contrary to lawful requirements of the focused investigation and consequent action in the case as indicated above. Any direction if received by the Investigating Officer that is aimed at rendering the observations of this Court in-effective shall be brought to the notice of this Court for appropriate action.

(2) The I.O shall in the first instance concentrate on the accusation appearing against the public functionaries named in the case diaries and shall conclude the investigation and take appropriate steps in this behalf including custodial interrogation of the involved persons and report by next date.

(3) The I.O shall also take appropriate action on the conclusions arrived at by him in this respect of other persons, as mentioned in the case diaries. Compliance report in this behalf be submitted by the next date."

This order reflected a broad repetition of earlier directions and was challenged by CBI before Hon'ble apex court through an SLP, which was disposed of inter-alia in following terms;

"....It goes without saying that for enforcement of the rule of law every one, howsoever big or influential, is equal. In appropriate cases monitoring by a court may be necessary but, at the same time, for honest and independent investigation, it is also necessary to give a free hand to the expert investigators and the question of issuing any direction may be necessary only when it is found that the investigation being conducted is not honest

and bona fide...."

"....when the High Court directs that the Investigating Officer shall not act on incompetent instruction, it only means instructions from those who are not competent in law to issue such instructions. It does not mean, as is apprehended by the C.B.I, that the instructions of the superior officers in accordance with law are also to be ignored. In sum and substance, the direction in Paragraph (3) read as a whole only means that honest and bona fide investigation should be conducted by all concerned in the investigating agency from the Investigating Officer up to the Director of the C.B.I or any other competent person.....".

"....Regarding monitoring of the case by the High Court, per se, we find no illegality but how frequently the Investigating Officer should be directed to appear before the High Court so that it can effectively monitor to ensure that legal, proper and bona fide investigation is conducted, is a matter for the High Court to decide on the fact situation. Undoubtedly, while directing the appearance of the Investigating Officer before it, the High Court would take into consideration the reasonableness of the gap period."

Meanwhile, by 7th of Sept. 2006, statements/further statements of S....., G....., Gu..... one Murvat Mir, Hakeem Mohd Yasin, Niyaz Mehmood DIG police, Sheikh Mehmood SP, Ashkoor Wani SSP, one Amit Amla and Dr. Pritipal Singh Goga had been recorded in view whereof while quoting from Hon'ble Apex Court order, the proceeding under order of 7.9.2006, continued as follows:

"In view of the orders of this Court passed from time to time read with above quoted observations of Hon'ble Apex Court, the CBI is duty bound to conduct the investigation honestly and bona fide and any element

contrary to these requisites would automatically necessitated issuance of appropriate directions. It hardly needs to be said that the element of honesty and bona fide investigation would have to be gathered from the actions and approach of CBI for fulfilment of requirement of law and focused investigation to bring the real culprits to book.

On perusal of case diaries we find that the CBI has extended the area of investigation to certain highly placed persons/officers against whom allegations exist on record. We, however, feel that some more steps are required to be taken in compliance of the directions of this Court dated 11.8.2006 as subject to Apex Court observations.

Dy. Inspector General of CBI who is present in the Court has agreed to prepare action plan and proceed with the investigation of the case on that basis in a systematic way so that the investigation is taken to its logical conclusion expeditiously.

Investigating Officer is further directed to take steps to ensure that none of the witnesses whose statements have been recorded so far are subjected to threat or inducement from any quarter whatsoever."

13. After this, with many sessions in between on 21.09.2006, the I.O presented two lists comprising of those mentioned by S..... and concerned girls, indicating action taken in each case which may be quoted in due course. By that date however few more statements of Dr. Goga, Kesar, Rafiq Khan and one Mushtaq Ahmed Wani had come on record and accordingly the following order was recorded;

"I.O. present in person.

Investigating Officer produced case diaries which were perused.

He has also submitted two lists relating to the status of the investigation in respect of various accused persons. He seeks further time to produce a third list. He may do so

on the next date of hearing."

The third list however never came and on 3.10.2006 by which date the statements of certain persons from Delhi namely M/s Narayan Ragopalan, Vidya Dalmia, Manog Verma, Arjun Amla, Hena Handa, Prochi Bhasim, Sunil Tandon and Archana Gujral had been recorded along with two locals namely Mohd Yousuf Wani and Zahoor Ahmed Malik, the CBI furnished its final status report.

14. Before proceeding ahead, it may be noticed that throughout around five month long monitoring, through proceedings reflected in the interim orders quoted hereinabove, this Court kept on impressing upon the investigating agency; first, that speed was of essence in the matter because in view of the sensitivities and the possible adverse impact of delay, the investigation and consequential action could not brooke any delay, particularly in view of the frailty of concerned girls coming for ward against all possible odds to depose before CBI and the might of those whom they were implicating_ the political functionaries and officers of police/civil administration who could try to turn tables on the CBI, which as would be seen later appeared to have partially happened in certain cases; and secondly that all out follow up action in light of incriminating statements which were coming on record be precipitated if necessary by arrest and custodial interrogation of the culprits who if left at large would in all probability try to influence or even coerce the witness girls, who may also get discouraged due to delay in action which did not find any effective response. Both, without casting any aspersion on or attributing anything negative to the agency, we believe that CBI conducted investigations as they perhaps would in a scam involving financial swindling or administrative/white collar crimes, where once the relevant records/materials

are seized, all evidence stands preserved. But that was not the position in this case which solely rested on oral evidence of the weakest of people who could easily be tipped, tossed or troubled, even tortured into silence. It was the proverbial fight between the tremoring candle flame and the torrential storm.

15. However on 3.10.2006, the S.P of CBI furnished the "final status report" contents whereof may if necessary be noticed later, with concluding portion running as under;

"8. In short, based on the evidence collected, 17 persons who sexually exploited the victim girls have already been Charge sheeted and a final report u/s 173 Cr.P.C requesting further for the discharge of 03 persons has also been filed in the competent court on 29.09.06.

9. That it is respectfully submitted that the Hon'ble Supreme Court in Nandan Jha v. Dinesh Mathur, AIR 1968 SC 117, has held that "according to the Code of Criminal Procedure, the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority".

Further, the Hon'ble Supreme Court of India has also held in Vineet Narain and ors. v. Union of India and Anr. that the task of monitoring by a Court would end the moment the Charge sheet was filed in respect of a particular investigation and that the ordinary process of law would then take over."

Thus in the final analysis CBI informed the court "with utmost respect" that investigation in the matter having concluded it should wind of the proceedings because whatever the conclusions arrived at by I.O, had to be the last word, and in support quoted two judgments of Hon'ble apex court also. Accordingly, before proceeding

ahead it would be apt to look for whatever guidance is available from the quoted judgments and while doing so, the final submissions of appearing counsel may also be briefly noticed. The CBI counsel while quoting from aforementioned judgments contended that with completion of investigation the matter comes to an end rendering any further orders/directions by the court un-necessary, in reply where to the counsel representing Bar Association have submitted that CBI has only conducted a half baked investigation resulting in exoneration of most of the bigwigs involved in the case, and that they had been loudly apprehending it, never duly registered by the agency which necessitated intervention by court.”

In the later paragraphs also since, the name and statements of victims are reproduced and therefore, those are not reproduced.

The said case was thereafter adjourned by issuing the following two separate directions in Para 30 and 85:-

“30. In conclusion, therefore, and for all that has been said in preceding paras, I feel that magisterial proceedings for consideration regarding taking cognizance of offences under penal laws in appropriate cases is required to be ordered besides having further fresh investigation done in other cases. Accordingly, I order that:-

(a) The CBI shall place all records/evidence/materials available regarding Sh Ashkoor Wani SSP, Sheikh Mehmood SSP, and Niyaz. Mehmood DIG; Sh. G.H. Khan MLA former minister; Sh. Yogesh Sani MLA; former minister; Sh. Nissar Ahmed Sheikh; Sh. Manzoor Naik; and Sh. Hakeem Mohd. Yaseen the sitting cabinet minister; Dr. Pritipal Singh Goja and Amit Amla before CJM, Srinagar, within six weeks from now; alongwith a detailed report thereupon, who shall examine

the same for considering taking cognizance of the offences as may appear to be made out whatever against them under appropriate provisions of law, or for passing such orders as appear to him to be proper and lawful.

(b) The CBI shall conduct further, speedy and focused investigation in cases of Sh. M.Y. Khan former Chairman of JK Bank, Sh. Raj Tickoo the then Vigilance Commissioner, & Sh. Zahoor Ah. Malik.

(c) The CBI shall also conduct fresh investigation in respect of those persons named by Sabina or any of the involved girls as mentioned in various status/action reports by them against whom no action has been taken due to reportedly insufficient materials.

(d) They shall also establish the identity of the "Gora-Chitta commissioner" mentioned hereinabove, and conduct further lawful interrogation of Sabeena, Dy. S.P M.Y. Mir, Shazia/Azra and Muzaffer Handoo alongwith the councilor Manju mentioned hereinbefore.

(e) Status report by CBI be filed in the two cases FIR No. 80/04, P/S SR Gunj, and FIR No. 5/04 of P/S Magam when the matter comes up next.

(f) The DGP of J&K shall form a Special team of police officers with reputed integrity to be headed by a DIG for exclusively dealing with the cases of illicit sex traffic and drug trade in whatever form; and cases relating to drug abuse.

(g) He shall also immediately provide security to all persons named in this order, especially the girls mentioned herein.

(h) Suitable police action against hotels named in the statements quoted and those figuring in challans produced be initiated under appropriate provisions of law.

(i) The Govt. shall undertake a rehabilitation programme for all girls/women involved or dragged into

sex trade, through Department of Social Welfare and Women's Development Board.

xxxx xxxx xxxx xxxx

85. In view of the above discussion it is directed that:-

a. The CBI shall submit within four weeks, its report along with all the material collected during investigation to the Court having jurisdiction.

b. The Court shall independently apply its mind to the facts and circumstances of the case and decide whether in respect of persons named in the statements of the witnesses the conclusions arrived at by the CBI are correct.

c. If the Court feels that the evidence and material collected during investigation justifies prosecution of all or any of these persons, it may not accept the findings but take cognizance and summon the accused. The Magistrate may also direct action against the hotels and guest houses if warranted in accordance with the provisions of the Immoral Traffic (Prevention) Act, 1956.

d. If from the material the Court finds that the report of the CBI is in accordance with law and that no offence has been committed by any person the Court may accept the report after giving due hearing to the complainant and the petitioners.

e. The Court if feels proper, can in exercise of the powers under Section 173(8), Cr.P.C. direct the CBI to 'further investigate' the case and collect further evidence keeping in view the nature of accusation and the allegations appearing from the evidence.

f. CBI shall complete the investigation in FIR No: 80 of 2004 of Police Station SR Gunj and FIR No.5 of 2004 of Police Station Magam without delay and file its report before the Court of competent jurisdiction.

g. Due protection be given by the State to the victims who approach the authorities for the purpose. State shall also take steps for rehabilitation of any such victim who needs the assistance of the Government in this behalf. For this it will be appropriate for the Government to constitute a committee of senior officers including an officer from the Social Welfare Department to examine such cases if any and work out proper ways to rehabilitate such girls.

h. State shall pay due attention to fully enforce the provisions of the Act. Functionaries under the act be made responsible for strict implementation of the Act. It will be proper to constitute a high level committee to suggest ways and means to make the Act effective.”

It is worth noticing that though in Para 12 of the judgment, the PIL Bench has noticed an order passed by the Hon’ble Supreme Court in SLP (Criminal) No.3975 of 2006 filed by CBI against the order dated 11.08.2006 passed in the aforesaid OWP No.299 of 2006, however, the complete order is reproduced below as during the course of arguments, learned senior counsel appearing for the appellants has referred to both the orders which will be discussed in the main judgment. The operative part of the said judgment is reproduced as under:-

“The challenge in this special leave petition filed by the Central Bureau of Investigation [for short, "the C.B.I."] is to the order dated 11th August, 2006, passed by the High Court. By that order, the High Court, in suo motu initiated proceedings, has issued certain directions to the C.B.I. in the matter of investigation of a case popularly known as "Sex Scandal Case" in Srinagar, Kashmir. On the same subject, a public interest writ petition has also been

filed in the High Court. Firstly, a First Information Report was registered in the Shaheedganj Police Station, Srinagar, and later the C.B.I. registered a regular case, which is under investigation. Various persons have been arrested as well. According to the C.B.I., by the impugned order, the High Court has directed custodial interrogation of all persons. The relevant part of the impugned order reads thus:

"i. The CBI shall without any further loss of time concretize action including custodial interrogation against all persons found involved in terms of materials on record, regardless of their position and placement, to take process of investigation to logical end, and prevent the witnesses who have exposed themselves by giving reportedly incriminating statements against powerful culprits, from being harassed or subjected to unlawful pressures etc.

The investigating officer of the case shall be at liberty to seek appropriate directions from this court if required for effective and lawful investigation of the case as aforesaid, and shall not act on any incompetent instruction whatsoever, nor shall any authority issue any direction/instruction contrary to lawful requirement of the focused investigation and consequent action in the case as indicated above. Any direction if received by the Investigating Officer that is aimed at rendering the observations of this Court in-effective shall be brought to the notice of this Court for appropriate action.

ii. The I.O. shall in the first instance concentrate on the accusation appearing against the public functionaries named in the case diaries and shall conclude the investigation and take appropriate steps in this behalf including custodial interrogation of the involved persons and report by next date.

iii. The I.O. shall also take appropriate action on the

conclusions arrived at by him in respect of other persons, as mentioned in the case diaries. Compliance report in this behalf be submitted by the next date."

Submissions have also been made by the learned Solicitor General about almost day-to-day monitoring of the investigation by the High Court. It is urged that the C.B.I. is duty-bound to conduct bonafide and honest investigation and in that process also take into custody such persons whose custodial interrogation becomes necessary, having regard to the honest assessment of the relevant material on record.

Before we consider the submissions made by the learned Solicitor General, a brief reference to what is stated in the counter affidavit filed on behalf of the first respondent, namely, Jammu and Kashmir High Court Bar Association by its Secretary, is necessary as also to some parts of the press release dated 23rd August, 2006, issued by the Bar Association. On behalf of the Bar Association, we have heard Mr. R.A. Jan, learned counsel. In the counter affidavit, it has been, inter alia, stated that the C.B.I. has disobeyed the directions of the High Court and despite substantial material being available in the case diaries, the C.B.I. has failed to concretize its action against them. On being asked, Mr. Jan very candidly stated that Respondent No.1 would like the C.B.I. to continue the investigation. The learned counsel was unable to point out which direction of the High Court was disobeyed by the C.B.I. and against which person, despite substantial material, the C.B.I. failed to concretize the action. "To say the least, the averments made in this behalf in the counter affidavit are wholly vague and irresponsible. In fact, the learned counsel expressed regrets for such statement as also the statements made in Paragraph (21) of the counter

affidavit.” Learned counsel submitted that, in fact, it was an inference which is stated, as a matter of fact, in Paragraph Nos.17 and 21. The learned counsel was unable to point out as to which of the ‘high officer’ of the C.B.I. was withholding consent for arrest and for whose arrest. Likewise, it could not be pointed out which influential person was not arrested, though on the basis of material he was found to be involved by the C.B.I. Further, the learned counsel was unable to state which quarters have frustrated the attempt to unearth the truth. We hope in future utmost care would be taken and the allegations and averments made with a sense of responsibility, particularly when it comes from an Association which is supposed to be the guardian of the rule of law. It has to be kept in view that vague, unfounded and baseless allegations made harm the cause of justice and rule of law instead of helping it.

In paragraph (13) of the press release, above referred, after deciding to appear in the case and after appointing a team of advocates, as stated in Paragraph (12), it is stated that:

"It goes without saying that by causing its appearance in the Supreme Court on 29-8-2006, the Bar Association is not going back on its stand on Kashmir issue. On the other hand, by appearing in the case it will expose politicians, bureaucrats, police officials, etc. who have sexually exploited teenage girls of Kashmir in the name of countering insurgency and show the entire world the real face of India in Kashmir".

Again, we are constrained to note that the good cause of exposing the racket of this nature is being linked with wholly baseless, unnecessary and extraneous reasons. In respect of the afore-quoted paragraph, again, the learned counsel expressed sincere regrets and,

therefore, we would only deprecate such stand and leave the matter at that and say no more. *It goes without saying that for enforcement of the rule of law everyone, howsoever big or influential, is equal. In appropriate cases monitoring by a court may be necessary but, at the same time, for honest and independent investigation, it is also necessary to give a free hand to the expert investigators and the question of issuing any direction may be necessary only when it is found that the investigation being conducted is not honest and bonafide. Though it has been vaguely suggested by the first respondent that some influential people are being shielded but we find that out of those who have been arrested are (1) Two Deputy Superintendent of Police, Jammu and Kashmir; (2) Deputy Inspector General of Police, Border Security Force; (3) Members of Legislative Assembly, who were earlier Ministers; (4) a former Additional Advocate General of the State; and (5) a Principal Secretary to the Government of Jammu and Kashmir.*

Reverting to the afore-quoted directions of the High Court and the submission made that C.B.I. has been directed to undertake custodial interrogation of every one by taking him into custody, we may note that if direction for custodial interrogation, as given in paragraph 3(ii), is read in isolation without reading all the directions together, it is possible that one may gather the impression that the custodial interrogation of everybody is to be conducted and the matter reported to the High Court. But if this direction is read with Paragraph 3(i) as a whole, it becomes clear that custodial interrogation is to be conducted only of such person or person s against whom there is adequate material and on its assessment such interrogation is considered appropriate by the Investigating Officer and other higher officers in

accordance with the rules and regulations governing the C.B.I. When the High Court directs that the Investigating Officer shall not act on incompetent instruction, it only means instructions from those who are not competent in law to issue such instructions. It does not mean, as is apprehended by the C.B.I., that the instructions of the superior officers in accordance with law are also to be ignored. In sum and substance, the direction in Paragraph (3) read as a whole only means that honest and bonafide investigation should be conducted by all concerned in the investigating agency from the Investigating Officer up to the Director of the C.B.I. or any other competent person.

Regarding monitoring of the case by the High Court, per se, we find no illegality but how frequently the Investigating Officer should be directed to appear before the High Court so that it can effectively monitor to ensure that legal, proper and bonafide investigation is conducted, is a matter for the High Court to decide on the fact situation. Undoubtedly, while directing the appearance of the Investigating Officer before it, the High Court would take into consideration the reasonableness of the gap period.

The grievance was also sought to be made about the hearing being conducted in-chamber by the High Court. It was urged on behalf of the C.B.I. that it has not made any submission before the High Court for conducting the hearing in-chamber. The question is not of C.B.I. making such a submission before the High Court. The real question is that, in a given case, in the interests of investigation, a court may deem it appropriate to hold in-chamber proceedings. It does not necessarily depend upon what investigating agency may say. However, while holding in-camera proceedings in chambers, the courts have to keep in view the law laid and the observations made by this

Court in Vineet Narain & Ors. vs. Union of India & Anr. (1998 (1) S.C.C. 226), in particular to Paragraph (13), which reads thus:

"13. During the monitoring of the investigations, the Solicitor General/Attorney General, from time to time, reported the progress made during the course of investigation, in order to satisfy us that the agencies were not continuing to drag their feet and the "continuing mandamus" was having the effect of making the agencies perform their statutory function. The procedure adopted by us was merely to hear what they had to report or the CBI Director and the Revenue Secretary had to tell us to be satisfied that the earlier inaction was not persisting. We maintained this stance throughout. We also ensured that no observation of any kind was made by us nor was any response given which may be construed as our opinion about the merits of the case or the accusation against any accused. We also did not identify or name any accused during performance of this task. At the very outset, the then Solicitor General Shri Dipankar P. Gupta requested that a part of the proceedings be held "in camera" to enable him to state certain facts and, if necessary, place before us material, the secrecy of which was required to be maintained for integrity of the investigation and also to avoid any prejudice to the accused concerned. In these circumstances, such a procedure was adopted only to the extent necessary for this purpose, in the interest of justice, and that is how a part of some hearings was held in camera. This innovation in the procedure was made, on request, to reconcile the interest of justice with that of the accused."

In the light of what we have noticed above, it is not necessary to interfere with the impugned order of the High

Court dated 11th August, 2006.

The special leave petition is disposed of accordingly.

In view of the orders passed in Writ Petition (Crl.) No.161 of 2006, this special leave petition does not survive. It is, accordingly, dismissed.”

MAIN JUDGMENT

➤ (Local Police Case No.20/2006 dated 14.03.2006 PS Shaheed Ganj, Srinagar under Section 67 of the Information Technology Act, 2000)

➤ CBI Case No. (FIR No.)RC.1(S)/2006/CBI/SCR.III/New Delhi dated 10.05.2006.

➤ CBI submitted the final report under Section 173 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) against the following accused persons:-

➤ Shabbir Ahmad Laway @ Shabbir Kala (A-1), ***“as per Custody Certificate dated 29.07.2020, issued by Superintendent, Model Jail, Chandigarh and Superintendent Jail, Jammu as well as of Superintendent, Srinagar Jails, has undergone 02 years and 02 months, after conviction.”***

➤ Mehraj-ud-din Malik (A-2), ***‘acquitted’ by the trial Court.***

➤ Shabbir Ahmed Langoo @ Lone (A-3), ***“as per the Custody Certificate dated 30.07.2020, issued by Superintendent, Model Jail, Chandigarh and Superintendent Jail, Jammu as well as of Superintendent, Srinagar Jails has***

undergone total sentence of 02 years and 03 months, as on today.”

➤ Masood Ahmad @ Maqsood (A-4), *“as per the Custody Certificate dated 30.07.2020, issued by Superintendent, Model Jail, Chandigarh and Superintendent Jail, Jammu as well as of Superintendent, Srinagar Jails has undergone total sentence of 02 years and 03 months, as on today.”*

➤ Mohd. Ashraf Mir (A-5), *“as per the Custody Certificate dated 30.07.2020, issued by Superintendent, Model Jail, Chandigarh and Superintendent Jail, Jammu as well as of Superintendent, Srinagar Jails has undergone total sentence of 02 years and 02 months, as on today.”*

➤ K.C. Padhi (A-6), *“as per the Custody Certificate dated 07.08.2020, issued by Superintendent, Model Jail, Chandigarh and Superintendent Jail, Jammu as well as of Superintendent, Srinagar Jails has undergone total sentence of 02 years, 08 months and 17 days, as on today.”*

➤ Anil Sethi (A-7), *'acquitted' by the trial Court.*

➤ Sabeena (A-8), *'died' on 26.05.2015 during the pendency of the trial, proceedings 'abated' on 24.07.2015.*

➤ Abdul Hamid Bhullah (A-9), *'died' on 11.06.2017 during the pendency of the trial, proceedings 'abated' on 19.09.2017.*

All the aforesaid accused are being referred as '(A-1) to (A-9)'.

As noticed above, the proceedings *qua* (A-8) and (A-9) i.e.

Sabeena and Abdul Hamid Bhullah, stood abated as they died during the

pendency of the trial while accused (A-2) and (A-7) i.e. Mehraj-ud-din Malik and Anil Sethi, were acquitted by the trial Court.

CBI or any of the victim have not preferred any appeal against the judgment of acquittal of accused (A-2) and (A-7) i.e. Mehraj-ud-din Malik and Anil Sethi.

The accused (A-1) to (A-7), faced the trial for the offence punishable under Section 5 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter to be referred as 'the Act of 1956') for procuring a minor girl below the age of 16 years (referred to as PW-1 or W-1, as her identity is not disclosed) through a brothel run by accused Nos.(A-8) and (A-9), for the purpose of prostitution and in the alternative for commission of offence under Section 376 of Ranbir Penal Code for committing rape on PW-1(W-1), a minor girl below the age of 16 years.

Additionally, the accused (A-3) was also charged for commission of offence punishable under Section 67 of the Information Technology Act, 2000 while accused (A-8) and (A-9), faced the charge for offence punishable under Section 120-B of Ranbir Penal Code read with Section 376 of Ranbir Penal Code and also under Sections 3, 4 and 5 of the Act of 1956.

Hereinafter for the sake of brevity, Ranbir Penal Code, Svt. 1989 (1932 A.D.) is referred to as 'RPC', Code of Criminal Procedure, Svt. 1989 (1932 A.D.) is referred to as 'Cr.P.C.', The Immoral Traffice (Prevention) Act, 1956 is referred to as 'the Act of 1956' and The Information Technology Act, 2000 is referred to as 'the IT Act'.

FACTS OF THE CASE AS PER CBI CHARGE-SHEET

On 14.03.2006, a Crime Case No.20 of 2006 was registered

in Police Station Shaheed Ganj, District Srinagar under Section 67 of the IT Act, with the allegation that a fruit vendor namely Bashir Ahmad Paffoo has received a pornography clipping through an unknown boy containing obscene filming of a girl belonging to their vicinity and this was followed by a protest by the local residents. The police thereafter, arrested 06 persons namely Shabbir Ahmad Laway @ Shabbir Kala (A-1), Mehraj-ud-din Malik (A-2), Riyaz Ahmad Langoo, Sabeena (A-8), Abdul Hamid Bhullah (A-9) and one Nasiruddin Zargar and started the investigation.

Later on, the State Government handed over the investigation to CBI for further investigation as per the Notification dated 09.05.2006 issued by the Government of India with consent of Government of Jammu & Kashmir vide its Notification dated 08.05.2006 and CBI then registered a case on 10.05.2006.

As noticed above, the PIL Bench of Jammu & Kashmir High Court in OWP No.299 of 2006 and 300 of 2006 by taking the Suo Moto Proceedings as well as in a PIL filed by Jammu & Kashmir High Court Bar Association (hereinafter referred to as 'the bar association'), noticing the facts that there are some reports in the press about inducement of teenage girls to lure and then by blackmailing coerce them into the immoral physical activity which involved high officials, bureaucrats, police personnels, politicians and influential persons, issued certain directions on 02.05.2006, 12.05.2006 and 15.05.2006.

Thereafter, the PIL Bench directed the CBI to record the statement of all witnesses in presence of Principal District & Sessions Judge, Anantnag, who later on, appeared as PW26 (W-35) during the

evidence. The PIL Bench also directed that the Test Identification Parade of accused persons be got conducted before a Judicial Magistrate. During investigation, a list was prepared to conceal identity of victims and they were referred to as (W-1 to W-).

In the investigation conducted by the CBI, it is concluded that PW1 (W-1) a minor victim, was studying in 8th standard in a school in the year 2004. As per the school admission and discharge certificate, her date of birth is 20.12.1990. In the year 2003, when PW1 (W-1) was about 13 years of age and was studying in 7th class, she met Sabeena (A-8), who offered to provide monetary help for her poor family. Sabeena (A-8) took PW-1 (W-1) to a bed room on the first floor of her house where PW1 saw that one person was having sexual intercourse with a girl. Thereafter, Sabeena (A-8) brought PW1 (W-1) downstairs and gave her some sedative tablets in a glass of juice and under the sedation, Sabeena (A-8) took her to another room upstairs and forced her to have sex with a person for which, Sabeena (A-8) paid Rs.500/- to PW1 (W-1). Again after one week, PW1 (W-1) went to the house of Sabeena (A-8) where she had sexual intercourse with a person for which Sabeena (A-8) again paid her Rs.250/- and in this manner, a minor girl i.e. PW1 (W-1) was introduced into the flesh trade by accused Sabeena (A-8), when she was 13 years of age and she remained in the flesh trade till January, 2006.

The CBI investigation further revealed that one Ansar got the pornography clipping of PW1 (W-1) and one another unknown girl on his mobile phone. He had shown these clippings to one Firdaus, who was living in his vicinity and also handed over a memory card to him.

Firdaus had further shown the same to the members of a Samaj Sudhar Committee and on enquiry, the members found that one of the clipping, containing pornography filming of a girl in a naked condition, is of a girl who lives in their area and they identified the girl as PW1 (W-1). The members of the Samaj Sudhar Committee approached the police and for that purpose, they contacted one boy namely Mudassar, who was studying in BCA to prepare still photographs of the said clippings so that they can pass on the same to the police for taking necessary action. However, Mudassar told them that he can only prepared Compact Disc (CD) of the clippings and after the memory card was handed over to Mudassar, he prepared 03 CDs and handed over the same to one Habibullah, a member of the Samaj Sudhar Committee. Out of the 03 CDs, 02 CDs were handed over to the police and 01 CD was retained by the Committee for record. Later on, the 3rd copy of the CD was also taken over by CBI. To avoid the disclosure of the identity of Ansar, the member of the Committee informed the police that he is a fruit vendor Bashir Ahmad Paffoo, who has received the CD from an unknown boy. Further investigation reveal that Ansar Ahmad received this pornography clipping from M/s. Al-Riyaz, Mobile Phone Shop in Khaniyar and owner of the same Tahir had downloaded the same from the mobile phone of one Mushtaq Ahmad Latha, who has further received it from one Shakeel Ahmad Bhat. Shakeel Ahmad Bhat told that he had received this clipping from one Farooq Ahmad Lone, who is a tourist guide and he received it from one Irshad Ahmad Sheikh. On further investigation, Irshad Ahmad Sheikh told that he came across one driver at Gulmarg, who forwarded the same to him in the month of

February, 2006 from his mobile phone. Irshad further claim that after transferring the clipping in the phone of Farooq Ahmad Lone, he had deleted it.

During the investigation, PW1 (W-1) informed CBI that it was Shabbir Ahmed Langoo @ Lone (A-3), who has filmed her in a naked condition in Yousaf Guest House and Shabbir Ahmed Langoo @ Lone (A-3) had shown her another video clipping of a naked boy with a burka-clad girl, performing oral sex in some vehicle. The purpose for filming PW1 (W-1) in a naked condition by Shabbir Ahmed Langoo @ Lone (A-3) was that she may not perform marriage with a person other than him i.e. Shabbir Ahmed Langoo @ Lone (A-3). As per the investigation, the chain of receiving the CD could not be completed as Farooq Ahmad Lone, the last person in the chain, could not lead further from whom he received the same. The identity of the burka-clad girl appearing in the other porn CD also could not be identified.

After the recording of the FIR by the Jammu & Kashmir police, 02 statements of PW1 (W-1) were recorded in which she named number of persons and also named girls, involved in flesh trade.

The statement of PW1 (W-1) was recorded by PW26 (W-35) and in her statement, PW1 (W-1) named Shabbir Ahmad Laway @ Shabbir Kala (A-1), Mehraj-ud-din Malik (A-2), Shabbir Ahmed Langoo @ Lone (A-3), Masood Ahmad @ Maqsood (A-4), Mohd. Ashraf Mir (A-5), DIG BSF, K.C. Padhi (A-6) and Anil Sethi (A-7), who had sexual intercourse with her during the period of 2003 to 2006. Except Anil Sethi (A-7), the Test Identification Parade of accused (A-1) to (A-6), was conducted before the Judicial Magistrate and later on, the

Test Identification Parade of Anil Sethi (A-7) was conducted in the presence of Judicial Magistrate by mixing his photograph with the photograph of other persons and PW1 (W-1) identified the photograph of Anil Sethi (A-7) as a person, who had sexual intercourse with her at Hotel Imperial.

In the Test Identification Parade, PW1 (W-1) identified Shabbir Ahmad Laway @ Shabbir Kala (A-1) and stated that he had sexual intercourse with her at the house one Rashid at Hazratbal against the payment of Rs.300/-. It is further stated that Mehraj-ud-din Malik (A-2) was a visitor in the house of Sabeena (A-8) where PW1 (W-1) was asked to have sexual intercourse with him by Sabeena (A-8). Shabbir Ahmed Langoo @ Lone (A-3) used to visit the building where PW1 (W-1) was residing with her parents as he was indulged in gambling. He came in contact with the father of PW1 (W-1) and started visiting her house and from the period of 2003 to 2005, Shabbir Ahmed Langoo @ Lone (A-3) once took PW1 (W-1) along with him to his house where he had sexual intercourse with her. Again, she was called by Shabbir Ahmed Langoo @ Lone (A-3) to meet him and Shabbir Ahmed Langoo @ Lone (A-3) took her to Yousaf Guest House where again, he had sexual intercourse with her and at this place, when she was naked, he took photograph of her naked body with the help of a camera of his mobile phone and paid her Rs.200/- for having sex with him on that day. Later on, Shabbir Ahmed Langoo @ Lone (A-3) visited her house and by showing the video clipping of her naked body and also showing another video clipping of one burka-clad girl doing oral sex with a man in a vehicle, blackmailed her. Shabbir Ahmed

Langoo @ Lone (A-3), even threatened her mother not to disclose his name. During the investigation, PW1 (W-1) identified the room of Yousaf Guest House where Shabbir Ahmed Langoo @ Lone (A-3) had prepared the mobile clipping of her naked body and she was raped by him. PW1 (W-1) also identified Shabbir Ahmed Langoo @ Lone (A-3), in the Test Identification Parade before the Judicial Magistrate.

Further investigation show that Masood Ahmad @ Maqsood (A-4) had sexual intercourse with PW1 (W-1) at the house of Rashid at Hazratbal area during the period 2003 to 2005 against payment of Rs.300/-. PW1 (W-1) also identified Masood Ahmad @ Maqsood (A-4) in the Test Identification Parade on 25.05.2006 conducted before the City Magistrate (PW15).

The CBI investigation also concluded that PW-1 (W-1) was taken to Naaz Hotel in Karan Nagar by Sabeena (A-8) when she was 14 years of age and when they went on the first floor of the hotel, they found one police personnel in uniform sitting in the room. Thereafter, Sabeena (A-8) introduced the said police personnel to PW1 (W-1), who disclosed his name as Mohd. Ashraf Mir (A-5) and told her that he was working as DSP in police headquarters. Thereafter, he had sexual intercourse with PW1 (W-1) in the said room and Sabeena (A-8) paid Rs.250/- to PW1 (W-1) for having sex with Mohd. Ashraf Mir (A-5). PW1 (W-1) also identified Mohd. Ashraf Mir (A-5) in the Test Identification Parade on 04.06.2006 conducted before the City Magistrate (PW15).

PW-1 (W-1) in her statement made before the Principal District & Sessions Judge, Anantnag had disclosed that during the year

2004, she was taken to BSF Camp, Pantha Chowk by Sabeena (A-8) where one DIG, BSF had sexual intercourse with her at his residence and paid Rs.250/-. PW-1 (W-1) also identified the place where the said DIG, BSF had sex with her. The investigation show that the said place was the residence of K.C. Padhi (A-6), the then DIG, BSF, Kashmir Sector, at the relevant time. After the arrest of K.C. Padhi (A-6), PW-1 (W-1) also identified him in the Test Identification Parade on 11.06.2006.

The CBI investigation further revealed that in the year 2005, Sabeena (A-8) took PW-1 (W-1) to McDonald restaurant near Iqbal Park, where she introduced her with one Anil Sethi (A-7), who further took PW-1 (W-1) to the Imperial Hotel and raped her. Anil Sethi (A-7) paid the auto fare to PW-1 (W-1) whereas Sabeena (A-8) paid Rs.250/- to her for the said intercourse. PW-1 (W-1) identified the room of the hotel in which Anil Sethi (A-7) had sexual intercourse. Later, the Test Identification Parade of Anil Sethi (A-7) was conducted in the presence of Judicial Magistrate by mixing his photograph with the photograph of other persons and PW1 (W-1) identified the photograph of Anil Sethi (A-7) as a person, who had sexual intercourse with her at Hotel Imperial.

The CBI investigation also revealed that the accused Sabeena (A-8) had purchased the house in Chinkral Mohalla, Srinagar in the year 1995 and she was residing there with her husband Abdul Hamid Bhullah (A-9) and was running a brothel in the said house. The people of the vicinity called the husband of Sabeena in the mosque and advised him not to indulge in such activities but despite that he

continued his nefarious activities. Their house was raided by the police in the year 2004 and thereafter, both Sabeena (A-8) and Abdul Hamid Bhullah (A-9) purchased another house in Zaindar Mohalla and started living there. Suspecting the immoral activities, the locality people also advised Abdul Hamid Bhullah (A-9) to refrain from the said activity but again both Sabeena (A-8) and Abdul Hamid Bhullah (A-9) continued their activities from the said house.

The victim i.e. PW-1 (W-1) was got medico legally examined and the medical examination report dated 28.03.2006 coupled with the statement of the doctor indicate that PW-1 (W-1) would have had sexual intercourse with other persons.

During the investigation, the call details of accused Shabbir Ahmed Langoo @ Lone (A-3) with accused Sabeena (A-8) and hotel record of stay of accused Anil Sethi (A-7) in International Grand, Srinagar, was also taken in possession.

In the investigation, it was concluded that accused (A-1) to (A-7) had sexual intercourse with PW-1 (W-1) from 2003 to 2006 and when she was below 16 years of age and thus have committed rape on her and accused Sabeena (A-8) and her husband Abdul Hamid Bhullah (A-9) were found guilty of conspiracy for procuring PW-1 (W-1) and keeping her in a brothel run by Sabeena (A-8) and forcing her to earn her livelihood by way of prostitution.

After the report under Section 173 Cr.P.C., was submitted on 24.06.2006, against the above-mentioned 09 accused, the Chief Judicial Magistrate, Srinagar vide order dated 15.07.2006 committed the case in the Court of Sessions.

In the meantime, vide order dated 04.09.2006, the Hon'ble Supreme Court of India transferred the trial of the case to the Court of Sessions Judge, Chandigarh.

Thereafter, the charges were framed on 21.03.2007 under Section 5 of the Act of 1956 and in the alternative Section 376 of RPC. The accused Shabbir Ahmed Langoo @ Lone (A-3) was also charged under Section 67 of the Information Technology Act and accused Sabeena (A-8) and Abdul Hamid Bhullah (A-9) were charge-sheeted for the offence punishable under Section 120-B of RPC read with Section 376 of RPC and also under Sections 3, 4 and 5 of the Act of 1956.

PROSECUTION EVIDENCE

The prosecution had examined as many as 60 witnesses. Some of the witnesses were given up and some witnesses had died as detailed in the judgment of the trial Court and are not relevant to be re-discussed.

PW-1 (W-1), the minor victim/prosecutrix stated that her date of birth is 20.12.1990. She studied in Modern Islamia High School, Nawa Bazar, Srinagar, which was a co-educational school. Earlier, she was residing in Fateh Kadal, Srinagar and thereafter, she shifted her residence to Narparistan and she used to go to school on foot. She passed her 8th class from the said school in November, 2005. This witness further stated that later on, her family shifted to a house in Nawhatta and then to Drebayal Habakadal. She further stated that she knew a girl (W-38), who was residing in Fateh Kadal and she was a student of class 10th. She took her in the house of accused Sabeena (A-8) in Chinkral Mohalla, Srinagar. One or two other girls were present in

her house. Aabid son of Sabeena (A-8) was also present there. Sabeena (A-8) first of all served juice to her as well as W-38. Then, Sabeena (A-8) served tea and took her to a room on first floor of her house where a boy and girl were indulged in sexual intercourse with each other. She stated that she got perturbed and Sabeena (A-8) brought her back in her kitchen and gave juice mixed with 04 tablets which she later on, came to know to be Alprex tablets. Sabeena (A-8) took her to the room in upstairs where a man was sitting aged about 30-35 years and Sabeena (A-8) told her to have sexual intercourse with that person and he had forcible sexual intercourse with her. She also suffered scratches of his nails on her neck as she protested. The man called Sabeena, who told her that she has taken money from the said person and PW-1 (W-1) should oblige her by having sexual intercourse with him and then, the said person had sex with her. Sabeena (A-8) paid her Rs.500/-. This witness identified Abdul Hamid Bhullah (A-9) as husband of Sabeena (A-8). Again after one week, W-38 took her to Chinkral Mohalla where Sabeena (A-8) asked her to have sexual intercourse with a police officer. She demanded Alprex tablets from Sabeena but instead she gave her a bottle of Corex. Sabeena (A-8) paid Rs.250/- for having sexual act with the said police officer. This witness further stated that her mother was working in the house of Sabeena (A-8) from October, 2003 till September, 2004 and both the aforesaid acts of sexual intercourse took place prior to October, 2003.

Again in May or June, 2004, Sabeena (A-8) came to her house in Fateh Kadal and invited the family on the occasion of marriage of younger brother of her husband. She went there along with their

relatives. Her Bua Nilofar was also there, whose sister was married to brother of accused Abdul Hamid Bhullah (A-9). On coming to know this fact, Sabeena (A-8) repented from introducing her in the flesh trade. Again, Sabeena (A-8) asked her to accompany to a hotel but she was taken to Naaz Hotel where a 40 years' old person in police uniform was sitting. His name was Ashraf Mir (A-5) and he was a DSP. Sabeena (A-8) told her to go to washroom so that she can have a talk with Ashraf Mir (A-5) and then Ashraf Mir (A-5) had sexual intercourse with her and paid her Rs.250/-. This witness further stated that she identified Ashraf Mir (A-5) in the presence of Jafar Hussain Beg, a Magistrate vide identification memo Ex.P1. She also identified Naaz Hotel where Ashraf Mir (A-5) had sex with her vide her statement Ex.P2. Again, in the presence of CBI officials, she identified the Naaz Hotel vide memo Ex.P2/1 and identification of the room vide memo Ex.P2/2, which she signed.

After this incident, Sabeena (A-8) took her to Naaz Hotel where they met Bashir Makdoomi, his name was disclosed by Sabeena. Sabeena further asked her to have sexual intercourse with the said person, which she did and went home. This witness further stated that she was also subjected to have sexual intercourse with Shabbir Ahmad Laway @ Shabbir Kala (A-1), who is present in the Court in the year 2005 in the month of summer. Again, Sabeena and one lady took her to the house of W-99 where Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Maqsood (A-4) were present. This witness identified both of them and stated that W-99 was not present and had gone outside. The lady and the two persons drank liquor and forced her to drink liquor and then

Maqsood (A-4) had sexual intercourse with her. As the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) was having a cell phone with the facility of camera recording, he took snaps from his cell phone when Maqsood (A-4) was having sexual intercourse with her and then Shabbir Ahmad Laway @ Shabbir Kala (A-1) also had sexual intercourse with her. This person is also known as Shabbir Kala. When she told the lady accompanying her about this fact, she checked the mobile phone and stated that they have not clicked anything. She was paid Rs.300/- for the said act. This witness again stated that she identified them in the presence of a Magistrate and the CBI officials and proved the relevant memos. This witness further stated that Shabbir Ahmed Langoo @ Lone (A-3), present in the Court, used to visit her house in Fateh Kadal for playing cards. He was having a similar business as of her Chacha (real brother of her father) and he was acquainted with her family as he was a regular visitor. He took her and her younger sister on the pretext of attending a feast and took her to the house in Kawdara. His friend Setha was already present in the house, who went away after locking his house and Shabbir Ahmed Langoo @ Lone (A-3) took her to upstairs and told that he want to marry her but she refused and then subjected her to have sexual intercourse in the said house and also gave her some money.

After 02 months of this incident, her family shifted to Nawhatta and she made a call to Shabbir Ahmed Langoo @ Lone (A-3) on his cell phone to know his whereabouts and he told that he came to her house after 2/3 days and thereafter, he took her to Yousaf Guest House where a lady was preparing meals. Shabbir Ahmed Langoo @

Lone (A-3) told that lady that he wanted to marry her (PW-1/W-1) and in her house, he again had sexual intercourse with her and made a video recording when she was not wearing any clothes. Shabbir Ahmed Langoo @ Lone (A-3) paid Rs.200/- and again asked to marry her but she refused as she intended to marry her cousin Mohd. Irfan Khan but he threatened her on the pretext of video recording. After 5/6 days, he again came to her house and showed her the video recording and in the said recording, there was another recording of a girl, who was resident of Raje Kadal. She was present in some vehicle and was indulged in oral sex with a person.

This witness also proved the identification of accused Shabbir Ahmed Langoo @ Lone (A-3) as well as Yousaf Guest House, which was prepared during the investigation. It is further stated that accused Sabeena (A-8) took her and W-38 to Pantha Chowk where BSF Camp is located in summer of 2004. There was an STD booth outside BSF Camp where Sabeena (A-8) made a phone call to accused K.C. Padhi (A-6) and requested him to send a vehicle because auto-rickshaw was not allowed to enter BSF Camp. The accused K.C. Padhi (A-6) sent a white colour gypsy, in which 2/3 gunmen and 01 driver were sitting. The vehicle disembarked her and W-38 outside the house of K.C. Padhi (A-6) and they went to the house where they were served by his servants. Thereafter, K.C. Padhi (A-6) took her to his room and had sexual intercourse with her and thereafter, he had sexual intercourse with W-38 and then both of them left the house and thereafter, they have seen him in Central Jail, Srinagar. This witness also proved the identification of accused K.C. Padhi (A-6). She further stated that in the

year 2005, she had gone to the house of Sabeena (A-8) where accused Mehraj-ud-din Malik (A-2) was present. Sabeena (A-8) asked her to have sexual intercourse with Mehraj-ud-din Malik (A-2) in the basement. When she went to the basement, the accused Mehraj-ud-din Malik (A-2), was under the influence of liquor. This witness knew the accused Mehraj-ud-din Malik (A-2) because he was a regular visitor in the house of Sabeena (A-8). Firstly, he slapped her and then she ran away from the basement. This witness also stated that she identified him in the Central Jail and also proved the memo of identification.

She further stated that in summer of 2005, Sabeena (A-8) took her to a hotel where they met accused Anil Sethi (A-7), who took her to Imperial Hotel, Nehru Park and had sexual intercourse with her in a room on the second floor of the hotel. He told her that there was a girl W-55, who used to visit accused Sabeena (A-8) and further told her to tell W-55 to contact Anil Sethi (A-7). From there, she went to the house of Sabeena (A-8), who paid Rs.250/-. This witness further proved the memos regarding the identification of Imperial Hotel and the identification of a photograph of accused Anil Sethi (A-7).

This witness further stated that she was never medico legally examined by CBI rather she was examined by a doctor of J&K Police. The video clipping Ex.P11 which was made by Shabbir Ahmed Langoo @ Lone (A-3) was played in the Court and this witness identified the same video clipping recorded by Shabbir Ahmed Langoo @ Lone (A-3) in Yousaf Guest House in his cell phone. However, the Court declined to allow playing of the second CD of another lady as the same was not related to the charges framed by the Court. During the

examination-in-chief, a request was made by Public Prosecutor to cross-examine this witness on two counts regarding identity of accused Anil Sethi (A-7) and the fact that Mehraj-ud-din (A-2) had sexual intercourse with her whereas she deposed in-chief that he did not have sexual intercourse with her. The same was allowed and the Public Prosecutor cross-examined the witness where she again stated that during the investigation by the police, she named Mehraj-ud-din (A-2) as a person, who had sex with her because the public had burnt her house and the police has put pressure on her to name Mehraj-ud-din in the name of culprits. Regarding accused Anil Sethi (A-7), a question was put to her to identify the photograph Ex.P10 with the accused Anil Sethi (A-7) present in the Court in which she replied that Anil Sethi is the same person as shown in the photograph Ex.P10. Further in the cross-examination, this witness stated that she has not seen Anil Sethi (A-7) prior to 2007 i.e. the previous date when her statement was recorded and the Public Prosecutor was allowed to cross-examine her. In cross-examination on behalf of accused Mehraj-ud-din (A-2) and Mohd. Ashraf Mir (A-5), she stated that her father had tried to commit suicide twice due to the incident that her naked picture was circulated on the cell phones in the vicinity. This witness further stated that ***“It is correct that taking undue advantage of the circulation of my naked picture, Madam Asia Indra Bi, Chief of the Women’s Organization known as Dukhtran-I-Millat started organizing protest and rallies in Srinagar. It is correct that Dukhtran-I-Millat is a Militant organization. I do not know if at the time of investigation of this case by the police, a Asia Indra Bi was actively helping the police.*”**

It is correct that when there was protest and demonstrations by the public about the circulation of my photograph, Media and Press became hotly after us for interviews. The Media and the Press published posters and otherwise gave publicity about the names and number of other people as culprits who are actually not named by me. It is correct that the media and the press did this to bring into limelight their own institutions. The media hype had a very bad and adverse effect on my reputation and that of my parents and family.”

This witness has further stated in cross-examination that she do not know if the local Lawyers had filed a PIL in Jammu & Kashmir High Court and Asia Indira Bi had pleaded by appearing in the High Court for intervening in the said PIL. This witness has further stated that she was kept in police custody for about 12 days after the public demonstrations and she was kept in Shergarhi, Srinagar, forcibly without her consent and felt bad. Due to the restrictions imposed by the police, she was not allowed to go outside and meet anybody. Thereafter, she was kept at CBI Camp at Humhama, Srinagar for about 8-9 months. For about 03 months, she was kept confined in the room upstairs and nobody was allowed to meet her. Regarding the accused Mohd. Ashraf Mir (A-5), this witness has stated that *“I started knowing accused Mohd. Ashraf Mir when I was 14 or 15 years old. When we were residing in Nohatta I used to see accused Mohd. Ashraf Mir near police station Khaniar on his duty. It is correct that accused Mohd. Ashraf Mir was known as a very strict police officer who caused terror in the minds of the people. I do not know if this accused was*

subjected to grenade attack by the militants or whether on another occasion he was shot at by the militants.

It is correct that when we were residing in the house of Pandits in Mohalla Fateh Kadal, accused Mohd. Ashraf Mir accompanied by a police party had come there to throw us and other occupants of the adjoining houses of Pandit Migrants and he had also abused the occupants of the houses including us at that time. It is correct that my parents had made entities to this accused not to evict them from that house but he did not oblige them. Voltd. That he had thrown away our utensils from that house. It is incorrect to suggest that I falsely named accused Mohd. Ashraf Mir regarding sexual intercourse with me on account of the fact that he had tried to expel us from the house of Pandit migrants, to take revenge from him.”

This witness has further stated that she had earlier made a statement on 15.03.2006 to the police containing true facts but that was not believed by the police. She was kept in custody by the police for four days and at the instance of police, she was forced to make aforesaid allegation regarding the blue film against the accused Sabeena (A-8), Mehraj-ud-din Malik (A-2) and W-98. She also stated that she do not remember if in the statement dated 16.03.2006, she has named the accused Mohd. Ashraf Mir (A-5) as one of the person, who had sexual intercourse with her. When confronted with the statement Ex.DA-1, the name of accused Mohd. Ashraf Mir, was not found. However, she further stated that in the statement under Section 161 Cr.P.C., recorded on 04.05.2006, she named Mohd. Ashraf Mir (A-5) as one of the person, who had sexual intercourse with her. She further stated that from March

to May, 2006, Rasik Mir was the SHO of Police Station Shergarhi, who conducted the investigation at that time and then Zahoor conducted the investigation and DSP Javed Kaul was also conducting the investigation. This witness admitted that Javed Kaul and accused Mohd. Ashraf Mir were involved in fight for the last 02 years and this fact was known to everybody in the police and she also came to know about this fact. She further stated that she had sexual intercourse with Mohd. Ashraf Mir (A-5) at Naaz Hotel around 4/5 PM and she had tea in the same room where this accused performed sexual intercourse with her.

In further cross-examination, this witness was consistent with the allegation that Mohd. Ashraf Mir (A-5) had sex with her.

This witness also named Nazir Secretary of PDP and Amir of CID and some other officials by their descriptions. In one of the suggestions, she admitted that she is still a minor. In further cross-examination, she stated that her father's younger brother was killed by the Security Forces as he was a Militant and was a member of Kashmir Liberation Front. This witness has further stated that she has stated before CBI that after leaving Sabeena (A-8), she continued prostitution through C-152 and thereafter independently. Regarding her age, she stated that the recital in the admission and withdrawal form of Modern Islamia High School, Nawa Bazar, Srinagar (Mark-B) show that she took admission in 2001 in 6th class is wrong. In the Discharge Certification (Mark-A), it is wrongly stated that she had withdrawn from the school on 03.12.2004. She further stated that the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) is a surrender militant and is a married person having children. This witness also stated that she

named accused K.C. Padhi (A-6) in the statement recorded on 15.05.2006, however, when confronted with the statement Ex.DA, his name is not found. She also stated that she cannot identify the gunmen with whom she had gone to the house of DIG and at his residence when she and W-38 were taking tea and he was present. The cook, present in the house, who prepared the tea may be present in the Kitchen. The CBI did not confront her with the gunmen of DIG during the investigation. She further stated that in the statement dated 18.05.2006 recorded by CBI, she named K.C. Padhi (A-6) but when confronted with the statement Ex.DA/3, his name is not there.

This witness has further stated in cross-examination that *“I had named accused K.C. Padhi as one of the person who had sexual intercourse with me in the statement before the CBI recorded on 15.05.2006. Confronted with statement Ex.DA in which accused K.C. Padhi is not named.*

Court Question: Was your statement u/s 161 Cr.P.C. by the CBI completed on 15.05.2006?

Ans. No. It was an incomplete statement.

I have seen accused K.C. Padhi today. He is not a fat man now. Vol. At that time he was fat (Mota). I do not know if no action was taken against 48 out of 57 persons named by me in my statement dated 04.05.2006. Vol. Some of the names in that list were mentioned by me falsely.”

This witness in further cross-examination has stated that *“It is correct that after the CBI took over investigation I gave a different version to the CBI than the one given by me to the police. It*

is incorrect to suggest that even the statements that I made to the CBI are not truthful. I do not know if CBI believed that I was not a truthful witness or that due to that reason they got recorded my statements in the presence of a Magistrate.”

This witness denied the fact that in the year 2003, she was aged about 18 years. She further stated that it is correct that after CBI took over the investigation, she gave a different version to the CBI than the one given by her to the police.

It is worth noticing that while conducting cross-examination on behalf of accused Mehraj-ud-din Malik (A-2) and Mohd. Ashraf Mir (A-5), their counsel Maulvi Aijaz Ahmed, Advocate had put certain questions which, in opinion of this Court could not be asked to a rape victim to prove the innocence of the accused. One of the question and its reply reads as under:-

“Ques. Whether accused Ashraf Mir had sexual intercourse with you in his full satisfaction or not and whether the act of sexual intercourse was complete?”

Ans. I removed my clothes and whatever a man does with a woman while committing sexual intercourse was completely done by accused Mohd. Ashraf Mir with me.”

It has been held number of times by the Hon’ble Supreme Court that in **“State of Punjab vs Gurmit Singh”, 1996(1) RCR (Criminal) 533**, while conducting the cross-examination of victims of sexual assault, the Court should be vigilant that defence counsel should not adopt a strategy of continuing questioning the

prosecutrix as to the detail of the rape. The Court should not sit as a silent spectator while the victim of the crime is being cross-examined by the defence and it should effectively control the recording of the evidence. The operative part of the said judgment, reads as under:-

“There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defense counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defense. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence.”

Therefore, the trial Court should not have allowed such questions to be put to the prosecutrix if the defense counsel could not shatter the testimony of a rape victim.

PW-2, Mohd. Ashraf has stated about Sabeena (A-8) and Abdul Hamid Bhullah (A-9) and their activities in their house being the resident of same Mohalla. He also deposed about the incident of police raid in the year 2004 in the house of Sabeena (A-8) and Abdul Hamid Bhullah (A-9). This witness along with PW-2 and PW-6, have deposed about the activities of Sabeena (A-8) and Abdul Hamid Bhullah (A-9).

PW-3, Gulam Ahmed Ganie, the other neighbourer of Sabeena (A-8) and Abdul Hamid Bhullah (A-9), has also deposed on the line of PW-2 with regard to Sabeena (A-8) and Abdul Hamid Bhullah (A-9) and the unusual activities taking place in their house. He also deposed with regard to raid conducted by police in the house of Sabeena (A-8) and Abdul Hamid Bhullah (A-9) regarding illegal activities.

PW-4, Mohd. Maqbool Gujri has deposed with regard to moving the application Ex.P12 before the SHO along with two CDs which were taken into police possession vide memo Ex.P12/A.

PW-5, Mohd Altaf Gujri, a member of Mohalla Sudhar Committee, has stated that Ansar showed them MMS message of PW-1 (W-1) and thereafter, the CDs were prepared from Madasar Nazeer (PW-34) and he apprised the President of the Committee namely Mohd. Maqbool Gujri (PW-4) and the application along with the CDs were handed over by them to the police which was taken into police possession vide Ex.P12/A. This witness identified the CDs Ex.P-13 and

Ex.P-14.

PW-6, Abdul Rehman Pajwari also deposed on the lines of PW-2 and PW-3 with regard to the activities of Sabeena (A-8) and Abdul Hamid Bhullah (A-9).

PW-7 Abdul Rashid Bangi, was examined by the prosecution to prove the allegation leveled by PW-1 (W-1) against Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) that they committed sexual intercourse with her at the house of Rashid i.e. PW-7 in consideration of money. But this witness was declared hostile and was cross-examined by the prosecution and his earlier statements under Section 161 Cr.P.C. Ex.P-15 and under Section 164 Cr.P.C. Ex.P16, were confronted, to which he denied having made any such statement.

PW-8, Gulam Hussain Masoodi, Principal in the school where the prosecutrix studied deposed to prove the date of birth of PW-1(W-1) from School record. He deposed on the basis of the School register Ex.P-17 that as per entry No.326 dated 01.11.1994, the date of birth of PW-1 (W-1) is recorded as 20.12.1990. He also proved the other relevant documents i.e. letter Ex.P18 vide which discharge certificate Ex.PW18 and copy of Register Mark-B was forwarded to CBI. He further deposed with regard to another letter dated 17.03.2006 Ex.P19 vide which the information about the date of birth of the prosecutrix was provided to the police of Police Station Shaheed Ganj.

PW-9, Nisar Ahmed Katoo @ Naz, an auto driver has deposed with regard to taking Sabeena (A-8) at different places at

Srinagar in his auto. He has also identified the accused Sabeena (A-8) who was present at the time of his examination.

PW-10, Mukhtar Ahmed Bhatt, another auto rickshaw driver has stated with regard to taking Sabeena (A-8) to Naz Hotel along with other girls and also Mughal Darbar, Lal Chock, Tulsi Bagh and in Govt. Quarters. He further deposed that a raid was conducted at the house of Sabeena (A-8) in December 2004. He also deposed that he sold his BSNL Sim No.9419061121 to the husband of Sabeena (A-8) i.e. to Abdul Hamid Bhullah (A-9).

PW-11, Dr. Shagufta Parveen, a Demonstrator in Department of Pharmacology, Government Medical College, Srinagar, deposed to prove the medical report Ex.P20 of PW-1 (W-1) aged 15 years as she examined her on 20.03.2006. It is also deposed that PW-1 (W-1) was produced before her by the police of Police Station Shaheed Ganj.

PW-12, Ms. Ramiza Hassan, an official from the School, has deposed that the documents Ex.P-17, Ex.P-18, Ex.P-19 were prepared by her. This witness has identified her hand-writing as well as the signatures of the Principal at Mark-D.

PW-13, Abdul Gaffar, was examined to prove conduct of Sabeena (A-8) and Abdul Hamid Bhullah (A-9) but he was declared hostile and thereafter, cross-examined by the prosecution. The statement of this witness is only with regard to Sabeena (A-8) and Abdul Hamid Bhullah (A-9), (both died).

PW-14, Mustaq Ahmed Mir, is a witness who deposed

about the activities of Sabeena (A-8) and Abdul Hamid Bhullah (A-9) as he knew them being the resident of the same Mohalla. He further stated that they were running the illegal brothel. He also deposed about raid conducted in the year 2004 by S.P. Mr. Bashir Ahmed Khan at the residence of Sabeena (A-8).

PW-15, Jaffar Hussain Beig, the then City Judge, Srinagar, deposed about conducting the identification parade of the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Mehraj-ud-din Malik (A-2) on 21.05.2006 at Central Jail Srinagar by PW-1 (W-1). He also deposed with regard to documents Mark PW15/A, Ex.P-4, ExPW15/1, Ex.PW 15/2 the memos prepared at the time of the identification parade of accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Mehraj-ud-din Malik (A-2). He stated that the victim/prosecutrix rightly identified the accused. He also deposed with regard to the proceedings Ex.P3 carried out by him in connection with Masood Ahmad @ Maqsood (A-4) at Officers Mess, Humhama and stated that the prosecutrix/victim correctly identified the accused Masood Ahmad @ Maqsood (A-4).

The witness also proved the identification parade proceedings Ex.PW15/3, Ex.PW15/4 and Ex.P-5 carried out by him with regard to accused Shabbir Ahmed Langoo @ Lone (A-3) on 28.05.2006 at Central Jail Srinagar. He has stated that the victim/prosecutrix has identified the accused Shabbir Ahmed Langoo @ Lone (A-3). The witness further deposed about the identification parade proceedings Ex.P-1 in respect of Mohd. Ashraf Mir (A-5) at Police

Officer Mess, Humhama, Distt, Bagdam on 04.06.2006 wherein the victim/prosecutrix has correctly identified Mohd. Ashraf Mir (A-5). This witness also deposed with regard to the identification parade proceedings Ex.PW15/5, Ex.P-7, Ex.PW15/6 to Ex.PW15/8 in respect of accused K.C. Padhi (A-6) carried out by him on 11.06.2006 wherein the victim/prosecutrix has identified the K.C. Padhi (A-6) correctly in all three rounds of Test Identification Parade made on the request of K.C. Padhi (A-6).

PW-16, Ansar Ahmed Khan, has deposed that he had gone to Al-Riyaz shop for downloading video songs, songs and wallpapers and handed over his mobile phone to Riyaz Ahmad, who after downloading the same, handed over it to him. Apart from the abovesaid songs or wallpapers, he noticed one porn video clipping and thereafter, handed over the memory card of his mobile to his friend Firdosh Ahmad (PW-17). From the said memory card, the Mohalla Committee got prepared the CDs which was handed over to the police for necessary action. Thereafter, Firdosh Ahmad (PW-17) returned his memory card which he handed over to CBI who took the same into possession vide memo Ex.PW16/1. This witness has identified the memory card as Ex.P-12 to Ex.P-16.

PW-17, Firdosh Ahmad, a member of Mohalla Sudhar Committee, was examined to corroborate the version of PW-16 with regard to porn video of PW-1 (W-1) in his mobile and preparing the CDs of the same from one Mudassar Nazir (PW-34). He deposed with regard to CD Ex.P-11 and the seizure memo Ex.PW17/1 vide which

CBI took his memory card of his mobile phone.

PW-18, Mohd. Ramzan, was examined in respect of activities of accused Sabeena (A-8) and Abdul Hamid Bhullah (A-9) but he was also declared hostile and thereafter, was cross-examined by the prosecution.

PW-19, Mohd Yusuf, admitted his acquaintance with Sabeena (A-8) and Abdul Hamid Bhullah (A-9) but he did not support the prosecution version that Sabeena (A-8) was indulged in flesh trade so he was declared hostile and cross-examined by the prosecution and confronted with his previous statement.

PW-20, Ali Mohd. Mir has proved the proceedings of identification of a room at Naaz Hotel, Neelam Cinema, which were carried out in his presence, wherein PW-1 (W-1) identified the room in which she had sexual intercourse with one DSP as per her disclosure memo and sketch as Ex.PW9/1 and Ex.PW9/2.

PW-21 Tahir Ahmed Shera, shopkeeper of M/s. Al-Riyaz Networks and Al-Riyaz Photo Shop deposed how the porn clipping in question came into his computer. He was examined to corroborate the version of PW-16, for his visit to his shop to get a ringtone downloaded in his mobile. He also stated as to how the said porn videos came into his computer which were, thereafter, downloaded in the mobile phone of PW-16. He also deposed with regard to memo Ex.PW21/1 vide which hard disk of said computer was taken into possession by CBI and also identified the CD Ex.P11 and Ex.P17, containing the same video clippings which were downloaded in his computer from the memory

card of Mustaq Ahmed Latha PW-38 at the time of removing the virus from his memory card and were further loaded by Ansar Ahmed in his mobile phone from his computer. The CDs Ex.P-11 and Ex.P-17 are the copies of CDs Ex.P-13 and Ex.P-14 which were prepared from FSL Srinagar for investigation purpose as revealed from record.

PW-22, Imran Galani corroborated the version of PW-21 with regard to downloading of the ringtone in the mobile of Mustaq Ahmed Latha (PW-38) from which the said porn videos downloaded in his computer, which were further downloaded in the mobile phone of PW-16. He also identified the contents of CD Ex.P-11 and Ex.P-17 played on laptop, containing the same video clippings, which were downloaded from the memory card of Mustaq Ahmed Latha (PW-38). He also identified the hard disk of said computer Ex.P-18 which was taken into possession by CBI in his presence vide memo Ex.PW21/1 bearing his signature.

PW-23 (W.55) an alleged major victim of Immoral Trafficking, turned completely hostile and thereafter she was cross-examined by the prosecution and was confronted with her earlier statements Ex. PW23/1 and Ex.PW23/2 recorded by CBI under Section 161 Cr.P.C. in the presence of PW-23, the then Principal District and Sessions Judge, PW-29 but did not support the prosecution version.

PW-24, Syed Asif Zaidi was examined to corroborate the version of PW-10 with regard to selling of BSNL SIM No.9419061121 to Sabeena (A-8) by PW-10 for Rs.3,000/-.

PW-25 (W.39), another alleged major victim of immoral

trafficking also turned hostile and she was cross-examined by the prosecution and she was confronted with her earlier statement Ex.PW25/1 recorded by CBI under Section 161 Cr.P.C. in the presence of PW-29.

PW-26, Javed Ahmad, the then, Principal District & Sessions Judge, Ananatnag deposed with regard to recording of further statement Ex.PW26/1 of PW-1 (W-1) on 18.05.2006, and further statement of Sabeena (A-8) Ex.PW26/2 on 31.05.2006. He also deposed with regard to recording of statements of other girls W.59 as Ex.PW26/3, of (name withheld) as Ex.PW26/4 on 12.06.2006, of PW-48 (W.56) as Ex.PW26/5 on 15.06.2006 of PW-30 as Ex.PW26/6.

PW-27, Fayaz Ahmed has deposed with regard to the disclosure statement Ex.PW27/1 of PW-25 (W.39) recorded by CBI in his presence and he has proved the memo Ex.PW27/2 signed by PW-25 in his presence and also the rough sketch map Ex.PW27/3.

PW-28, Abdul Rashid Gujree was examined to corroborate the version of Firdosh PW-17, Ansar Ahmed PW-16 and Mohd. Maqbool PW-4, with regard to preparing the CD from the memory card and further disclosing the same to the Police.

PW29, Abdul Wahid, the then Principal District and Session Judge, Pulwama, deposed with regard to recording of statements as Ex.PW29/1 of W.38 on 10.06.2006, Ex.PW29/2 of W.57 on 22.06.2006 of PW-25 (W.39) Ex.PW25/1 on 10.06.2006 of PW-23 (W.55) as Ex.PW23/1 on 11.06.2006, in compliance of the order dated 09.06.2006 passed by the Hon'ble High court of J&K in OWP

No.299/06 C/W OWP No. 300/06.

PW-30, another alleged victim was also declared hostile as she completely denied that she was ever sexually exploited as alleged by the prosecution and she was also cross-examined by the prosecution however, she denied the factum of recording her statement Ex.PW26/6 before the CBI.

PW-31, Zahoor Ahmed Khan, has deposed in the capacity of Manager HR, Hotel Broadway, M.A. Road, Srinagar to prove the letter dated 13.06.2006 Ex.PW31/1 and copies of the Registration Card dated 15.09.2004 Ex.PW31/2 of Hotel Broadway issued to the accused Anil Sethi (**A-7**) for staying in Room No.408 of the said Hotel.

PW-32, Zahoor Ahmed Naik has also deposed, in the capacity of receptionist in Hotel Broadway to corroborate the testimony of PW-31 with regard to stay of Anil Sethi (**A-7**) on 15.09.2004. He also deposed with regard to the Registration Card Ex.PW31/2 and further identified the signatures i.e.Ex.PW32/1 and Ex.PW32/2 of the accused Anil Sethi (**A-7**) on Ex.PW31/2. He further deposed with regard to carbon copy of Bill Ex.PW31/3

PW-33, Ghulam Nabi Hajam, Senior Accounts Officer, has handed over the printouts of call details Ex.PW33/2 to Ex.PW33/20 and soft copy of CD to CBI vide letter dated 17.06.2006 Ex.PW33/1 and CDRs Ex.PW33/22 vide letter dated 16.06.2006 Ex.PW33/21. He also deposed with regard to providing information with regard to name and address of the subscribers of landline telephones numbers 2432915

(Manoor Ahmed Bhatt), 2472176 (Abdul Hamid Bhullah (A-9)) 2483250 (Motta Bilal Ahmed), 2484057 (Langoo Gulam Mohi-ud-din) with subscribers detail Ex.PW33/28. He also provided certified copies as per record for the said information as Ex.PW33/29 to Ex.PW33/48.

PW-34, Mudassir Nazir was examined to corroborate the version of PW-5, PW-16 and PW-17 for preparing CD containing porn video of PW-1 (W-1) by him from the memory card and handed over the same to Mohalla Sudhar Committee. He also identified the clipping on watching the CD which was downloaded by him from memory card to CD through his computer and further identified PW-1 (W-1) as of his Mohalla (residential area). He has also identified his writing Ex.PW34/1 and Ex.PW34/2 on CD Ex.PW34/A. He further identified the hard disk of his computer Ex.PW34/B and his signatures on the same and also Mohd. Maqbool Gujree (PW-4) and the envelope Ex.PW34/C in which the hard disk Ex.PW34/B was handed over by him to CBI.

PW-35 Habib Bullah Shalla was examined to corroborate the version of PW-17, PW-34 with regard to preparing the CD containing porn video clippings of PW-1 (W-1). He deposed with regard to handing over the other copy of CD to CBI vide seizure memo Ex.PW35/1 and identified his signature on it as Ex.PW35/2 and the said CD Ex.PW34/A. He identified signatures of PW-34 on the CD as Ex.PW34/1 and Ex.PW34/2 as the same was put in his presence. He also identified his signatures on the cloth wrapper Ex.PW35/A in which the said CD Ex.PW34/A was sealed by the CBI. After watching the CD, this witness stated that the clipping was the same which he had seen on

the memory card of mobile phone which was downloaded by PW-34 through his computer and he identified the girl in said clipping as PW-1 (W-1).

PW-36, Bashir Ahmed Fafoo deposed with regard to giving the statement to local police that one child left the CD at his shop on the instructions of PW-4 but the same was not the true version. He further stated that the version which he got recorded to CBI is the true version.

PW-37, Shakeel Ahmed has deposed for getting the pornographic clipping in question from the mobile phone of a tourist guide Farooq through Bluetooth into his mobile which he further transferred to the mobile device of another Driver Mustaq Ahmed Latha and thereafter deleted the same. He also stated that the CBI had taken his multi-media memory card vide seizure memo Ex.PW37/1. He also identified the video clipping, after watching the CD as the same which he received from the mobile phone of his friend Farooq.

PW-38 Mustaq Ahmed Latha deposed on the same line of PW-37, PW-22 with respect to porn video clipping in his mobile. He has also stated that the CBI took into possession the memory card of 64 MB vide seizure memo Ex.PW38/1 and after watching the CD, he identified it, having the same video clipping which he received in his mobile from PW-37.

PW-39 Irshad Ahmed Sheikh stated that he received MMS clip of Kashmiri girl with nude breast, from a boy while assisting him in skin. He met Farooq Ahmed Lone and on his request he

transferred the same on his mobile through Bluetooth. He identified seizure memo Ex.PW39/1 bearing his signature and find mentioning his mobile No. 9419545986 vide which CBI seized the multimedia card after extracting from his mobile. He also identified the video clipping after watching CD as the same which was received by him and then transferred to Farooq Ahmed Lone and identified one of the girl.

PW-40, Farooq Ahmed Lone also deposed on the same line of PW-39 with regard to receiving MMS of Kashmiri Girl with nude breast who further transferred the said MMS clipping to Shakeel Ahmed PW-37, driver, with Bluetooth. He also deposed that he handed over the memory card of his mobile holding SIM No.9419444797 to CBI on 02.06.2006 which they took into the possession vide seizure memo Ex.PW40/1 bearing his signatures. On playing the CD, this witness has stated that the said video clipping is the same which he received and then transferred to PW37 Shakeel Ahmed. He also identified one of the Kashmiri women in the CD.

PW-41, Mohd. Yusuf Wani the then Magistrate Sub-Judge, in District Court Complex, Srinagar has deposed with regard to the photo test identification parade in respect of accused Anil Sethi (A-7) on 19.06.2006 in compliance of the order dated 19.06.2006 Ex.PW41/1 passed by the C.J.M., Srinagar. He has proved the photographs Ex.PW41/2 to Ex.PW41/9 and Ex.PW10/2 and the identification proceeding as Ex.PW41/10.

PW-42, Mir Rashid, the then S.O., Police Khanyar Srinagar has deposed with regard to the raid at the residence of Sabeena

(A-8) in the year 2004 by becoming a fake customer, which was conducted by him. He has also stated that with regard to such incident, an FIR was got registered at Police Station Mir Ganj vide No. 80/2004 dated 14.10.2004 under Sections 3, 4, 5, 7 and 8 of the Immoral Trafficking Act read with section 120-B RPC.

PW-43, Gulam Jeelani Bhatt, owner of Quick Cure Clinic Laboratory at Dukani Sangeen Khan Kalri, has deposed with regard to submitting the urine sample by a girl of similar name of PW-1 (W-1) vide receipt No.9543 dated 03.09.2005 as Ex.PW43/4 in receipt book Ex.PW43/2 for the test of urine sugar. Similarly, vide receipt No.9557 dated 03.09.2005 Ex.PW43/5 of receipt book Ex.PW43/2, a girl of similar name of PW-1 gave urine sample for pregnancy test. The receipts of Books Ex.PW43/2 and Ex.PW43/3 were taken into possession by CBI vide seizure memo Ex.PW43/1. He also identified his signatures on the carbon copies of receipt No.9543 dated 03.09.2005 Ex.PW43/4 and No.9597 dated 03.09.2005 Ex.PW43/5 and on seizure memo Ex.PW43/1.

PW-44 Manjit Raj, along with one Hans Raj, is other independent witness of the disclosure statement Ex.P-8 made by PW-1 in their presence at CBI camp office Humhama on 28.05.2006 in connection with the place where, the then DIG, BSF took her in the room of his house. He also deposed with regard to point out memo Ex.PW8/1 and rough sketch memo Ex.PW8/2. He identified his signatures and signatures of PW-1 and Hans Raj on Ex.P-8, ExPW8/1, Ex.PW8/2. He also identified the signatures of CBI officials on these

documents. He categorically stated that Ex.P-8 was rightly recorded as PW-1 stated in Ex.P-8 by CBI officer.

PW-45 (W.38), the alleged victim did not support the prosecution case and declared hostile and was cross-examined by the prosecution with her statement made to CBI.

PW-46 Kamlendu Talukdar, who deposed with regard to his posting as Deputy Commandant Operation/Administration, BSF, Srinagar from August 2002 to August, 2006 and of accused K.C. Padhi (A-6) as his DIG from 2003 to 2005 and the residential house earmarked for DIG in BSF complex in which K.C. Padhi (A-6) was residing during his posting there. This witness was declared hostile as he has stated that he could not say firmly that during the entire tenure of K.C. Padhi (A-6) at Srinagar, his wife had stayed with him throughout or not and he was, thereafter, cross-examined by the prosecution.

PW-47, Hans Raj deposed with regard to the disclosure statement dated 30.05.2006 Ex.P-6 of PW-1, point out memo Ex.PW6/1 and rough sketch memo Ex.PW47/1 in respect of accused Shabbir Ahmed Langoo @ Lone (A-3).

PW-48 (W.56) the another alleged major victim, also turned hostile for not supporting the prosecution version and she was also cross-examined by the prosecution and she was confronted with her statement Ex.PW26/5 recorded by PW-26.

PW-49 Mohd Ayub Nazir, a para medical worker in National Leprosy Eradication Programme at Srinagar, did not support the prosecution version that a lady in September, 2005 contacted him

with regard to termination of pregnancy of her daughter, therefore, he was also declared hostile and was confronted with his statement Mark 49/A (Ex.PW49/A).

PW-50 Mehrajuddin, the owner of Hotel Broad view, deposed about his acquaintance with Mohd. Ashraf Mir (A-5) as he was SHO in Police Station Shaheed Ganj and used to visit the restaurant/hotel for checking situated near New Secretariat Sringar. He was declared hostile as he has stated that his hotel was only having a restaurant and nor any room on the first floor and thereafter, he was cross-examined by the prosecution and was confronted with his earlier statement Mark PW50/A.

PW-51 R.K. Khajuria, the then Inspector with CBI on deputation at relevant time, who remained associated with part of the investigation of the present case. He has deposed with regard to recording of the statement Ex.PW27/A of PW-25 (W.39) by R.S. Kurail, DSP, CBI (PW-54) in his presence and in the presence of Fayaz Ahmed. He has identified the signatures of R.S. Kurail and Fayaz Ahmed. He has further identified the pointing out memo and rough sketch memo Ex.PW27/2 and Ex.PW27/3 of Hotel Naaz in connection with Mohd. Ashraf Mir.

PW-52, Shri Anuj Arya the then posted as DSP, CBI recorded the statement EXPW52/1 of Shri Gulam Nabi Hajam PW-33 on 24.06.2006 under Section 161 Cr.P.C. and he enquired about the BSNL telephone numbers from him as directed by the Chief Investigating Officer S.L. Gupta (PW-60).

PW-53 Javed Ahmed Kaul, the then Sub-Divisional Police Officer at Shaheed Ganj, deposed with regard to the complaint Ex.P-12 and the seizure memo Ex.P12/A vide which two CDs Ex.P-13 and Ex.P-14 were taken by him into possession and FIR No.20 dated 14.03.2006 under Section 67 of I.T. Act Ex.PW53/1 was registered on the basis of the said complaint. He also deposed with regard to the investigation carried out by him till the case was transferred to CBI. He deposed that the girl in porn video was identified by PW-4 as PW-1 (W-1). He recorded statements of PW-4, PW-5, PW-35 and PW-36 on 16.03.2003. He further deposed that in response to his letter dated 17.03.2006, the School vide Ex.P-19 informed the DOB of PW-1 (W-1) as 20.12.1990. He also deposed that he examined PW-1 and after her examination additional offences under Sections 5, 6 and 7 of PITA, Act i.e. ITP Act and Sections 294, 376 & 34 RPC were added on different dates.

He further deposed about the arrest proceedings of Sabeena (A-8) from her house on 29.04.2006 and of Riyaz Ahmed Langoo and of Abdul Hamid Bhullah (A-9) on 01.05.2006 and further deposed about their medical check up and their production before CJM, Srinagar. He deposed that after recovering copy of communication Ex.PW53/A issued by Govt of J&K, Home Department with regard to the transfer of case to CBI, he handed over the case file along with the statement of witnesses and the documents to CBI vide seizure memos dated 11.05.2006 and 12.05.2006 Mark PW53/B and Mark PW53/C.

PW-54, Radhey Shyam Kuril, the then DSP, CBI is the

part investigating officer who deposed with regard to investigation proceedings carried out by him. He deposed with regard to disclosure statement dated 11.06.2006 Ex.P-2 of PW-1 recorded by him in the presence of independent witnesses and pointed out memo Ex.PW2/1 at Hotel Naaz with regard to accused Mohd. Ashraf Mir. He also proved pointing out memo Ex.P9/1 and rough sketch Ex. P9/2 at Imperial Hotel with regard to accused Anil Sethi (A-7) in pursuance of disclosure statement of PW-1. This witness also deposed with regard to similar proceedings taken out with regard to accused K.C. Padhi (A-6) and Shabbir Ahmed Langoo @ Lone (A-3) i.e. pointed out memo Ex.PW8/1 and rough sketch memo Ex.PW8/2 with regard to accused K.C. Padhi (A-6) and disclosure statement Ex.P6, pointed out memo Ex.PW6/1 and sketch memo Ex.PW47/1 with regard to accused Shabbir Ahmed Langoo @ Lone (A-3). Besides, this the witness also deposed and proved the proceedings carried out in connection with pointing out memo Ex.PW27/2 and rough sketch Ex.PW27/3 at Naaz Hotel in pursuance of disclosure statement Ex.PW27/1 by PW-25.

He also proved the seizure memo Ex.PW40/1 vide which he took into possession multimedia card of 64 GB memory from Farooq Ahmed Lone PW40.

Further he deposed with regard to recording of statements of victims under section 161 Cr.P.C.

PW-55 Parvej Ahmad Ahanger, a Chemist deposed, with regard to pregnancy of PW-1. He stated that he referred PW-1, who came along with her mother at his shop for terminating her pregnancy,

she was sent to Mohd. Ayub, a Chemist where she got terminated her pregnancy. He also deposed that the age of PW-1 at that time was about 12-14 years as disclosed by her mother.

PW-56 Hari Singh, the then DSP, CBI, ACB, New Delhi, has deposed with regard to the partial investigation carried out by him in this case.

PW-57 Shri A.K. Sharma, the then, Additional Superintendent of Police, CBI, SCB, Chandigarh, the part investigating officer, deposed with regard to the investigation carried out by him in this case.

PW-58, Shri U. Ramamohan, Explosive Crime Expert, deposed with regard to examination of 7 case properties i.e. Ex.PW58/4, Ex.PW58/5, Ex.PW22/1 (Article P-18), Ex.PW34/B, Ex.PW58/6, Ex.PW34/A and Ex.PW58/7 after receiving the same along with two letter Nos.3320 and 3319 dated 09.06.2006 i.e. Ex.PW58/1 and Ex.PW58/2. He gave the opinion as per his report/opinion Ex.PW58/8 along with Annexures collectively as Ex.PW58/9. As per his report Ex.PW58/7 i.e. mobile Nokia Model 6630 was found in working order without SIM card. Rest of articles i.e. Ex.PW34/A and Ex.PW 58/7 were also found in working conditions and contains pornographic videos.

PW-59, T. Rajabalaji, the then posted as DSP in CBI SCIII and associated with the part investigation of this case, deposed about the partial investigation carried out by him in this case.

PW-60, S. L. Gupta, the then, SSP (Retired), CBI, the

Investigating Officer of the case deposed about the investigation carried out by him and under his directions being the Chief Investigating Officer of this case. He deposed that the FIR was registered by CBI on issuance of the Notification Ex.PW60/2 by the Government of Jammu & Kashmir dated 08.05.2006. He further stated that on 11.05.2006, he along with other members of the team of CBI officials had taken over the record of local police record of this case and during the course of investigation, he made an application before the Chief Judicial Magistrate, Srinagar for deputing a Judicial Magistrate for conducting the test identification parade of the accused persons. He had examined accused Sabeena (A-8) on 31.05.2006 in presence of Principal District & Sessions Judge i.e. PW26 at Central Jail, Srinagar, who was in judicial custody, when her statement was recorded as Ex.PW26/2. He further deposed with regard to the medical examination of the alleged victims, who were sexually exploited i.e. PW23 (W-55), PW25 (W-39), PW30, PW45 (W-38) and PW48 (W-56) sent at police hospital, Srinagar vide his forwarding letter dated 20.07.2006 Ex.PW60/10. He further deposed regarding collecting the evidence of date of birth of PW-1 (W-1). He stated that he obtained school record pertaining to admission and discharge of PW-1 (W-1) from the school Ex.P18 and attested copy of admission and withdrawal register of the school Ex.PW60/11 (Mark B), the forwarding letter from the school Ex.P18 and subsequently, the original school register was also obtained/seized as Ex.P17. On examination of the said documents, he came to know that the date of birth of PW-1 (W-1) is recorded as 20.12.1990 at Sr. No.326 of Ex.P17 and in the discharge certificate Ex.P11 and from document Ex.P60/11.

He further deposed that on 14.05.2006, he had seized one hard disk Ex.PW34/B from Mudassar Nazir (PW34) and after seizure, the same was sent to Forensic Science Laboratory, Hyderabad vide letter Ex.P58/1, which was subsequently received vide Ex.P58/8. He recorded further statement of the victim PW-1 (W-1) in the presence of PW26. He proved the test identification parade of accused – Mehraj-uddin Malik (A-2) and Shabbir Ahmed Langoo @ Lone (A-3) on 28.05.2006 and also identified them in the Court. He stated that on 11.06.2006, he produced and identified PW45 (W-38) before Jaffar Hussain Beig, the then Magistrate, Srinagar for identification of accused K.C. Padhi (A-6), who was lodged in Central Jail, Srinagar and also identified him.

He further stated that on 11.06.2006, he produced and identified PW25 (W-29) for identification of accused Mohd. Ashraf Mir (A-5) and she identified him i.e. Mohd. Ashraf Mir (A-5). On 23.06.2006, he had received the scrutiny report Ex.PW60/18 of telephone print outs from Rakesh Utneja, Sub-Inspector, CBI, who was assisting him in the investigation. On 15.06.2006, vide seizure memo Ex.PW35/1, he had taken into possession one CD. During the investigation, he had also received the call details of various telephone numbers i.e. Ex.PW33/29 to Ex.PW33/48.

He also deposed in respect of the test identification proceedings of accused K.C. Padhi (A-6) before PW-1 (W-1) in presence of PW15. He further stated that on 28.05.2006, he had recorded the disclosure statement of PW-1 (W-1) Ex.P8. He also stated

that on 13.05.2006, vide letter Ex.P18, he had received the record pertaining to the date of birth of PW-1 (W-1). On 26.09.2006, he had recorded the statement Ex.P15 of PW7, Abdul Rashid Bangi. He further stated that he recorded the statements Ex.PW29/1 of PW45 (W-38), Ex.PW25/1 of PW25 (W-39) and Ex.PW23/1 of PW23 (W-55) in presence of PW26. He also stated that during the investigation, he recorded the statement of various persons under Section 161 Cr.P.C.

He further stated that after completing the investigation, charge-sheet Ex.PW60/20 was filed by him in the Court of Chief Judicial Magistrate, Srinagar against the accused. He also deposed that vide order dated 04.09.2006 passed by the Hon'ble Supreme Court, the trial of the present case was transferred to the Court of District and Sessions Judge, Chandigarh from the Court of Principal Sessions Judge, Srinagar.

Thereafter, the trial Court recorded the statement of accused persons under Section 342 RPC which corresponds to Section 313 Cr.P.C. and put all the incriminating evidence to them. The accused denied their involvement in the case and pleaded false implication.

DEFENCE EVIDENCE

The accused persons produced as many as 09 defence witnesses.

DW1, S.G. Goyal, was examined by K.C. Padhi (A-6) to prove that he was residing in BSF Camp which is a high security zone. DW1 was posted at Station Headquarter as Second in command operation. He was also responsible for maintaining the accounts and

administration as the Commandant of Station Headquarter. He knew K.C. Padhi and his wife used to reside in the residential accommodation. This witness has proved certain photographs of K.C. Padhi and his wife attended various functions in school, etc.

This witness has further stated that he was maintaining certain parameters regarding security of the campus at different entry points and access was controlled by internal checking of the security staff. It is further stated that there are two types of civilians and those, who were frequent visitors for supply of daily needs like milk and contractors and mason, were issued temporary pass after proper police verification and others were the casual visitors and in relation of the BSF personnel. All such visitors were also checked at the entry gates and the particulars were recorded in the register and after their identities were verified, they were given the entry pass by the concerned personnel. This witness has further stated that no one was allowed to enter the premises without a pass as the gates were closed steel gates and mobile patrol also intercepted the outsider. There was 24 hours security at the residence of K.C. Padhi DIG, who was under constant threat from militants and the security personnel used to frequently frisk his house besides other security staff. One cook and one security guard was permanently placed in his residence. This witness has also stated that K.C. Padhi was attacked by militants in valley and he survived two such attacks. One of which was an Improvised Explosive Device (IED), which was planted when he was returning from Tral and in another incident at Pampore, he was fired upon by militants. This witness further stated that during his tenure in Kashmir valley (Lal Chowk)

more than 40 militants were killed and on different occasion when some operational achievements were made, K.C. Padhi as DIG used to give media briefing to electronic and print media, which were telecast on national TV and newspapers and therefore, he was a known figure. K.C. Padhi was awarded Presidents Police Medals in the year 2005. He further stated that such medals are given after verification is done by IB and local police and after the name is cleared by Ministry of Home Affairs.

DW-2, B.P. Ghosh, another official of the BSF posted at the relevant time stated that he was a driver and used to drive a white gypsy of the DIG at Pantha Chowk. He was required to make entry in register while entering in the campus as well as while going out of the campus. The register was maintained by guard and verified by an officer of the BSF. The BSF personnels did not interact or bring any civilians inside and if any civilian was required to enter the premises even in gypsy, he/she was required to disclosed his/her identity and make entry in the register maintained at the gate and only then entry was permitted by issuing a pass. He further deposed that wife of K.C. Padhi, used to reside with him and one sevadar namely Chhetri was permanently residing in the residence. This witness further stated that he had not brought any civilian on the asking of K.C. Padhi.

DW-3, Gian Bahadur Chhetri, another BSF employee has stated that he is working as a Cook and at the relevant time, he was posted along with K.C. Padhi, DIG. He used to remain 24 hours at his residence and his wife also used to reside there. He used to cook food and serve them. This witness also stated that he did not see any civilian

visiting the residence of K.C. Padhi during his entire tenure.

DW-4, Jamsheed Khan, the owner of Hotel Imperial Lake View had given an information regarding stay of accused Anil Sethi (A-7). Since this accused was acquitted, the evidence of this witness is not of much relevance.

DW-5 (W.18) mother of the prosecutrix, deposed that she was married to the father of the prosecutrix and gave birth to a female child after one year of marriage. She further stated that while the prosecutrix was admitted in school, she did not disclose the age and asked the school authorities to mention the date of birth as per their wish. She further stated that her daughter remain in protective custody of CBI of about 1½ months and she was not allowed to meet anyone during this period and even, her pregnancy was terminated. Her husband also stayed with her during the said period. She was initially kept in Hamama Camp and then brought to Chandigarh. Her daughter informed after she was relieved by CBI, she was tortured by CBI to depose in the case as per their dictate. Thereafter, PW-1 (W-1) visited the Courts at Srinagar and drafted one application, which she posted and requested that she is ready to depose the correct facts. She proved this application as Mark DX and identified the signatures of PW-1 (W-1) at one 'A' on the same.

DW-6, VJS Slaria, another official of BSF posted at Srinagar at the relevant time stated that his immediate senior was DIG(G) and his office was about 100 yards from the residence of K.C. Padhi. This witness also proved about the protocol maintained by the guards for making entries in the visitor's register, verification of

antecedents and identity of the visitors and thereafter, issuance of entry pass and then allowing them to enter the campus. This witness also stated about the militants attack on K.C. Padhi as well as his achievements. This witness has also stated that his wife used to reside with him and also proved the photographs, already exhibited on record. This witness also stated that in view of heavy security at the entry gate of the campus, it was not possible for anyone, by any means to enter the premises without following the strict protocol and there was no scope for any unauthorized person to enter the complex.

DW-7, husband of PW-1 (W-1), also deposed on the line of DW-5 and proved the application given by her as Mark DX and identified the signatures of PW-1 (W-1) at point 'A'. This witness also stated that he remained with his wife PW-1 (W-1) and she was not inclined to give false statement against anyone and S.L. Gupta office of CBI used to threaten her. After about 8 months of protective custody, they were brought to Chandigarh by CBI and were kept in house for another about 8-9 months and their movement was restricted. One CBI official was deputed along with them as and when they used to go outside. This witness further stated that they used to tell us to give statements as per their choice and against the nominated accused of this case.

DW-8, Mohd. Yusuf, was examined by accused (A-3). This witness stated that he was owner of Yusuf Guest House and he had joined the investigation before the CBI and had given the original record i.e. entry book of visitors. This witness also stated that CBI officer put pressure on him to become a witness but he refused.

DW-9, Zahoor Ahmad Dar, was also examined by the accused (A-3), however, he stated that he did not know or identify any person by the name of (A-3) and also did not know the girl by the name PW-1 (W-1). He never joined any marriage function where he met them. He has deposed before CBI that he had no acquaintance with them.

The trial Court, thereafter, framed the following points for determination :-

1. *Whether pornographic clipping in CD Ex.P-13, Ex.P-14 and Ex.PW35/A is of prosecutrix W.1 (PW-1)?*
2. *Whether the prosecution has proved CDs Ex.P-13, Ex.P-14 and Ex.PW35/A on record as per law of evidence?*
3. *Whether the accused A-3 had published/transmitted the pornographic clipping of W.1 (PW-1) in CD Ex.P-13, Ex.P-14 and Ex.PW35/A from his mobile or otherwise to another person?*
4. *Whether prosecutrix/victim W.1 (PW-1) is proved to be minor i.e. below 16 years at the time of alleged incidents?*
- 5(A). *Whether accused persons A-1 to A-7 procured W.1 (PW-1) a minor victim W.1 (PW-1) for the purpose of prostitution and had sexual intercourse with her against monetary consideration?*
- 5(B). *In alternative, whether the W.1 (PW-1) was subjected to sexual intercourse by accused persons A-1 to A-7 at different point of time during 2002 and 2005 amounting to rape?*
6. *Conclusion/final order.*

The trial Court while deciding Point Nos.1, 2 and 3, on

appreciation of evidence held that the prosecution has succeeded to establish the genuineness of the CDs Ex.P-13, Ex.P-14 and Ex.PW35/A and identity of PW-1 (W-1) in the said porn clipping, however, it was held that the prosecution failed to establish the offence under Section 67 of the I.T. Act against the accused (A-3) beyond reasonable doubt and finally observed that Point Nos. 1 and 2 are decided in favour of prosecution whereas Point No.3 against it.

While deciding Point No.4, the trial Court recorded a finding that from the collective reading of testimony of PW-1 (W-1), PW-8 and PW-12 along with the documents Ex.P-17 and Ex.P-19 and statements Ex.DA and Ex.DA/1 and medico legally certificate Ex.P20, the victim PW-1 (W-1) was below 16 years of age at the time of alleged offence and at the time of registration of FIR No.20/2006 she was aged 15 years, 02 months and 25 days and therefore, it is proved that she was minor at the time of incident.

While deciding Point No.5, the trial Court held that since the accused (A-8) and (A-9) have died during the trial against whom the primary charge was under Sections 3 and 4 of the Act of 1956, therefore, on appreciation of evidence, no charge under Section 5 of the ITP Act is made out against the accused persons i.e. (A-1) to (A-7).

While deciding Point No.5(B), the trial Court dealt with the cases of all the accused separately and held accused (A-1) and (A-3) to (A-6) guilty of offence punishable under Section 376(1) of RPC, however, accused (A-2) and (A-7) were acquitted by giving them benefit of doubt.

ARGUMENTS

Learned senior counsel appearing for the appellants namely Mohd. Ashraf Mir, Shabbir Ahmed Langoo @ Lone, Masood Ahmad @ Maqsood and K.C. Padhi and learned counsel appearing for the appellant namely Shabbir Ahmad Laway @ Shabbir Kala, have jointly argued the case and have also submitted the written synopsis.

Learned senior counsel as well as the counsel appearing for the appellant namely Shabbir Ahmad Laway @ Shabbir Kala, have argued that the victim was more than 16 years of age and her birth record is not admissible in evidence. It is argued that the case of the prosecution is that the date of birth of the minor victim is 20.12.1990 as per the school record relied upon by CBI but in the school register Ex.P17, the signatures of the parents are not there and it does not specify that any supporting document to prove the date of birth is attached. It is also submitted that at Serial No.327 of Ex.P17, date of birth of a student namely Shakeem Nazir is entered as 01.06.1992 which reflect that a 02 year old child was admitted in the school. Similarly, at Serial No.331, there is an entry of a child namely Quazi Nouman, whose date of birth is shown as 18.08.1993. It is also argued that in front of the entries at Serial No.332, 336, it is not mentioned in which class, the children were admitted.

Learned senior counsel further argued that PW8 and PW12, in their statement have stated that the school did not accept admission of any pupil, who was below the age of 03 years and therefore, no reliance can be placed on the school register Ex.P17. It is further submitted that even in the certificate Ex.P18, the date of admission is not mentioned.

Moreover, it is produced by the Principal of the school whereas the discharge certificate should have been in the custody of the student. This discharge certificate was issued on 03.12.2004, on the asking of the parents but surprisingly it remained in possession of the school for 02 years when it was handed over to CBI on 13.05.2006. It is also submitted that it is mentioned in this certificate that the student is promoted to class 9th, in the same school but the Board Roll Number is not mentioned in this certificate though, 8th class examination are conducted by the School Board. It is further argued that PW 53– Javed Ahmed Kaul, the then I.O. Superintendent of Police, J&K Police, Police Headquarters, Jammu, admitted that he never tried to get the Birth Certificate of the child and neither it was requisitioned from the parents nor by the School Board. It is also submitted that the Investigating Officer of CBI PW60 – S.L. Gupta, SSP (Retired), also admitted in cross-examination that he never tried to get the certificate verified from the School Board and no ossification test of the prosecutrix was got conducted. Learned counsels further submitted that one of the defense witness i.e. DW5, who is mother of the victim/prosecutrix stated that she was married in 1982 and the victim was born after 01 year of her marriage i.e. somewhere in the year 1983 and therefore, in the year 2003, she was about 21 years of age. It is further submitted that even the husband of the victim appeared as DW7 to support the defense version regarding her age as she was married to him. It is, thus, argued that the Investigating Officer intentionally did not collect the evidence regarding the age of the minor victim.

Learned senior counsel has further submitted that in the

cross-examination the victim (PW-1/W-1) has admitted that the recital in the school admission showing her admission on 15.11.2001 in class 6th is not a correct statement. It is, thus, submitted that the victim was a major, above 18 years of age in the year 2003 and therefore, no offence is made out.

Learned senior counsel for the appellants has also argued that CBI during the investigation recorded the statement of many other major victims (name not disclosed), however, some of them were given up by the Public Prosecutor being won over and except PW-1/W-1, the minor victim, no other major victim have supported the prosecution version.

Learned senior counsel for the appellants has referred to the statements of PW23, PW25, PW45 and PW48, all major victims, who did not support the prosecution version and they were declared hostile. It is further submitted that, in fact, under pressure local police and CBI introduced these witnesses as major victims, however, none of them supported the case and either they were given up or were declared hostile during the trial.

Learned senior counsel for the appellants has also submitted that the statement of PW-1 (W-1) is not trustworthy as in the cross-examination, she has admitted that her version given to the CBI was not correct and her first version given to the police is correct. It is further submitted that in the cross-examination PW-1 (W-1), has stated that whenever she had sexual intercourse with accused persons, Sabeena (A-8) used to pay money to her and therefore, she being a major had consensual sex with the accused persons.

Learned senior counsel for the appellants has further contended that PW-1/W-1 has further stated in her cross-examination that taking undue advantage of the circulation of her naked pictures in Srinagar City, Chief of Women's Organization i.e. Dukhtran-I-Millat started organizing protest and rallies in Srinagar City and the said organization is a banned Militant organization.

Learned senior counsel for the appellants has further submitted that on account of the said fact by taking *suo moto* action the PIL Bench even issued strict directions to all concerned including media not to publicize such things and even prohibited the press from publishing any news item in this regard. Later even a PIL was filed by in Kashmir wing of Jammu and Kashmir High Court by the Bar Association of High Court (which is stated to be an organ of an anti India militant organization i.e. All Party Hurriyat Conference), and both were clubbed.

Learned senior counsel for the appellants also referred to the order dated 04.09.2006, passed by the Hon'ble Supreme Court in SLP (Criminal) No.3975 of 2006, wherein the Hon'ble Supreme Court has taken a strict notice of the conduct of some members of the Bar Association by observing that the learned counsel representing them had to feel sorry and Bar association was warned that in future utmost care should be taken while levelling allegations and averments must show a sense of responsibility as it had come from an association which is supposed to be a guardian of rule of law and vague, unfound and baseless allegations should not be made to harm the cause of justice and

rule of law instead of helping it.

Learned senior counsel further argued that this observation of the Hon'ble Supreme Court came in the light of one affidavit filed by the association wherein it was stated that association is not going back to its stand to expose politicians, bureaucrats, police officials, etc. who are sexually exploiting the girls in the counter insurgency to show the entire world the real face of India in Kashmir. The Hon'ble Supreme Court further observed that good cause of exposing the racket of this nature is being linked with wholly baseless, unnecessary and extraneous reasons.

Learned senior counsel has further submitted that, in fact, even CBI was under monitoring pressure while conducting the investigation and therefore, all the major victims cited as a witness by CBI in the charge-sheet did not support the prosecution version.

Learned counsel for the appellant – Shabbir Ahmed Langoo @ Lone (A-3) Shabbir Ahmad Laway @ Shabbir Kala (A-3) has additionally argued that the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1), is a surrendered militant and he was implicated in this FIR on the behest of an Anti-national Terrorist Organization. It is further submitted that the accused Shabbir Ahmed Langoo @ Lone (A-3) was a police official and he had rebuked the prosecutrix for indulging in immoral activities and that is why, he has been falsely implicated and as per the statement of PW-1 (W-1), it is admitted that Shabbir Ahmed Langoo @ Lone (A-3) had asked her to leave his house and the accused Shabbir Ahmed Langoo @ Lone (A-3) was posted in Kargil as he had offered to marry her but she refused to marry him.

Learned counsels for the appellants have further submitted that the allegation against the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1), Shabbir Ahmed Langoo @ Lone (A-3) and Masood Ahmad @ Maqsood (A-4), are vague as without mentioning any date or month, only the year has been mentioned and therefore, in the absence of any specific allegation, no reliance can be placed on the statement of PW-1 (W-1). It is further submitted that even the accused Masood Ahmad @ Maqsood (A-4), at one point of time, slapped the prosecutrix for indulging in immoral activities and for keeping militants at her house and that is why, he is involved in this case.

It is argued on behalf of the accused Mohd. Ashraf Mir (A-5) that PW-1 (W-1) has admitted that he was not having good relations with the Investigating Officer Javed Kaul and in the first statement dated 16.03.2006, she has not named him but named him in the subsequent statement dated 04.05.2006. It is also submitted that the reason for his false implication is that the accused Mohd. Ashraf Mir (A-5), got her house vacated and on account of having enmity with the Investigating Officer Javed Kaul of J&K Police, she has involved him.

Learned senior counsel for the appellants have further submitted that all the four statements made by the prosecutrix on 16.03.2006, 04.05.2006, 15.05.2006 and 18.05.2006 were referred to the cross-examination of this witness to submit that she clearly admitted that her version before the police and before the CBI was different. It is further argued that in the cross-examination this witness has also admitted that she named 57 persons including some senior police officials and politicians, however, they were not charge-sheeted as

admitted by PW60 – S.L. Gupta, Investigating Officer of CBI, that against majority of the persons named in the statement of PW-1/W-1 final report was not submitted.

Learned senior counsel has further submitted that the allegations against the accused K.C. Padhi (A-6) are vague as he was not named by PW-1 (W-1) in the first statement and even in the statement made before the CBI, it is mentioned that BSF, DIG had sexual intercourse with her and only in the later statement, she named the appellant – K.C. Padhi (A-6) and there is every possibility that the name of the appellant K.C. Padhi (A-6) was disclosed to her subsequently by CBI.

Learned senior counsel for the appellant K.C. Padhi (A-6) has also argued that he was head of the Border Security Forces at Srinagar (BSF) and during his tenure as DIG, BSF, many encounters took place in which militants were shot dead and PW-1 (W-1) in her cross-examination has admitted that her real uncle i.e. father's brother who was a militant was also killed by the security forces and therefore, she had developed hatred for security forces. It is also submitted that even on an earlier occasion, attempts were made to kill the accused K.C. Padhi (A-6) by Anti-national Terrorist Organizations, however, he escaped. It is also submitted that K.C. Padhi (A-6) was a decorated BSF Officer and in his tenure more than 40 militants were killed.

Learned senior counsel has next argued that K.C. Padhi (A-6) was having an official residence inside the BSF Camp, a highly protected area and it was impossible for anyone to come inside without following the proper protocol which required every person entering the

camp to make an entry in the register maintained at the gate disclosing his/her identity and giving identity proof. It is also submitted that this fact was proved by PW46 – Kamalendu Talukder in the cross-examination and also by DW-1 to DW-3, BSF officials that the aforesaid protocol was duly maintained. The learned counsel also submitted that the trial Court has not considered the defence evidence in right perspective.

Learned senior counsel for the appellant has further argued that the sole incident in which the name of K.C. Padhi (A-6) is involved is referred to as in the month of May or June, 2004 is without giving any date.

Learned senior counsel for the appellants has referred to the statement of PW-1 (W-1) wherein she stated that she was taken to Hamhama Camp by Sabeena (A-8) and one another girl, who appeared as PW45 (who was declared hostile). She further stated that they gone to BSF Camp in an auto where outside the Camp, from an STD booth, Sabeena (A-8) made a phone call to K.C. Padhi (A-6), to send an official vehicle and then a white colour gypsy came in which a driver and gunmen were present. This witness further stated that without making any entry of the two girls i.e. PW-1 (W-1) and PW-45, they Gypsy took them to the residence of K.C. Padhi (A-6) and Sabeena (A-8) went back from the outside gate.

Learned senior counsel has further argued that PW-1 (W-1) further stated that when they went inside the house of K.C. Padhi (A-6), they met him and his cook (who later on appeared as defence witness) served them with tea and thereafter, K.C. Padhi (A-6) had

sexual intercourse with her and thereafter, with PW45.

Learned senior counsel for the appellant argued that this version of PW-1 (W-1) is totally unbelievable as looking into the allegations in the first or second statement made before the police, she did not name him and even in the statement before the CBI, she named DIG, BSF and in cross-examination when this fact was confronted to her, his name was not found. It is further submitted that once the PW-1 (W-1) has stated that the first version given to the police is the correct version and the statement recorded by the CBI in which she named 57 persons, was not the correct statement, no reliance can be placed on the testimony of PW-1 (W-1) *qua* K.C. Padhi (A-6). It is also submitted that CBI did not record the statement of the STD booth owner from where Sabeena (A-8) allegedly made a phone call to K.C. Padhi (A-6) nor cited him as a witness. It is further argued that PW46 – Kamalendu Talukder, a BSF official has stated that there is no entry in the entry registers regarding PW-1 (W-1) or PW-45 entering the BSF Camp. It is also submitted that even the auto driver, who allegedly took Sabeena (A-8) upto the gate of BSF camp is not examined and 02 auto drivers i.e. PW9 Nisar Ahmed Katoo @ Naz and PW10 Mukhtar Ahmed Bhatt, have nowhere stated that they ever took Sabeena (A-8) or any of the girl to BSF Camp.

Learned senior counsel also submitted that the most relevant witness i.e. PW45, a girl who allegedly accompanied PW-1 (W-1) to the house of K.C. Padhi (A-6) where allegedly K.C. Padhi (A-6) had sex with both of them did not corroborate PW-1 (W-1). It is further argued that this witness, in examination-in-chief, has stated that she

neither knew any girl named (PW-1/W-1) nor she had taken her to the house of Sabeena (A-8). She even do not know Sabeena (A-8). This witness was declared hostile by the Public Prosecutor and when she was confronted with her statement Ex.PW29/1, she even denied having making a statement to the CBI that PW-1 (W-1), was her neighbour and she was visiting the house of Sabeena (A-8). This witness further denied the allegations made in her statement before CBI regarding having paid sex with the persons named in the statement.

Further even further, during the cross-examination, on the request of the Special Public Prosecutor, K.C. Padhi (A-6) was asked to stand and was shown to PW45 and she was asked if she knew K.C. Padhi (A-6), this witness declined to identify the accused K.C. Padhi (A-6). She further stated that she was never introduced to K.C. Padhi (A-6), who is present in the Court. She further denied that she had gone to Pantha Chowk, Srinagar, to meet K.C. Padhi (A-6) or that a white gypsy was sent, who took her to his house and he had sexual intercourse with her on payment of money. It is further denied by this witness that she, on the asking of Sabeena (A-8), she had gone to the residence of K.C. Padhi (A-6) along with PW-1/W-1. In totality, this witness completely denied her statement made before CBI as Ex.PW29/1 despite being confronted on all the facts mentioned in this statement.

Learned senior counsel for the appellants has, thus, argued that though PW46 – Kamalendu Talukder, has denied having interrogated the cook of K.C. Padhi (A-6), however, this witness Bahadur Chetri was examined as DW3 and his driver B.P. Ghosh as DW2. It is further submitted that both these witnesses have denied that

PW-1/W-1 or PW45 have ever visited the house of K.C. Padhi (A-6), who was residing there along with his wife. It is also argued that even otherwise, the BSF Camp was under continuous vigilance of intelligence agencies being soft target of the militant organization and therefore, in the absence of any entry made in the register, it cannot be believed that PW-1/W-1, PW45 ever visited the house of K.C. Padhi (A-6).

Learned senior counsel for the appellants has also argued that from the totality of circumstances especially in view of the fact that in the first 02 statements PW-1/W-1 has not stated the name of the appellant, K.C. Padhi (A-6), he was later on, named just because he was a senior BSF officer fighting insurgency in the valley. It is also submitted that till the time the PIL was filed before the High Court of J&K, the name of the appellant was not there and it was only after the protective custody of PW-1/W-1, was given to CBI, she made the statement under pressure as admitted by her in the cross-examination.

Learned senior counsel has further submitted that the PIL Bench in Para 24(iii) has observed that it has come in the statement of PW45 – S..... that one Dr. Pritpal Singh Goga was accused by her of having illicit sex and Dr. Goga introduced her with K.C. Padhi (A-6), at his clinic.

Learned senior counsel has also submitted that it is also observed in PIL judgment that later on PW-45 resiled from her statement made before the CBI and stated that she has made the statement against Dr. Goga, due to some personal grudge. It is also observed in this order that after recording the statement of PW45, the

CBI recorded the statement of Dr. Goga under Section 161 Cr.P.C., in which he has stated that he had introduced said S...., PW-45 to K.C. Padhi (A-6) DIG of BSF at his residence in Srinagar but he was never cited as prosecution witness.

In this statement, Dr. Goga has further stated that he came to know K.C. Padhi (A-6) during militant's (fidayeen) attack in Hotel Peak View where he was having his clinic and K.C. Padhi and other BSF personnel brought him out from the hotel safely and since then, he knew K.C. Padhi (A-6). The PIL Bench, thus, observed as under:-

“It is not clear from records whether or not, the CBI tried to assess the circumstantial relevance of Sh. Padhi's intimacy with Dr. Goga, Location of his clinic in Peak View Hotel where his room was identified by S.... earlier, and, his acquaintance with her, and the reliance that was placed by CBI on other parts of her statement relating to Sh. Padhi's sexual connection with her, along with Y.... and her depositions about Sabeena.”

Learned senior counsel has, thus, argued that the CBI has taken a different stand before the PIL Bench by referring to the statement of one Dr. Pritpal Singh Goga with the allegation that he introduced K.C. Padhi (A-6) with one of the victim PW45, who later on resiled during the trial and on the other hand, the CBI neither arrayed the said person as an accused nor cited as a witness.

Learned senior counsel has also placed reliance on the statement of Sabeena (A-8), which was proved by the statement of PW-26, Javed Ahmad, District & Sessions Judge, Anantnag as well as PW60 S.L. Gupta, DSP, CBI. It is further argued that though this evidence may not be admissible under Section 162 Cr.P.C., however, the same can be

read as a defence evidence. It is also submitted that in this statement, Sabeena (A-8) has allegedly named many high ups including politicians, police officials, etc. however, with reference to the allegations against DIG, BSF, in the end it is recorded by her as under:-

“Note: At this stage, Sabeena refused to give further statement and stated that she will give her further statement after her ex-husband Abdul Hamid Bulla is released from jail, who has been falsely involved by the local police in this case. She further stated that several other high ups including DIG, BSF at Pantha Chowk and various police officers, bureaucrats, are involved in the sex racket, whose name I will divulge only after my ex-husband is released. The above statement has been read over and explained by Sh. Javed Ahmad @ Maulvi Javed, Principal District & Sessions Judge, Anantnag to Sabeena in Kashmir language and she admitted the above statement as truly recorded.

Recorded in my presence and hearing

Sd/-

Before me

31/5/06

Ex.

Sd/- 31/5/06 4.50

PM

PW26/2

*S. Javed Ahmad
Pr. D.S. Judge,
Anantnag*

*Dy. S.P.
CBI, SCR-III, New Delhi
Camping at Srinagar”*

Learned senior counsel has further argued that this part of the statement of accused Sabeena (A-8) clearly demonstrates that she was allured by CBI to make a statement, as directed by CBI and was assured that her ex-husband namely Abdul Hamid Bhullah (A-9) will be released in lieu thereof.

Learned senior counsel has, thus, argued that the very genesis of involvement of the appellant – K.C. Padhi (A-6) is false as he has been named by coercing and alluring Sabeena (A-8) at the first instance and therefore the link between K.C.Padhi and PW-1 (W-1) is missing.

The learned counsel submitted that it has come in cross-examination of PW60, the Investigating Officer, CBI that in all 03 statements of Sabeena (A-8) were recorded. This fact is also noticed in para 15 of PIL judgment but only one statement dated 31.05.2006 is proved on record, which proves false implication of K.C. Padhi (A-6).

Learned senior counsel as well as for the appellants have also argued that though during the investigation of the CBI, which was monitored by the PIL Bench, as many as 57 accused persons were named and later on, CBI submitted 02 challans in which one set of the accused are facing the trial in the present case and one another at Srinagar. It is also submitted that number of suspect persons were not made accused by the CBI. It is further argued that all the major victims except minor victim PW-1 (W-1), whose names surfaced on recording of their statements by the CBI as victims did not support the prosecution version as either these major victims were given up by the prosecution or all of them were declared hostile and did not support the prosecution version, which itself show that the case was relating only to the victimization of PW-1 (W-1).

Learned senior counsel as well as counsel for the appellants have also submitted that a lenient view be taken as all the accused persons suffered the agony of trial for a period of 14 years and the

appellants namely Shabbir Ahmad Laway @ Shabbir Kala (A-1), Shabbir Ahmed Langoo @ Lone (A-3), Masood Ahmad @ Maqsood (A-4) and Mohd. Ashraf Mir (A-5) have already lost their jobs and reputations and have gained social stigma and due to their age, they are suffering from multiple diseases. It is also submitted that K.C. Padhi (A-6) is presently aged about 70 years and is also suffering from multiple ailments.

Learned senior counsel for the appellants has relied upon the judgment *“Santosh Prasad @ Santosh Kumar vs State of Bihar”*, 2020(3) SCC 443, wherein it is held that where the conviction of accused is solely based on deposition of prosecutrix and there are material contradictions in the deposition and further neither any independent witness nor medical evidence is supporting the prosecution case and there is a delay in registration of the FIR, the accused can be given benefit of doubt.

Learned senior counsel for the appellants has also relied upon the judgment *“Narender Kumar vs State (NCT of Delhi)”*, 2012(7) SCC 171, wherein a similar view has been taken that when the prosecution has not disclosed the true genesis of the crime and her deposition does not inspire confidence, in such a fact situation, the accused are entitled to benefit of doubt.

In reply, counsel for the CBI has argued that the prosecution has led sufficient evidence that Sabeena (A-8) was in the business of flesh trade, working as a pimp and used to supply girls to various persons for earning money. It is further submitted that it has come in the evidence of the prosecution witnesses that she was using

her house as a brothel and her husband namely (A-9) was actively helping her and both had a meeting of mind in running the brothel.

Counsel for the CBI has further submitted that Sabeena (A-8) had introduced the minor victim PW-1 (W-1) into the flesh trade by taking undue advantage of her parents and by luring her with money. It is also submitted that the trial Court has rightly recorded a finding that the victim/prosecutrix is a child and has not completed the age of 16 years.

Counsel for the respondent – CBI regarding age has relied upon the oral testimony of PW-1 (W-1) to submit that the same is corroborated by the other evidence i.e. the statement of school teacher PW-8 and an official PW-12 to prove the age of the prosecutrix. It is further submitted that PW-1 (W-1), who was examined in April, 2007, has stated herself to be into the age of 16 years and had given her date of birth as 20.12.1990. PW-8, a Principal of the school where PW-1 (W-1) studied upto class 8th till November, 2005, was admitted in the school as per Ex.P17 against Entry No.326 of the admission register of the school on 01.11.1994.

PW-1 (W-1) was admitted in class UKG and her date of birth in the entry is mentioned as 20.12.1990. It is further submitted that even the SHO, Police Station Shaheed Gunj vide letter Ex.P19 was given information regarding the date of birth of PW-1 (W-1). It is also submitted that the CBI has also received the discharge certificate Ex.P18 (Mark A) as attested by Principal of the school along with the attested copy of the register (Mark B) vide letter dated 13.05.2006 (Ex.P18) send by the Principal. It is further argued that the photocopies

of the documents were attested by the Principal. PW-12, an official of the school, who has prepared the discharge certificate Ex.P18 in her own hand-writing and under the signatures of the Principal has proved the same as Ex.P18. This witness further stated that she has extracted the particulars of the discharge certificate from the admission record of the school and identified her signatures on the letter dated 17.03.2006 Ex.P19, which was written in her own hand-writing. This witness also identified the signatures of the Principal as she was working with him. This witness has categorically deposed that the entry of date of birth of PW-1 (W-1) was duly verified by the Principal and the register from where Ex.P17 was extracted is a regularly maintained register in the school pertaining to admission of the children as it pertained to class nursery to class 2nd. On seeing the register of the school, this witness proved that Entry No.326 at Page No.42 of the register Ex.P17 is relating to PW-1 (W-1) wherein her date of birth is mentioned as 20.12.1990.

Counsel for the respondent – CBI has further submitted that even during the cross-examination of PW-1 (W-1), by the accused (A-1), (A-3) and (A-4) she has stated that her mensuration started about 15 years ago when she was 12 years old i.e. in the year around 2002. It is further argued that the argument raised by learned senior counsel for the appellants that in her cross-examination, PW-1 (W-1) has admitted that the certificate is not correct, cannot be read in isolation and if the entire statement of PW-1 (W-1) is seen, there is no discrepancy that her date of birth is 20.12.1990. It is further submitted that when the statement of PW-1 (W-1)/minor victim, was recorded by the then, SHO,

Police Station Shaheed Ganj on 16.03.2006, she was not in the protective custody and in the said statement, she has given her age as 16 years. Even in the second statement dated 04.05.2006, her age is mentioned as 16 years. This witness while appearing as PW53 has also verified the age as per the letter dated 17.03.2006 sent by school to him in response to a query put by him for providing the date of birth of PW-1 (W-1) and it was stated to be 20.12.1990. It is also submitted that the statement of PW-8, a school teacher is consistent despite lengthy cross-examination about the date of birth.

Counsel for the respondent – CBI has further argued that even as per the medical examination report dated 28.03.2006 (Ex.P20), when PW-1 (W-1) was medico legally examined by PW-11, her age is recorded as approximately 15 years which further corroborates the version of PW-1 (W-1) and PW8. PW11 in cross-examination has further stated that the age was given by the prosecutrix and therefore, the counsel for the CBI has submitted that despite a lengthy cross-examination of PW-1, PW-8 and PW-12, the credibility of these witnesses could not be shattered and therefore, the trial Court has rightly recorded a finding that the date of birth of PW-1 (W-1) was 20.12.1990 and mere some discrepancies as submitted by counsel for the appellants do not make the documents Ex.P17 to Ex.P19, doubtful when these are duly proved by the deposition of the witnesses who have prepared it.

Counsel for the CBI has further submitted that even in the first two statements dated 16.03.2006 Ex.DA/1 and 05.05.2006 recorded by the J&K Police, when a cross-examination was conducted with regard to these documents, PW-1 (W-1) has stated that she had made

these statements to the local police on these dates and therefore, the contents of these documents regarding date of birth, cannot be disputed. It is also submitted that the argument raised by learned senior counsel for the appellants that the CBI has not investigated about the date of birth from the school board despite its registration number is mentioned in Ex.P19, does not carry much weight as the school record produced by the CBI is admissible evidence, which proves the age of the prosecutrix. Counsel for the CBI has further argued that if there was any discrepancy in the school board record, it was open for the accused to lead defence evidence to this effect to rebut the argument led by the CBI and in the absence of any such defence evidence, the trial Court has rightly believed the school record regarding the age of the prosecutrix, who was a child at the time of commission of the offence.

Counsel for the respondent – CBI has also submitted that the statement of DW5, the mother of PW-1 (W-1), is not admissible regarding her date of birth as she has tried to favour the accused persons. It is further argued that in her statement DW5 has stated that she had orally asked the school authorities to enter the date of birth of PW-1 (W-1) in their record as she has not provided any document to the school at the time of her admission. Counsel for the respondent, thus, submitted that this evidence rather corroborate the version of PW-8, who has stated that at the time of admission, since no record was produced by her parents and therefore, she could not produce any record.

Counsel for the respondent – CBI has further argued that the arguments raised by counsel for the appellants that though the PW-1

(W-1), was got medico legally examined by J&K Police by PW-11, however, the CBI failed to get the medico legally examined or to get her ossification test is without any substance. It is further argued that the trial Court has recorded a finding that once the CBI has obtained the school record which has evidentiary value and the same was proved by producing two witnesses from the school, who have deposed that the same is correct according to the original record and was prepared in the hand-writing of PW-8, there was no requirement of ossification test as CBI has produced, sufficient evidence to prove the date of birth of PW-1 (W-1), who herself is consistent about her date of birth as 20.12.1990 and therefore, there was no requirement for any ossification test, which is required only when the prosecution is not able to find any admissible evidence regarding age of the victim.

Counsel for the respondent – CBI has, thus, argued that the trial Court has recorded a categoric finding that the offence of rape was committed on PW-1 (W-1) and therefore, the trial Court has rightly convicted all the accused/appellants. It is also submitted that in the statements made by PW-1 (W-1) to the J&K Police, she has named the accused (A-1), (A-3) to (A-5). It is further argued that in the 3rd statement, she has named the accused (A-6) and therefore, her statement cannot be dis-believed in any manner. It is further submitted that the trial Court has considered the role/offences committed by by all the accused/appellants separately by recording a specific finding in the judgment by holding that the deposition of PW-1 (W-1), despite a lengthy cross-examination could not be shattered.

Counsel for the respondent – CBI has, thus, prayed for

dismissal of the appeals filed by the accused/appellants.

FINDINGS

On re-appreciation of the entire evidence, I find no illegality or perversity in the findings recorded by the trial Court regarding the age of the prosecutrix PW-1(W-1).

As per the prosecution version, PW-1 (W-1) was born on 20.12.1990 and in the year, 2004, she was about 15 years of age when she was introduced in flesh trade by A-8 police registered the FIR. The argument raised by learned counsel for the appellants that the victim was more than 16 years of age is not correct. In the school register (Ex.P17), mere fact that one entry relating to a child reflect his age as 02 years do not make the entry of date of birth of PW-1 (W-1) doubtful.

This document is coming from the possession of the school authorities and was proved by 02 prosecution witnesses i.e. PW-8, Principal of the school and PW-12, another school official, who have stated that the same was maintained in ordinary course and there is no tampering with the original record. PW-8, Gulam Hussain Masoodi, stated as per entry No.326 in the school register Ex.P17 dated 01.11.1994, that PW-1 (W-1) was admitted in their school in UKG class and an entry showing her date of birth was made as 20.12.1990. This witness further proved a letter Ex.P19 providing information to the SHO, Police Station Shaheed Ganj, showing the aforesaid date of birth of PW-1 (W-1) and vide letter Ex.P18 dated 13.05.2006, even copies of the school record were sent to the CBI, which includes discharge certificate Ex.P18 (Mark A) authenticated by the Principal of the school and attested copy of the register as Mark B. It is stated by him that the

attested copies were prepared from the original record. Further another school official i.e. PW12, Ms. Ramiza Hassan, stated that the discharge certificate Ex.P18 was prepared in her own hand-writing under the signatures of the Principal and she had extracted the same from the admission record. She also identified her signatures on the letter Ex.P19, in her own hand-writing as well as the signatures of the Principal as she was working with him. It was also stated by her that even the Principal had verified the date of birth of PW-1 (W-1). This official of the school also proved that the school register Ex.P17 was duly maintained by the school and related to class Nursery to class 2nd.

PW-1 (W-1), the victim had undergone a lengthy cross-examination by the defence counsels. She even stated that her mensuration started when she was 12 years of age i.e. about 05 years of making the statement in Court on 26.04.2007, therefore, on that day, her age was about 16 years and 04 months.

Javed Ahmed Kaul, the then, SHO Police Station Shaheedganj, who appeared as PW53 has stated that when he examined PW-1 (W-1) on 16.03.2006, he recorded her statement Ex.DA/1, in which she has given her age as 16 years and even in the second statement dated 04.05.2006 Ex.DA, recorded by local police, she has also given her age as 16 years. PW53 has also stated that he has verified the date of birth of PW-1 (W-1) from the school records, on receiving a letter Ex.P19 from the school, the date of birth of PW-1 (W-1) was mentioned as 20.12.1990. Therefore, PW8 and PW53 are consistent on the point that when the police asked about the verification of date of birth of PW-1 (W-1), PW8, Gulam Hussain Masoodi, provided the

information vide Ex.P19.

Apart from this, PW-1 (W-1) was subjected to medical examination by PW11, Dr. Shaguta Parveen, on 28.03.2006 vide report Ex.P20 and in this also, the statement of the victim was recorded as 15 years, which further corroborates the version of PW-1 (W-1). Though in the cross-examination, PW11 stated that the age was disclosed by the prosecutrix.

A perusal of the statement of PW-1 (W-1) (the minor victim), PW8 and PW12, (two witnesses from the school) show that the defence could not shatter the reliability of these witnesses in respect of the age of PW-1 (W-1). Even in the oral version given by PW-1 (W-1), she consistently stated that she was 16 years of age on the date of making the statement and her testimony could not be shaken by the defence during her cross-examination on the point of her age.

The defence examined two witnesses to rebut the evidence of the prosecution regarding the age of PW-1 (W-1) i.e. DW5, the mother of PW-1 (W-1) and DW7, husband of PW-1 (W-1), who stated about her age. Though, DW5, the mother of the prosecutrix stated that her marriage took place in the year 1982 and PW-1 (W-1) was born after 01 year of her marriage, however, she stated that she did not provide any document to the school while getting PW-1 (W-1) admitted and requested them to mention the date of birth as per their wish.

The trial Court rightly held that the evidence of DW5, if read as a whole, cannot be relied upon as if PW-1 (W-1) was born somewhere in the year 1983 and she could have provided the birth certificate to the school authorities or an affidavit to this effect and

therefore, in the absence of the same, the entries made in the school register showing the date of birth of PW-1 (W-1) as 20.12.1990, is correct.

The trial Court also rightly rejected the version of DW7 as whatever, this witness has stated, being husband of PW-1 (W-1), is in the shape of hearsay.

Therefore, the arguments raised by learned counsels for the appellants that the entries in the admission register are manipulated to create evidence against the accused persons is without any substance. Needless to say that in the first 02 version given to the local police, the victim PW-1 (W-1) had given her age as 16 years, which co-relates her date of birth as 20.12.1990. Even the medical report Ex.P20 also despite her age as approximately 15 years, therefore, the argument that there is possibility of manipulation in the school records is without any substance.

With regard to the arguments raised by learned counsels for the appellants that though in the letter Ex.P19, there is a reference of a school board registration number and the CBI has not verified the same is also without any substance as the CBI has produced on record the legal and admissible evidence. The accused while leading the defence evidence had a chance to rebut the same by producing the school record by examining a witness but in the absence of same, no doubt can be raised about the validity of the school record.

The last argument raised by learned counsel for the appellants that the CBI has not got conducted the ossification test or radiology test of PW-1 (W-1) to ascertain her age is also without any

substance as it is well settled principle of law that the ossification test is conducted only if no admissible evidence is available with the prosecution agency. In the instant case, there was sufficient evidence on record i.e. the school admission register, the discharge certificate duly proved by 02 school officials i.e. PW8 and PW12, the medical examination of the minor victim by PW11, therefore, the school record is to be given preference over any medical evidence like ossification test and for non-conducting of such test, the evidence produced by the prosecution cannot be discarded.

Therefore, on conjoint reading the statement of PW-1 (W-1), PW8 and PW12 along with the proved documents Ex.P17 to Ex.P19 coupled with her initial statement to the police Ex.DA and Ex.DA/1 and medico legal certificate proved by PW-11 Ex.P20, no ground to differ with the findings recorded by the trial Court is made out as the minor prosecutrix i.e. PW-1 (W-1) was below the age of 16 years at the time of the alleged offence and on the date of registration of FIR No.20 of 2006 Ex. PW53/1, PW-1 (W-1) was aged about 15 years and 02 months and, therefore, the prosecutrix is proved to be a minor victim at the time of the alleged incident.

The trial Court has rightly recorded a finding that the pornography clipping is CD Ex.P13, Ex.P14 and Ex.PW35/A is of the prosecutrix PW-1 (W-1) which is proved on record as per law of evidence. The argument on behalf of the appellants that the CD is not proved as certificate under Section 65-B of the Indian Evidence Act is not attached without any substance. A chain of events as discussed above reveal that the complaint was given to police after a CD was got

prepared through PW34 by PW5, a member of the Samaj Sudhar Committee and he had given a complaint to the police along with CD. This witness has identified the CDs as Ex.P13 and Ex.P14, which were later on sent to FSL. The other evidence as discussed in detail by the trial Court including the report of FSL, Srinagar, the CDs Ex.P11 and Ex.P17 and the 02 copies Ex.P13 and Ex.P14 prepared by FSL, Srinagar are duly proved on record. PW34 has also corroborated the version wherein he has identified the porn clipping of PW-1 (W-1) being resident of the same area. Not only this, PW-1 (W-1) during the cross-examination had seen the video clipping in CD Ex.P11 and stated that it is the same video clipping which was taken by accused Shabbir Ahmed Langoo @ Lone (A-3) at Yusuf Guest House and she admitted that it is her clipping. Therefore, it is proved by the CBI that initially FIR No.20 of 2006 Ex.PW53/1 was registered on a complaint Ex.P12 for commission of offence under the I.T. Act, on the basis of the CDs Ex.P13 and P14 and later on, during investigation offences under Sections 3, 4 and 5 of the I.T.P. Act and Section 376 RPC were added. The trial Court has rightly recorded a correct finding on appreciation of the statements of PW17, PW34 and PW35, regarding the manner in which the CD was prepared and was handed over to CBI and thereafter, the CBI sent it to FSL and vide its report Ex.PW58/8, the CDs were proved on record and therefore, it is proved that the CDs Ex.P13 and Ex.P14 and Ex.PW35/A were prepared from the computer, whose hard disk Ex.PW34/A was used to prepare the CDs, which is a primary evidence and therefore, the same does not require certification under Section 65-B of the Indian Evidence Act, especially when the

prosecutrix PW-1 (W-1) whose porn clipping is contained in the CD, when the same was put to her, has admitted it to be correct. Therefore, the finding recorded by the trial Court that the prosecution has established the genuineness of the CDs Ex.P13, Ex.P14 and Ex.PW35/A as well as the identity of PW-1 (W-1) in the said porn clipping, is upheld.

With regard to the charge under Section 376 RPC of commission of rape upon PW-1 (W-1) by accused Shabbir Ahmad Laway @ Shabbir Kala (A-1), Shabbir Ahmed Langoo @ Lone (A-3), Masood Ahmad @ Maqsood (A-4), Mohd. Ashraf Mir (A-5) and K.C. Padhi (A-6), the prosecution case initially based on registration of FIR No.20 of 2006 when a pornography clipping on mobile phone was circulated and is proved on record that it was PW-1 (W-1), whose date of birth is 20.12.1990, therefore, she was minor on the date of registration of the FIR No.20 of 2006.

Before discussing the alternative charge under Section 376 RPC of committing rape by the accused persons on PW-1 (W-1), Section 376 RPC applicable to the State of Jammu & Kashmir, which is corresponding to Section 376 IPC, the Court is to examine if the evidence of the prosecutrix even if a sole witness inspire confidence and if the reliance cannot be placed on the testimony of the prosecutrix, the Court will assess the evidence which may lend assurance to her testimony and no undesirable suspicion be made on the testimony of the prosecutrix. Further as per Clause (6) of Section 375 if the sexual intercourse with a woman, who is less than 16 years of age with or without consent amounts to rape. Since the prosecutrix is held to be

aged about 15 years and 02 months at the time of the incident, the findings regarding the allegations against accused Shabbir Ahmad Laway @ Shabbir Kala (A-1), Shabbir Ahmed Langoo @ Lone (A-3), Masood Ahmad @ Maqsood (A-4), Mohd. Ashraf Mir (A-5) and K.C. Padhi (A-6), is recorded as below:-

**ACCUSED – SHABBIR AHMAD LAWAY @ SHABBIR KALA
(A-1) AND ACCUSED – MASOOD AHMAD @ MAQSOOD (A-4)**

The charge against both these accused i.e. Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) is for committing the rape upon PW-1 (W-1) (minor victim) during the year 2003 to 2005.

PW-1 (W-1) had stated that she was subjected to sexual intercourse by Shabbir Ahmad Laway @ Shabbir Kala (A-1) in the year 2005 in summer season though, she do not remember the month. She has further stated that a girl named 'S....' was a frequent visitor to the house of accused Sabeena (A-8) and she had taken her to Hazratbal Habakadal, Srinagar, where she came in contact with accused Sabeena (A-8). PW-1 (W-1) further stated that she was taken to the house of PW7 (W-99) and in the house of PW7 (W-99), both Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) were present. PW7 (W-99) had gone outside and she was offered liquor in the presence of 02 accused persons and then, Masood Ahmad @ Maqsood (A-4) had sexual intercourse with her and thereafter, Masood Ahmad @ Maqsood (A-4) went out and Shabbir Ahmad Laway @ Shabbir Kala (A-1) had sexual intercourse with her. She also stated that accused (A-1) was also known as Shabbir Kala and Shabbir Ahmad

Laway @ Shabbir Kala (A-1) was having a cell phone and he had taken her photographs and she complained about the same to the aforesaid 'S....', who on checking the cell phone told PW-1 (W-1) that same does not contain any such photographs. PW-1 (W-1) was paid Rs.300/- by 'S....' for the aforesaid act. She also identified both these accused persons i.e. Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4), during the test identification parade conducted in Central Jail, Srinagar in the presence of PW15, Jaffar Hussain Beig, Magistrate and identification memos Ex.P3 and Ex.P4, were prepared in this regard which were proved by PW15, Jaffar Hussain Beig. This witness identified both the accused persons i.e. Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) in the Court during her deposition as PW-1 (W-1). Further PW15, Jaffar Hussain Beig, the then City Magistrate, Srinagar stated that he conducted the test identification parade of the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Mehraj-ud-din Malik (A-2) on 21.05.2006 and then, prepared the memos Ex.P4 and also obtained the signatures of PW-1 (W-1) at 'Point B' and that of Mohammad Sultan Lone, Senior Superintendent, Central Jail at 'Point C' as well as of Mohd. Asraf Beigh, Deputy Superintendent at 'Point D' and an inspector of CBI at 'Point E', who was accompanying him. This witness also identified the signatures of all the persons, who had signed the memos while conducting the test identification parade. 10 persons were associated and after the first round, the accused were asked to change their clothes for the second round of test identification parade by changing the sequence of line and again Ex.P15/2, was prepared with

signatures of all the persons present there. This witness also proved the test identification parade of Masood Ahmad @ Maqsood (A-4) and proved all the proceedings undertaken by him.

The defence set up on behalf of Shabbir Ahmad Laway @ Shabbir Kala (A-1) is that PW-1 (W-1) was inimical towards him because once he had caught her with one Bilal Ahmed indulging in sexual activity for money and he slapped and rebuked her for this purpose. Even, Masood Ahmad @ Maqsood (A-4) has taken a plea for false implication on the ground that he has helped one Nazir, who had given his house on rent to PW-1 (W-1) and later, they were thrown out of the house due to her activities and he had even slapped and rebuked her. But when this defence was put to PW-1 (W-1) in her cross-examination, she denied all such suggestions given by both the accused persons. She even further expressed her ignorance that Shabbir Ahmad Laway @ Shabbir Kala (A-1) is a surrendered militant. She denied all the allegations that one Bilal Ahmed had told Shabbir Ahmad Laway @ Shabbir Kala (A-1) that he had personal knowledge about PW-1 (W-1), as it is (A-1)'s consistent stand that she was indulged in prostitution and he was trying to stop her from doing such act. On a similar defence taken by the accused Masood Ahmad @ Maqsood (A-4), PW-1 (W-1) denied that she had falsely implicated Masood Ahmad @ Maqsood (A-4) because he had slapped and rebuked her for indulging in prostitution and he had done so in a public gathering when PW-1 (W-1) and her family members were residing at Nazir Ahmed's house as a tenant and people of the said locality were annoyed with her activities. The cross-examination of PW-1 (W-1) by Masood Ahmad @ Maqsood (A-4), also

suggests that he knew her and on the allegation of her involvement in prostitution, he had slapped her and rebuked her. Therefore, the previous acquaintance of accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) with PW-1 (W-1) is proved on record.

After going through the evidence and the arguments raised by learned counsel for the accused Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) that they are falsely implicated is not acceptable as it has come in the evidence that PW-1 (W-1) was residing with her parents along with her brothers and sisters and therefore, the allegation that Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) had rebuked her (a minor girl) from indulging in prostitution, when her parents were there is not tenable. It is not explained by learned counsel for the appellants/accused, as to why a minor victim, PW-1 (W-1) would falsely implicate Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) though there were many persons, who were residing there, especially the persons who have prepared the CDs, circulated it and had given to the police to take action.

Even in the statement made to the local police on 04.05.2006 Ex.DA/1, PW-1 (W-1) had specifically named Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) with other persons who had raped her and that she can identify them. PW-1 (W-1) also stated that before the local police also, she had given the name of Shabbir Ahmad Laway @ Shabbir Kala (A-1) in the first statement dated 16.03.2006.

The next argument raised by learned counsel for the appellants that PW7, Abdul Rashid Bangi, in whose house the alleged incident of rape has taken place, while appearing as a witness before the Court, was declared hostile and therefore, the corroboration is without any substance as during the cross-examination by Public Prosecutor, he was confronted with the statement under Section 161, Ex.P15 and the statement recorded under Section 164 Cr.P.C., before the Magistrate Ex.P16. The statement recorded under Section 164 Cr.P.C., before the Magistrate is not explained by PW7 and therefore, such statement which was recorded by the Magistrate in performance in his duties, corroborate the version of PW-1 (W-1). Therefore, the findings recorded by the trial Court that the deposition of the minor victim, PW-1 (W-1) is trustworthy and reliable that she was raped by Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) at the house of PW7 in the year 2005 and the explanation given by Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) regarding their false implication is not worth reliable to discard the deposition of PW-1 (W-1) is upheld and accordingly, the appeals i.e. **CRA-S Nos.2945-SB of 2018** and **No.2901-SB of 2018**, filed by Shabbir Ahmad Laway @ Shabbir Kala (A-1) and Masood Ahmad @ Maqsood (A-4) are hereby *dismissed*.

ACCUSED – SHABBIR AHMED LANGOO @ LONE (A-3)

The charge against the accused Shabbir Ahmed Langoo @ Lone (A-3) is that he also committed rape upon the minor victim, PW-1 (W-1) during the year 2003 to 2005.

In her deposition, PW-1 (W-1) stated that Shabbir Ahmed

Langoo @ Lone (A-3) used to visit her house at Fateh Kadal for playing cards where she was residing before shifting to Haba Kadala. Shabbir Ahmed Langoo @ Lone (A-3) once told her mother that he want their family to attend a feast on the occasion of marriage of his friend. Shabbir Ahmed Langoo @ Lone (A-3) was acquainted with her family as he and her Chacha (uncle) were in the same business of dealing in copper articles. Shabbir Ahmed Langoo @ Lone (A-3) took her and her sister on a scooter for attending the feast in Gurgadi Mohalla, Zaina Kadal and while leaving his sister to sit with the mother of his friend, he took PW-1 (W-1) to his house where one of his friend namely Setha was also present, who went away after locking the house from the outside and Shabbir Ahmed Langoo @ Lone (A-3) took her to a room upstairs and told her that he wanted to marry her but she refused the offer of marriage and then, he forced her to have sexual intercourse as she used to do in the house of accused Sabeena (A-8) and there she was forcibly subjected to sexual intercourse by Shabbir Ahmed Langoo @ Lone (A-3) and thereafter, she was let out by giving some money by Shabbir Ahmed Langoo @ Lone (A-3). Later on, she remained in contact with Shabbir Ahmed Langoo @ Lone (A-3) on his cell phone and he told her that he was in Kargil and would be visiting her house. After 2-3 days again, he took her on a scooter to Yusuf Guest House where a lady was preparing meals and he told her that he was going to marry her and took keys of a lock room on that pretext. In the said room, Shabbir Ahmed Langoo @ Lone (A-3) again had sexual intercourse with her and he was carrying a cell phone and he video recorded her naked person. Thereafter, she was paid some money and Shabbir Ahmed Langoo @

Lone (A-3) asked her to marry him but she refused and on this Shabbir Ahmed Langoo @ Lone (A-3), threatened her that he will show the video recording to Mohd. Irfan Khan, to whom she intend to marry. Again, after 5-6 days, Shabbir Ahmed Langoo @ Lone (A-3) came to her house and had shown a video recording of another girl, following her video recording. On asking, he told that she is a girl (name not disclosed), who was present in some vehicle indulging in oral sex with a person. PW-1 (W-1) further deposed that the first incident was in the year 2004 but she did not remember the date and month, however, it was in summer season. After the second incident, she went to Central Jail, Srinagar for the test identification parade of Shabbir Ahmed Langoo @ Lone (A-3) in the presence of PW15, Jaffar Hussain Beig, the Magistrate, in which she identified him and also identified the Yusuf Guest House where the second incident has taken place. She also proved the memos prepared by the Inspector, CBI along with PW15, Jaffar Hussain Beig, the then Magistrate.

This witness during her deposition had identified Shabbir Ahmed Langoo @ Lone (A-3) in the Court. The trial Court has described in detail about the test identification parade of this person by the other independent witnesses. During the cross-examination, PW-1 (W-1) stated that she had gone to meet Shabbir Ahmed Langoo @ Lone (A-3) when he had returned from Kargil and therefore, it is a fact that PW-1 (W-1), the prosecutrix (a minor victim) was known to him as he had proposed to marry her.

The defence evidence produced by Shabbir Ahmed Langoo @ Lone (A-3) i.e DW-8 Mohd. Yusuf and DW-9 Zahoor Ahmad Dart

who denied having any knowledge about Sabeena (A-8) is not sufficient to discard the prosecution version as DW-8 had stated that he handed over the original visitor register to CBI.

The next argument raised by learned senior counsel for the appellant/accused Shabbir Ahmed Langoo @ Lone (A-3) is that PW-1 (W-1) was not a girl of good reputation and was leading an immoral life and that is why, she did not accept the marriage proposal of Shabbir Ahmed Langoo @ Lone (A-3). However, this argument raised by learned senior counsel do not absolve Shabbir Ahmed Langoo @ Lone (A-3) of the charge of rape against him as, the deposition of the prosecutrix could not be shattered by the defence for the false implication of Shabbir Ahmed Langoo @ Lone (A-3). It is well settled principle of law that even if the prosecutrix is habitual to sexual activity, it is not a matter to determine the issue of consent especially when it has been held that the prosecutrix was below 16 years of age at the time of the alleged incident, therefore, her consent would be of no consequence. Accordingly, the appeal i.e. **CRA-S No.2901-SB of 2018**, filed by Shabbir Ahmed Langoo @ Lone (A-3), is also *dismissed*.

ACCUSED – MOHD. ASHRAF MIR (A-5)

The accused – Mohd. Ashraf Mir (A-5) is also charged for committing rape upon the prosecutrix i.e. PW-1 (W-1), during the year 2003 to 2004, when she was a minor.

PW-1 (W-1) deposed that in the month of October/November, 2003, Sabeena (A-8) visited their house and told her mother that she was having fever and she should allow to take PW-1 (W-1) to accompany her to a hospital located in Soura but instead of

taking her to hospital, she took her to Naaz Hotel, Karan Nagar, Srinagar and on the first floor, she met with a man, aged about 40 years, who was in police uniform and his name was Mohd. Ashraf Mir (A-5). He was Deputy Superintendent of Police. The accused Sabeena (A-8) told her to go to bathroom so that she could have a word with him and thereafter, when she came back, Sabeena (A-8) told her that Mohd. Ashraf Mir (A-5) want to have sexual intercourse with her. On this Mohd. Ashraf Mir (A-5) told Sabeena (A-8) that she was very young but Sabeena (A-8) told him that by appearance she is young but she is 18 years of age. Thereafter, accused Mohd. Ashraf Mir (A-5) had sexual intercourse with PW-1 (W-1) and Sabeena (A-8) paid her some money and then, she went back in an auto arranged by Sabeena (A-8). PW-1 (W-1) had identified the accused Mohd. Ashraf Mir (A-5) in Police Officer Mess, Srinagar in May, 2006 in the presence of PW15, Jaffar Hussain Beig, the then Magistrate and the other witnesses including the other Investigating Officer of CBI where the test identification parade was done as detailed by PW15 and she signed on the identification memos along with other witnesses. This witness also identified the room at Naaz Hotel, where Mohd. Ashraf Mir (A-5) raped her. This witness also identified Mohd. Ashraf Mir (A-5) in the Court as an accused, who had raped her.

It is worth noticing that initially, the defence set up by Mohd. Ashraf Mir (A-5) was that he has been falsely implicated in the case as he was a very strict police officer and had enmity with the SHO, Javed Kaul, PW-53 who initially conducted the investigation in this case.

It was also set up by Mohd. Ashraf Mir (A-5) that he was responsible for evicting the family of PW-1 (W-1) from a house of Pandits in Mohalla, Fateh Kadal.

This defence of false implication could have been a legal defence as in the cross-examination of PW-1 (W-1), it has come that Mohd. Ashraf Mir (A-5) was known as a strict police officer and he had enmity with PW-53 Javed Kaul.

PW-1 (W-1) further admitted that when her family was residing in the house of Pandit in Mohalla, Fateh Kadal, Mohd. Ashraf Mir (A-5) accompanied by police party had come there and thrown out her family and other occupants of the adjoining houses of Pandit Migrants despite the request made by her parents not to evict them but he did not oblige them. Even a suggestion was given to this witness that it is incorrect to suggest that she had falsely named accused Mohd. Ashraf Mir (A-5) regarding sexual intercourse on account of the fact that her family was evicted from the house of Pandit Mohalla.

PW-1 (W-1) also admitted that in her first statement before the police on 15.03.2006, she did not name Mohd. Ashraf Mir (A-5).

However, surprisingly in the middle of the cross-examination of PW-1 (W-1), the learned defence counsel took a complete somersault and changed the line of defence, to set up a case that PW-1 (W-1) was major and Mohd. Ashraf Mir (A-5) had consensual sex with her.

This defence was set up so strongly that in the cross-examination of PW-1 (W-1), certain questions were put to her to the extent *“Whether while having sexual intercourse with Mohd. Ashraf*

Mir (A-5), she (PW-1) was able to satisfy him”, which she replied and one more question was put to her “Out of 02 persons, i.e. Mohd. Ashraf Mir (A-5) and one (C-20), who performed sexual intercourse first”. Again, PW-1 (W-1) replied that Mohd. Ashraf Mir (A-5) had sex first.

Even, a perusal of the subsequent part of the cross-examination of PW-1 (W-1) show that the defence counsel tried to impeach the character of PW-1 (W-1) by asking various questions regarding her character to suggest that she had consensual sex with many other persons as she was into flesh trade.

Even further no cross examination was done on PW-53, Javed Kaul regarding any enmity with him and even no defence witness was examined to prove the plea of false implication. Moreover, during investigation, PW-1 (W-1) has proved the identity of the room in Naaz Hotel, where Mohd. Ashraf Mir (A-5) had raped her.

Though it is well settled principle of law that the prosecution has to prove its own case and cannot rely upon weakness of defence, however, the defence by Mohd. Ashraf Mir (A-5) once switched over to consensual sex with PW-1(W-1), it can not be termed as a weakness in defence version.

Therefore, the statement of PW-1 (W-1) that she knew Mohd. Ashraf Mir (A-5) since she was aged about 13/14 years and even, Mohd. Ashraf Mir (A-5) had acquaintance with her family, the plausible defence of false implication, which he could prove, on account of his actions taken as police officer, having been switched over to consensual sex, lead to a conclusion that the findings recorded by the trial Court qua Mohd. Ashraf Mir (A-5) is also correct and is upheld and therefore,

the appeal i.e. **CRA-S No.2903-SB of 2018**, filed by Mohd. Ashraf Mir (A-5) is also *dismissed*.

ACCUSED – K.C. PADHI (A-6)

The charge against the accused – K.C. Padhi (A-6) is also for committing rape upon PW-1 (W-1), at his government accommodation in the year 2004.

K.C. Padhi (A-6) had taken a consistent defence of false implication because he was posted as BSF Commandant (Operations) at Humhama Camp, Srinagar in summer 2004 and was in-charge of the operations wherein, number of militants were killed, therefore, he has been falsely implicated.

After going through the prosecution evidence as well as the defence version, I find force in the arguments raised by K.C. Padhi (A-6) for the following reasons:-

(a) The allegation against K.C. Padhi (A-6) are that he was having acquaintance with Sabeena (A-8), who took PW-1 (W-1) along with another girl i.e. PW45 (W-38), at the official residence of K.C. Padhi (A-6) at BSF Camp, Humhama, Srinagar. The allegation further say that Sabeena (A-8) took both the girls in an auto and outside the BSF Camp, she made a phone call from STD booth to K.C. Padhi (A-6) to send an official vehicle and thereafter, a white gypsy came and PW-1 (W-1) along with PW45 (W-38) boarded the gypsy, which was driven by a driver and there were 03 gunmen. Both of them were taken to the house of K.C. Padhi (A-6). PW-1 (W-1) further stated that when she along with PW45 (W-38) went in the house of K.C. Padhi (A-6), there was a cook, who served them tea and thereafter, K.C. Padhi (A-6) first had sexual

intercourse with PW-1 (W-1) and then with PW45 (W-38). Further PW-1 (W-1) had identified this accused during the test identification parade and while her identification in the Court, she stated that the person, who was identified by her was a fat man but K.C. Padhi (A-6) is not a fat man.

(b) *A perusal of the prosecution evidence show that PW-1 (W-1) stated that she was sent to K.C. Padhi (A-6) along with PW45 (W-38) and K.C. Padhi (A-6) had sex with both of them. However, PW45 (W-38) when examined as a witness took a complete U-turn and during her cross-examination by CBI Prosecutor, when she was confronted with her statement made to the police and CBI, during the enquiry, she stated that she is 6th standard pass and do not know English and had signed the statement under the pressure of CBI. She even denied having any previous acquaintance with K.C. Padhi (A-6) and further denied that she knew Sabeena (A-8) or the prosecutrix PW-1 (W-1), therefore, the statement of PW-1 (W-1) is not corroborated by PW45 (W-38).*

(c) *The sequence as detailed by PW-1 (W-1) also lead to a conclusion that K.C. Padhi (A-6) has been falsely implicated. PW-1 (W-1) stated that Sabeena (A-8) took her and PW45 (W-38) in an auto to BSF Camp. A perusal of the statements of PW9, Nisar Ahmed Katoo @ Naz and PW10, Mukhtar Ahmed Bhatt, 02 auto drivers examined by CBI, show that they have nowhere stated that they ever took Sabeena (A-8) or PW-1 (W-1) or PW45 (W-38) to BSF Camp, Humhama, Srinagar.*

(d) *CBI has neither recorded the statement of the STD booth owner, from where Sabeena (A-8) allegedly made a phone call to K.C. Padhi (A-6) nor his identity is known.*

(e) *It has come in the statement of PW46 – Kamlendu Talukdar, who was posted as Deputy*

Commandant Operation along with K.C. Padhi (A-6) from the year 2003 to 2005 that wife of K.C. Padhi (A-6) used to reside with him and no lady has ever visited his house except two daughters of K.C. Padhi. This witness further stated that a strict protocol was maintained at the BSF Camp, which was highly vulnerable by the militants. This witness as well as the 03 defence witnesses i.e. DW1 to DW3, had further stated that as per the protocol maintained at the BSF Camp at entry gate, the name and the identity of the civilians/visitors was properly recorded and after due verification of their identify document/card, a visitor pass was issued and thereafter, a civilian/visitor was allowed to enter the BSF Camp.

(f) PW-1 (W-1) in her cross-examination has stated that when she and PW45 (W-38) entered the BSF Camp, neither any entry in register was made nor their antecedents were verified, which raises a doubt about her visit to K.C. Padhi's (A-6) house especially when PW45 (W-38) completed denied that she had gone to BSF Camp or at house of K.C. Padhi (A-6).

(g) PW-1 (W-1) in cross-examination has further admitted that when she was accompanied by CBI for identification of the house of K.C. Padhi (A-6), due entries were made in the visitor register maintained at the gate of BSF Camp, which also show that strict protocol as stated by PW46 and DW1 to DW3, is correct.

(h) DW1, S.G. Goyal, who was examined by K.C. Padhi (A-6) stated that he was posted as a Second in Command Operation during the relevant time and the house of the DIG was earmarked. This witness further stated that the BSF Camp is a highly security zone and only 02 types of civilians were permitted to enter the BSF Camp. First category is the frequent visitor, who supplied daily needs like milk, contractors, mason, etc. and they

were issued temporary pass after proper verification. In the category of casual visitors, they were checked at the entry gate, their identity was verified and then, they were given entry pass and even, there was a mobile patrol, which would intercept the outsiders, after the entry pass was given. From the statement of this witness, it is apparent that a strict protocol was maintained at the time of entry of all the civilians and PW-1 (W-1) admitted that when she went to BSF Camp, no such entry was made at the gate and PW45 (W-38) completely denied the incident, who allegedly accompanied PW-1 (W-1).

(i) DW1 further stated that on 02 occasions, K.C. Padhi (A-6) was attacked by the militants. In one incident, an Improvised Explosive Device (IED) was planted when he was returning from Tral and in another incident at Pampore, he was fired upon by the militants but he survived. This witness also stated that during his tenure about 40 militants were killed on different occasions and with regard to the operational achievements of BSF, K.C. Padhi (A-6) as DIG used to make media briefing, which were recorded through electronic and print media and were telecasted on national TV and published in newspapers. K.C. Padhi (A-6) was awarded a President's Police Medals in the year 2005, which is given after verification is done by the IB and local police and upon a clearance by the Ministry of Home Affairs.

(j) DW2, B.P. Ghosh, an official of the BSF, who was working as a Driver with K.C. Padhi (A-6) on his official gypsy, also stated about the protocol maintained at the entry gate of BSF Camp. He further stated that he had not brought any civilian girl on the asking of K.C. Padhi (A-6) inside the BSF Camp and this version also belies the statement of PW-1 (W-1).

(k) DW3, Gian Bahadur Chhetri, another BSF

employee, stated that he was assigned the duty of Cook with K.C. Padhi (A-6) at his residence and he used to present there 24 hours. This witness also stated that he did not see any civilian visiting the residence of K.C. Padhi (A-6) during his entire tenure. This version also makes the deposition of PW-1 (W-1) qua K.C. Padhi (A-6), doubtful.

It is worth noticing that the trial Court while assessing the case of K.C. Padhi (A-6) has not given much weightage to the statements of DW1 to DW3 about his false implication.

(l) Even in the first 02 versions given to the police, though, the other accused were named, however, the name of K.C. Padhi (A-6) was not mentioned by PW-1 (W-1). It is also a matter of record that when PW-1 (W-1) was cross-examined with regard to the 3rd statement made before CBI naming K.C. Padhi (A-6), she stated that she has named K.C. Padhi (A-6) but when confronted with the statement, it was only mentioned that a BSF, DIG had sexual intercourse with her and name of K.C. Padhi (A-6) was not mentioned.

(m) PW-1 (W-1) had also stated in the cross-examination that her real uncle i.e. father's brother, who was a militant was killed by the security forces and therefore, she had developed hatred for the security forces. This bent of mind of PW-1 (W-1) also leads to a conclusion that K.C. Padhi (A-6) was falsely implicated.

(n) The prosecution has cited many (major victims) i.e PW-23, PW-25, PW-30, PW-45, PW-48 apart from PW-1 (W-1) (the minor victim). Apart from them some more witness were cited but were not examined by CBI and these witnesses were given up by the prosecution and above stated witness when examined by the trial Court, they have not supported the prosecution version and have taken a complete U-turn which show that they were under

pressure, when they made the statement before the CBI.

(o) Even the evidence of connecting PW-1 (W-1) with K.C. Padhi (A-6) is also missing. A perusal of the PIL judgment show that at one point of time, the CBI recorded the statement of PW45 (W-38) to the effect that one Dr. Pritpal Singh Goga with whom PW45 (W-38) was having sexual relation introduced her with K.C. Padhi (A-6) at his clinic and thereafter, Dr. Goga introduced K.C. Padhi (A-6) to accused Sabeena (A-8). Further the statement of PW60, the Investigating Officer of CBI as well as the judgment of PIL Bench, show that during investigation, 03 statements of Sabeena (A-8) were recorded, however, only one statement dated 31.05.2006 was exhibited as Ex.PW26/2 which was recorded by PW26, Javed Ahmad, the then, Principal District & Sessions Judge, Anantnag and PW60, S.L. Gupta, Investigating Officer of CBI. In the statement Ex.P60/2, though Sabeena (A-8) had named number of high ups to be involved in a sex racket. However with regard to K.C. Padhi (A-6), in the last paragraph of the statement dated 31.05.2006, she stated that she will give further statement only after her ex-husband namely Abdul Hamid Bhullah (A-9) is released from the jail and then, she will disclose the names of high ups including DIG, BSF, politicians, other police officers, bureaucrats, etc.

This statement clearly prove that either Sabeena (A-8) was under pressure or she was negotiating with CBI to release her husband Abdul Hamid Bhullah (A-9) and on such allurements, she will name a DIG of BSF.

Therefore, in the absence of any subsequent statement of Sabeena (A-8) not proved on record by CBI, the genesis of involvement of K.C. Padhi (A-6) in this case is not proved as the only link between K.C. Padhi (A-6) and PW-1 (W-1) was Sabeena (A-8) (since dead) and she

has cleared stated before the CBI in presence of PW26 Javed Ahmad, the then, Principal District & Sessions Judge, Anantnag that she will name a BSF, DIG only after her husband Abdul Hamid Bhullah (A-9) is released.

(p) The cross-examination of PW-1 (W-1) show that when her nude video clipping was circulated on mobile phone, some banned militant groups also started circulating the same on phone and even posters were circulated.

By noticing such activity, the J&K High Court, took suo moto action and stayed all such activities by passing a restraint order against the press and media from publicizing the incident. Later on, Bar Association also filed a PIL and aggrieved against an interim order, the CBI filed an SLP before the Hon'ble Supreme Court. The Bar Association, filed an affidavit before the Hon'ble Supreme Court, which reads as under:-

“It goes without saying that by causing its appearance in the Supreme Court on 29-8-2006, the Bar Association is not going back on its stand on Kashmir issue. On the other hand, by appearing in the case it will expose politicians, bureaucrats, police officials, etc. who have sexually exploited teenage girls of Kashmir in the name of countering insurgency and show the entire world the real face of India in Kashmir.”

The Hon'ble Supreme Court on this affidavit observed as under:-

xxxx xxxx xxxx xxxx

“We hope in future utmost care would be taken and the allegations and averments made with a sense of responsibility, particularly when it comes from an Association which is supposed to be the

guardian of the rule of law.”

xxxx xxxx xxxx xxxx

“Again, we are constrained to note that the good cause of exposing the racket of this nature is being linked with wholly baseless, unnecessary and extraneous reasons. In respect of the afore-quoted paragraph, again, the learned counsel expressed sincere regrets and, therefore, we would only deprecate such stand and leave the matter at that and say no more.”

(q) Therefore, by using the feeble shoulders of PW-1 (W-1) as a pedestal, some organizations tried to settle their own agendas against para military forces. Therefore, the possibility of false implication of K.C. Padhi (A-6) at the hands of PW-1, under pressure of CBI cannot be ruled out as she herself was socially condemned by a hostile and volatile society at that time and was in the protective custody of CBI.

(r) So far as the identification of K.C. Padhi (A-6) is concerned, it has come in the cross-examination of PW-1 (W-1) that she was kept in protective custody in the same premises where K.C. Padhi (A-6) was kept, however, on different floors. PW-1 (W-1) also stated that she used to watch TV and read newspapers. She also stated that she heard about BSF, DIG, who was actively involved in counter insurgency operations and therefore, in view of the statement of DW1 that K.C. Padhi (A-6) used to make media briefing, which used to be telecast on national TV and newspapers, indicate that at time of the test identification, PW-1 (W-1) already knew about the identity of K.C. Padhi (A-6).

Accordingly, it is held that K.C. Padhi (A-6) was

falsely implicated in this case and therefore, the findings of trial court are reversed and K.C. Padhi (A-6) is acquitted of charge under section 376 RPC.

*This appeal i.e. **CRA-S No.2668-SB of 2018**, filed by K.C. Padhi (A-6) is **allowed** and the judgment of conviction dated 30.05.2018 and order of sentence dated 06.06.2018 qua K.C. Padhi (A-6) is set-aside.*

In view of what has been discussed hereinbefore, the findings recorded by the trial Court that the date of birth of PW-1 (W-1) is 20.12.1990 is upheld and the **appeals Nos.2903-SB, 2901-SB and 2945-SB of 2018** filed by Mohd. Ashraf Mir (A-5), Shabbir Ahmed Langoo @ Lone (A-3), Masood Ahmad @ Maqsood (A-4) and Shabbir Ahmad Laway @ Shabbir Kala (A-1), are hereby **dismissed** and the judgment of conviction dated 30.05.2018 and order of sentence dated 06.06.2018, qua them is upheld, the appeal i.e. **CRA-S No.2668-SB of 2018**, preferred by K.C. Padhi (A-6) is **allowed** and the judgment of conviction dated 30.05.2018 and order of sentence dated 06.06.2018 qua K.C. Padhi (A-6) is set-aside.

Since the main appeals have been decided, the pending applications, if any, in all the appeals are also disposed of.

The Registry is directed to issue the release warrant of K.C. Padhi (A-6) forthwith, if he is not involved in any other case.

It is further directed that the Registrar General of this Court, will circulate the observations made at Page 64-65 of this judgment, to all the Presiding Officers/Designated Courts dealing with cases of Crime against Women, in the States of Punjab, Haryana and

U.T., Chandigarh, regarding a lewd, filthy and an indecent question put to the prosecutrix, which could not be allowed by the trial Court, in violation of the directions given by the Hon'ble Supreme Court in “State of Punjab vs Gurmit Singh”, 1996(1) RCR (Criminal) 533, directing that while conducting the cross-examination of victims of sexual assault, the Court should be vigilant that defence counsel should not adopt a strategy of continuing questioning the prosecutrix as to the detail of the rape and the Court should not sit as a silent spectator while the victim of the crime is being cross-examined by the defence and it should effectively control the recording of the evidence to avoid her victimization.

(ARVIND SINGH SANGWAN)
JUDGE

20.08.2020

yakub

Whether speaking/reasoned	Yes
Whether reportable:	Yes