

Jammu High Court

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Suomoto Proceedings In Flesh ... vs State And Ors. on 8 October, 2007

Equivalent citations: 2008 (1) JKJ 161

Author: B A Kirmani

Bench: H I Hussain, B A Kirmani

JUDGMENT

Bashir A. Kirmani, J.

1. On 02.05.2006, this Court initiated suomoto 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 suomoto, 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, bearucrats, 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 under Section 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 be 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 unneeded be 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 Yasmeena 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 Sabeena 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 Sabeena 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 Yasmeena now without any further delay.

Investigating Officer, CBI states that the statement of Sabeena 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 Yasmeena 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 Yasmeena and the statement of Sabeena, 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 Ah. 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 Yasmeena 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 Sabeena and shall take steps for recording the statements of other girls whose names have been given either by Sabeena or Yasmeena. 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 Sabeena and Yasmeena 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 Sabeena 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 Yasmeena 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 Yaseema 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 Sabeena 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 Yasmeena and Sabeena, 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 Yasmeena 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 Yasmeena, 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 (Introgation report) Moniba @ Rahila, further statement of Sabeena 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 Sabeena 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 this vestigation 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 corr roborated 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 Yasmeen/Nancy, lady constable Nelofar, Shafufta, Ayesha Salim 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 CF3I 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; Mymoona, Shazia @ Dilli, Shazia @ Azrah, Shamima @ Sonia, Zamruda @ Iqra, and Afroza @ Affa @ Kaki had been recorded in view where of 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 mater 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 medi-care 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 Rukhsana, Naseer Ahmed, Nuzhat @ Nuzu, Sonia @ Faroka, and Ulfat @ Saimi 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 concretize 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. Yasmeena, 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 Organization 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 Shakila and Abida @ Gypsy @ Sahiba @ Saima 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 outlined 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 Yasmeena, 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 honorably. 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 0 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 Nelofar, Shazia @ Azrah, Aijaz, Dy. SP, Farooq Reshi and Abida @ Gypsy @ Saima @ Sahiba 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 patronized 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 bonafide....

...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.

Meanwhile, by 7th of Sept. 2006, statements/further statements of Shagufta, Gulshan, Gulshan @ Pepsi one Murvat Mir, Hakeem Mohd Yasin, Niyaz Mehmood DIG police, Sheikh Mehmood SP, Ashkoo ward SSP, one Amit Amla and Dr. Pri tupal 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 bonafide 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 bonafide investigation would have to be gathered from the actions and approach of CBI for fulfillment 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 Sabeena 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 tremering 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 under Section 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 , 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. JT 1996 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 whereto 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.

16. We have heard learned Counsel and gone through around four thousand pages of materials including 18 volumes of case diaries, and considered the matter. Before anything else we may mention that pronouncement of this order in these proceedings got considerably delayed because of the pendency of bail matter in Srinagar and the case against eighteen accused persons in trial court at Chandigarh where it was transferred by Hon'ble Apex Court which were being debated for framing of charge and grant of bail to accused persons. Feeling that our observations and impression as contained in this order might be used to influence the out come of proceedings before the Courts below, we thought it proper to wait till charge stage in the case and proceeding on bail matters is over, which stands done by now. In addition, we expected that after closing investigation the CBI would file report regarding released among surfaced persons before the CJM, Srinagar where they had instituted the case against some of the persons involved; but till date nothing has been reported or brought on record to suggest that the report has been filed. The question that now falls for determination is what next? CBI, has concluded its investigations resulting in institution of cases against eighteen persons currently facing the trial; and abstained from taking any action against others who surfaced during investigation, on the ground that in opinion of the investigation officer as approved by his controlling officers sufficient incriminating materials did not exist against them. Obviously at this stage two possibilities exist. Either we agree with conclusions arrived upon by CBI or do not. If we do then the whole matter comes to a logical end with what stands already done by the CBI. If we do not, then again two ways open up. Either the court concedes that I.O's conclusions legally seal the matter and declaring itself incapable of further action sits calm despite a disagreement to wind up the proceedings, or passes such further orders/directions as appear to be proper, which would naturally involve an appreciation of materials on record. But that exercise can only be undertaken if even after conclusion of investigation the way it stands done, some scope for further examination of the matter is available; and for that in the first place it would be proper to seek guidance from law declared by Hon'ble apex court. To start with the judgments quoted by CBI may be considered first.

17. In "Abhinandan Jha and Ors. v. Dinesh Mishra" and "Roopchand lal and Ors. v. State of Bihar", reported as ; the common question of law formulated by the Court for its consideration was whether a magistrate could direct the police to submit a charge sheet where after investigation into a cognizable offence it has submitted a final report opining that alleged offences were not made out in view of evidence collected during investigation. The question arose because of a cleavage of opinion expressed by different High Courts, some opining in negative and others in affirmative. For denying existence of such power with magistrate the crux of argument was that it would amount to acknowledge magistrate's power of compelling the investigating agency to form a particular opinion in the matter, while such opinion was required to be formed by I.O., independently and was his sole right; while affirmative opinion rested on the reason that denying the

magistrate the power to ask police to file a charge when he contrary to the opinion of 1.0 finds commission of an offence apparent, would directly result in leaving the discretion to institute criminal charge sheets entirely with police rendering the courts powerless even while suspecting commission of offence on perusal of final police report submitted to them. In these circumstances the apex court while discussing different contours of the matter, was pleased to refer to certain observations from a Privy council case (AIR 1945 PC 18) as under:

Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as he has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordship think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

18. From another privy council case (AIR 1955 SC196) the court quoted the following observation;

Investigation usually starts on information relating to the commission of an offence given to an officer in-charge of a police station and recorded under Section 154 of the Code. If from information so received or otherwise, the officer in-charge of the police station has reasons to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and includes all the proceedings under the Code for the collection of evidence conducted by a police officer.

The cumulative import of these observations appears to be that investigation which means all proceedings conducted by a police officer under Cr.P.C while investigating a case those are aimed at collection of evidence belong to his province in which the magistrates should not interfere because that may result in overlapping of police and magisterial function which should only compliment each other for effective functioning of the criminal justice system. The observations are salutary and binding meant to be observed by magistrates by exercising restraint in interfering with the investigation of a particular case by police. However, proceeding further Hon'ble Supreme Court, observed that;

11...The High Courts, which have held that the Magistrate has no jurisdiction to call upon the police to file a charge-sheet, under such circumstances, have rested their decision on two principles viz., (a) that there is no express provision in the Code empowering a Magistrate to pass such an order; and (b) such a power, in view of the scheme of Chapter XIV, cannot be inferred. On the other hand, the High Courts which have recognized such a power, rest their decision again on two grounds viz., (a) when a report is submitted by the police, after investigation, the Magistrate has to deal with it judicially, which will mean that when the report is not accepted, the Magistrate can give suitable directions to the police; and (b) the Magistrate is given supervision over the conduct of investigation by the police, and therefore, such a power can be recognized in the Magistrate.

12...Though it may be that a report submitted by the police may have to be dealt with judicially, by a Magistrate, and although the Magistrate may have certain supervisory powers, nevertheless, we are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear, that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law....

Under these observations Hon'ble apex court while negating the opinion that magistrates could ask the police even against their final opinion to bring a charge sheet against the accused, opined that nonetheless they could take cognizance of the offence they felt was committed in view of the contents of police report which did not in I.O's opinion incriminate the accused. Thus the important element of these observations appears to be that under inherent power of magistrates to take cognizance of offences, which the Code of Criminal Procedure expressly vests in him to assure that none committing a crime goes unpunished, is saved even in cases where a magistrate can't order production of a charge sheet against the opinion of I.O. By implication saving this power to the magistrate renders non-institution of charge sheet redundant, because in any case the objective of assuring that all offenders are brought to book is somehow achieved. However, taking the discussion ahead the court further opined as under:

...Then the question is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report, as we have already indicated, is called, in the area in question, as a 'final report.' Even in those cases, if the Magistrate agrees with the said report, he may instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under Section 156(3) to make a further investigation. That is, if the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156(3)....

...17. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under Section 190(1)(c) of the Code. That provision in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from the third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c) on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed.

The import of this para as clearly expressed is that in case of his disagreement with the final opinion of police the magistrate may either take cognizance of offence which he prima-facie feels was committed or direct a reinvestigation in the matter to find out the whole truth and implicate the culprits for being brought to book. In other words the position certainly is not that where police opines against presenting a formal charge sheet in a case, the magistrate would feel compelled to swallow the police version calmly and preside over the matter with tied hands. On the contrary he would vigilantly assess the materials produced before him and take a view to act in a mode accepted by law as aforesaid. This view was further reiterated in "H.S. Bains v. State" Reported as ,

with the only addition that mention of Section 190(1)(c) in para 17, of above quoted judgment was incorrect, as it should be Section 190(1)(c). This is what the Hon'ble apex court said,

...On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(c) and straightway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police there from. The Magistrate is

not bound by the conclusion drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sees. 200,203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things; (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process: this he may do without being bound in any manner by the conclusion arrived at by the police in their report: (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section

200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

19. Coming to the second case quoted and relied upon by CBI counsel, for canvassing that with conclusions of the I.O., the court should shut the door on investigation, captioned as Vineet Narayan v. U.O.I and Anr. reported as ; relating to unaccounted inflow of hawala money in Crores to top politicians of the country within and out of Govt, which on becoming known raised serious questions touching policy, governance and above all national security persuading Hon'ble apex court to show indulgence in public interest, whereupon it ordered and monitored the investigations purely in discharge of its constitutional functions/powers. This was the perspective as spelled by Hon'ble court.

3. The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies.

The Hon'ble Court then cut out the following role for itself.

4. In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

Determining the contours of its indulgence Hon'ble court observed that,

5. In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits, in accordance with law.

6. However, if in respect of any such person the final report after full investigations is that no prima facie case is made out to proceed further, so that the case must be closed against him, that report must be promptly submitted to this Court for its satisfaction that the authorities concerned have not failed to perform their legal obligations and have reasonably come to such conclusion. No such report having been submitted by the CBI or any other agency till now in This Court, action on such a report by this Court would be considered, if and

when that occasion arises. We also direct that no settlement should be arrived at nor any offence compounded by any authority without prior leave of this Court....

and then proceeded ahead to pass further requisite directions. In terms of the judgment therefore, the sole purpose of monitoring has to be the assurance of an effective, impartial and honest investigation by concerned agency in discharge of its legal obligations irrespective of the placement or position of victims or culprits; during which requisite directions can be issued for that purpose. At the close however, while the cases of those incriminated by police are to left to face process of law before the trial court, regarding other who might have been left out the courts can take a view and pass appropriate orders in given circumstances of the matter. Reading this judgment together with the earlier judgments quoted, the conclusion appears to be that in monitoring proceedings, this Court, if not satisfied by the performance of statutory duty by CBI in bringing to account those who in view of materials available could not have been left out, can take a view and pass appropriate orders, to have such materials assessed at competent magisterial level for lawfull action.

20. With that the stage appears to be ripe for considering the conclusions arrived at by I.O in cases of persons left out with a view to assess whether or not it does amount to discharge of his lawful duties and to decide upon the requisite course of action. But before that it would be apt to notice the prescribed contours of an I.O's functioning exercise of power and discharge of duties in terms of the relevant provisions of the Code of Criminal Procedure. The whole gamut of an I.O's activity as is well known is confined to investigations into allegations of commission of an offence and committal of accused persons before a competent Criminal Court to face the trial, or filing of a final report under Section 173 Cr.P.C. After receipt of a report regarding commission of an offence the I.O in non-cognizable cases with permission of the magistrate, and in cognizable cases without such permissions has to undertake and commence investigation which means collection of evidence during which he is authorized to require attendance of witnesses and after examination record their statements without however pressing for their signature thereupon or offering them any inducement and after conclusion either release the accused if evidence against him is found to be deficient or institute a case against him before the competent magistrate if the evidence so collected is sufficient. Both these situations are covered by Sections 169 and 170 of the Code, as follows:

Section 169 Release of accused when evidence deficient If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police station or to the police officer making the investigation that there is not sufficient evidence or reasonable ground of suspicious to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bound, with or without sureties, as such officer may direct to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

Section 170 Case to be sent to Magistrate when evidence is sufficient (1) If, upon an investigation under this Chapter it appears to the reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance from day to day before such Magistra te on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2)-(5)...

In case of releasing the accused for want of sufficient evidence the I.O is required to file a final report after conclusion of investigation before the magistrate under Section 173 of the Code, which runs as under:

Section 173 Report of police officer on completion of investigation (1) Every investigation under this Chapter shall be completed without unnecessary delay:

Provided that....

(2)-(7)...

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-section (2) to (6) shall as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

Thus in the final analysis according to above quoted provisions the sufficiency/deficiency of evidence or availability/non-availability of reasonable ground(s) of suspicion determine the fate of case with reference to a particular accused as also his involvement. In case of sufficiency of evidence/availability of reasonable grounds of suspicion he/she is to be committed to competent magistrate for trial, and otherwise released. The key expressions being "sufficiency/deficiency of evidence" and "reasonable grounds to suspect", the I.O is only required to satisfy himself whether or not the evidence on record is sufficient to bring the accused before competent court. Clearly therefore, the sufficiency of evidence at this stage will have to be assessed with a view as to whether the evidence on record is sufficient enough to reasonably send a person accused of commission of the offence alleged against him to the court, which in other words would mean whether the materials on record do point the finger of accusation towards the accused person by containing such allegations as in given circumstances of the case may incriminate him. It would be apt to notice that the satisfaction of I.O., for the purpose of laying a formal accusation against a person alleged of having committed an offence by institution of a case shall have to be uniform and in conformity with settled legal principles and not only guided by the personal opinion or subjective perception of the I.O; because if that be so, that will certainly lead to multiplicity of standards bound to dilute efficacy and accuracy of police power by subjecting its exercise to individual assessments. As a matter of fact the expressions "sufficiency of evidence/availability of reasonable grounds" for taking requisite procedural action is relevant at almost all stages of a criminal proceeding/investigation/enquiry or trial, right from registration of a case to committing the accused for trial, taking cognizance, framing charge and the final verdict and for all stages the standard of the sufficiency or deficiency of evidence is well set even while the level of scrutiny varies with the varying requirement of each stage. So in any case the concerned I.O., can't take an insulated view independent of settled principles to commit the accused for trial or release them, much less set a different standard for him by speculating about the out come of trial on materials collected by him and assess their sufficiency accordingly.

21. In addition, during the process of satisfying himself about sufficiency of incriminating materials available on record against an accused person that would render him liable to be committed to a Criminal Court for facing proceedings the I.O would naturally look for corroborative materials if the direct evidence does not appear to him to be sufficient to commit the accused. It may be in place to observe that material or evidence corroborative of a fact would be that which by itself does not directly or independently prove the fact, but suggests existence of some other fact or circumstance which supports existence of the fact indicated by other part of evidence directly, or strengthen the belief of its existence. It would therefore appear to be safe to assume that level of corroboration too at this stage has only to be of the level of sufficiency of materials. Moreover the corroborative nature of a material has got to be assessed in backdrop of the general texture of a case and not in isolation. Thus where a piece of evidence indicates something directly, looking for corroboration, particularly at the stage of investigation may be an unnecessary stretch, more so, in cases pertaining to offences against women, their chastity, modesty or decency. Hon'ble apex Court has more than once been pleased to stress that even at the level of trial when sole statement of a victim implicates the accused and circumstances of the case render it believable, no corroboration would be required to hold the accused person guilty. If that can be the case at trial level, it has to be so, with greater force at the concluding stage of investigation, when concerned I.O has only to formulate an opinion whether or not to commit the accused to a Court/magistrate for facing the proceedings. The conclusion, therefore, is that in cases pertaining to offences against women, if the victims statement in over all circumstances of the case appears to reflect a reasonable presumption or suspicion of the commission of offence by the alleged accused, no corroboration

needs be looked for by the I.O for committing him to the Court; and if any appears to be required the same needs not support the victims statement directly but would be enough if it indicates, shows or suggests existence of any other fact or circumstances to support the individual statement of the victim in which case it would be enough for the purpose of committing the accused to the court of law. This part of the discussion, I may record, has been necessitated because during course of monitoring I felt that instead of satisfying itself regarding sufficiency of materials and corroboration at the requisite level, the CBI has been trying to raise it to the level of conviction stage according to its own understanding or perceptions of the possible outcome of trial, which perhaps resulted in some sort of a self imposed passivity in bringing all involved to the book. This type of forecast about conclusion of the trial by investigating agency is neither required nor desirable because besides being beyond their province, in essence it is only limited to an assessment of the matter only on statements of witnesses as available with them, while according to well settled principles there is nothing to forbid the trial Court from recording statements of those also who were never examined during investigation. Reference in this behalf, if at all required may be made to following reported cases. In "Jhagru Tewari v. State of West Bangal" reported as AIR 1959 Cat. 177; it was said,

Para 8...While the law no doubt requires that the report of the police officer submitted under Section 173 should include the names of the persons who are acquainted with the circumstances of the case and also requires that the statements recorded under Sub-section 3 of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses should be furnished to the accused, I can find nothing in the law that prevents the prosecution from producing or the court from examining, as a witnesses in the case, a person whose name has not been included in the report made or whose statement has not been furnished. This view appears to have been taken in a decision of this Court in Criminal Revn. No. 640 of 1956 to which I was a party.

In another judgment "State v. Jagadish Pandey" reported as AIR 1958 Cat. 31; the view taken was as under:

(3) Section 173(4) of the Code of Criminal Procedure provides that the officer-in-charge of the police station shall, before the commencement of the inquiry of trial, furnished or cause to be furnished to the accused, free of cost, a copy of the report forwarded under Sub-section (1), of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164, and the statements recorded under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses. The learned Magistrate seems to think that this is a provision designed to benefit the accused person by giving him an advance copy of the statements which the witnesses have made against him during investigation. Obviously copies of all police papers, including the first information report and confessions and statements of witnesses examined by the police during investigation are intended to be given to the accused for his benefit. The question arises whether this provision of the law implies that the prosecution is prevented from calling any witnesses at the trial who has not been examined by the police or whose statement has not been recorded by them under Section 161 of the Code. In my view, it was not the invention of the legislature to shut out relevant evidence by enacting Sub-section (4) of Section 173 of the Code. The purpose might have been to benefit the accused by giving him in advance, copies of the documents and statements referred to in the Sub-section; but that could not possibly have the effect of preventing the prosecution from calling other competent evidence at the trial.

(4)...The question arises whether in view of Sub-section (7) of Section 251-A, the prosecution is to be limited to examining only such persons as have already been examined by the police and whose statements have been recorded in accordance with the provisions of Section 161(3) of the Code. The learned Magistrate's view seems to be that if examination was permitted of persons at the trial whose statements have not been recorded by the police, that would take the accused person by surprise and prejudice the defence. A trial in order to be fair, has to be so both to the prosecutor and to the accused. If the prosecution is to be restricted to examining only those persons whose statements have been recorded by the police, that might very much affect proof of the charge brought against the accused. The real purpose of Section 161(3) taken along with Section 173(4) of

the Code seems to be that the accused should be given a fair treatment by being told what the case against him is and by apprising him of the fact that certain persons have furnished to the police materials for his prosecution. It is, of course, true that when those previous statements are proved according to law, they may affect the value of the evidence in court. But the mere fact that the police did not consider witness material during investigation or collection of evidence, will not, in my view, preclude the prosecutor from asking for or the Magistrate from calling such witness at the trial. The language of Sub-section (7) of Section 251-A seems to me to be purposely wide so as to enable the prosecutor to produce all such evidence as may be produced in support of the prosecution. If we are to read "all such evidence" in the sub-section as meaning only such evidence as relates the police, it will be reading into the Sub-section something which is not there. I do not think Sub-section (4) of Section 173 controls Sub-section (7) of Section 251-A of the Code. Moreover, a magistrate in the discharge of his judicial functions must always be left free to exercise his discretion in the matter of allowing parties to produce evidence. The exercise of that discretion is controlled and regulated by various factors, one of them being the factor of admissibility of evidence. But if in the interests of justice, the Magistrate feels that the prosecutor should be allowed to examine a witness whose statement has not been recorded by the police during investigation, I do not think it would be right to limit the prosecution to producing evidence of only such persons as have been examined by the police during investigation. Further it seems clear that the proviso attached to Sub-section (7) of Section 251-A gives; the Magistrate power to defer the cross-examination of a witness until a future date. That obviously prevents the accused from being taken by surprise so that he can if so permitted cross-examine the new witness on a later date upon his examination-in-chief. In my view, it could not have been the intention of the Legislature to limit the operation of Sub-section (7) of Section 251-A by compelling the prosecution to confine itself to the evidence of only those persons whose statements have been recorded by the police.

(5) There is yet another aspect of the matter. If the rule of Section 173(4) of the Code is to be considered irrelaxable, then Section 540 would become otiose. That section provides that any Court may, at any stage of any inquiry, trial or other proceeding under the Code summon any person as a witness or examine any person in attendance, though not summoned as witness, or recall or re-examine any person already examined, provided that the Court is satisfied that the evidence of such witness is essential to a just decision of the case. The magistrate's view of Sub-section (4) of Section 173 taken along with Sub-section (3) of Section 251-A would perhaps affect even Section 540. I cannot persuade myself that this was ever the intention of the Legislature to rob the prosecutor of the means of providing his case by calling relevant and useful evidence or to rob the court of its power of doing complete justice between party and party by limiting the citation of evidence in the manner suggested by the Magistrate in the order in question. I think despite Sub-section (4) of Section 173 of the Code of Criminal Procedure a prosecutor has the right to examine a witness whose statement has not been recorded by the police under Section 161(3) of the Code, and certainly the Court has power under Section 540 to examine or recall or re-examine any person whose evidence appears to the court to be essential to a just decision of the case. The structure of evidence in Court cannot always be a mere replica of statements during investigation.

22. That said, now let me advert to the records of the case to assess whether or not the investigating agency has acted aptly in the matter by letting off some incriminated persons. The question, therefore, would be whether or not the records reveal discharge of their statutory duty by CBI in effectively investigating the case in hand which doubtless involves important and sensitive questions touching the social/moral fabric and reputation of administrative and other institutions. It may be recalled that the whole story started with publication of such stuff in local/national press as suggested exploitation of hapless young girls at the hand of influential people at the helm in different spheres of society which was taken cognizance of by this Court as already said, followed by the Bar Association through their writ petition whereafter this Court decided to monitor the investigation and passed speaking directions from time to time to CBI to whom the case was handed over; who filed their ultimate report in the court on 03.10.2006 giving the final status of the case, according to which out of all persons surfacing during course of interrogation eighteen were arrested, while regarding others the I.O concluded that some among them could not be identified by concerned girls during Test Identification Parades, and against others sufficient materials in his opinion did not exist to warrant their

arrest or institution of cases against them. Those against whom cases have been instituted need not be discussed any further because the trial Court is all competent to deal with them. The area of reference therefore, gets restricted to those only against whom no action has been taken. These include seven persons who have been subjected to identification parade but not identified by concerned girls, who as such need not be mentioned. Others nominated by victim girls, who's identity was not in dispute but regarding whom despite availability of materials no action has been taken for mentioned reasons are; Sh. Ashkooor Wani SSP, nominated by two girls and the main accused Sabina who has been let off because of certain reported contradictions and later withdrawal of statement by concerned girl. One Javed Shah a deceased MLC who has died prior to commencement of investigation. Sh. Niaz Mehmood DIG, and Sheikh Mehmood SP left out because of reported contradictions in statement of concerned girl(s) and other discrepancies. Dr. Pritpal Singh Goga released because of reported withdrawal of statement by the girl & Amit Amla not roped in reportedly because the concerned girl failed to point out the house of his friend where he was alleged to have had sex with her. Another set of persons against whom no action has been taken comprises of those who have been nominated by the main accused Sabeena of having sex with the girls who were sought by or sent to them against whom no action has been taken despite apparently available materials include Sh. Raj Tickoo, Vigilance Commissioner at the relevant time, Sh. Mansoor Ahmed SP, Sh. Mohd Yousuf Khan, Ex-Chairman J & K Bank, Raja Mohiud din Journalist, Sh. Gh. Hassan Khan, MLA, Sh. Hakim Mohd Yaseen, a Cabinet minister, Sh. Yogesh Saini MLA, an unknown commissioner of the Govt, described by the victim girl as "Gora Chitta Commissioner" who had sex with her in an official hut at Chashme Shahi, Srinagar. It is regarding these persons only, that the I.O's opinion regarding deficiency of evidence for letting them off has to be securitized. In addition, are the persons who allegedly arranged girls for some of them who would be discussed later, alongwith others though initially proceeded against but let off later. They are Sh. Zahoor Ahmed Malik, Sh. Nissar Ahmed Sheikh, Sh. Manzoor Naik a Retd. S.P Jitender Misri, and one Vijay Kumar who would be dealt with separately. Broadly speaking in all these case the I.O's opinion regarding deficiency of evidence to implicate them is attributable to three main reasons. First, non availability of the victim girls, secondly, lack of corroborative materials, and thirdly, second thoughts of victim girls whereunder they charged their earlier statements. Regarding first and second categories I feel that non availability of victim girls would perhaps ipsofacto not undo the otherwise implicating materials, and corroboration where the principal material was clear and cogent would only be an additional material, lack whereof could not dilute the content of main statement. Regarding third relating to charge of statements by some of victim girls in some cases much after their earlier statements should have been viewed with circumspection and not given over riding effect against the first statements recorded before high ranking judicial officers. In any case, perhaps nobody, including the I.O., could safely predict/assume as to which of the statements the girls would own in their testimonies before trial court.

23. That takes me to the records perused which as already said comprised of case diaries, status reports, and other materials furnished by CBI during proceedings for an assessment as to whether or not the investigation came to right conclusions on available materials in discharge of their statutory duties. As the outset I may record that I am not making use of the CD files or statements recorded by CBI for implicating the persons mentioned or washing off of their involvement but only to assess the admissibility of conclusions resulting in releasing them from liability, because for coming to these conclusions the I.O has relied upon them only. Otherwise also, statements recorded by police and produced before a court do no more remain their exclusive property, but can be made use of to confirm or contradict opinions expressed on their strength. For further understanding and clarification of the scope of using these materials support may be derived from reported cases, wherein use of case diaries in circumstances identical with instant case has been held to be permissible. In "A.K. Roy v. State" reported as , the court while considering the question observed that,

(109)...

(iii) For the purpose of deciding whether cognizance of an offence should be taken, the Magistrate can look into the materials contained in the case diary and obtained during investigation, including statement recorded under Section 161 Cr.P.C., but he cannot take cognizance and issue process against the accused on

the materials contained in the case diary alone, unless facts contained in the report under Section 173 constitute an offence.

In so far as the use of case diaries in writ proceedings is concerned the judgment of Hon'ble apex court in "Khatri v. State of Bihar" reported as , covers the matter directly. Here is what was laid down.

3. Before we refer to the provisions of Section 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and Clause (g) of that section defines "Inquiry" to mean "every inquiry. Other than a trial conducted under this Code by a Magistrate or Court". Clause (h) of Section 2 gives the definition of 'investigation' and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

Section 4 provides:

4. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Indian Penal Code or under any other law is being investigated. Inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chap. XII dealing with the powers of the Police to investigate into offences. That section, so far as material, reads as under:

162. (1) No statement made by any person to a police officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or other side, or any part of such statement or record be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Clause (1) of Section 32 of the Indian Evidence Act, 1872 or to affect the provisions of Section 27 of that Act.

It bars the use of any statement made before a police officer in the course of an investigation under Chap. XII, whether recorded in a police diary or otherwise, but by the express terms of the section, this bar is applicable only where such statement is sought to be used 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made'. If the statement made before a police officer in the course of an investigation under Chap. XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in *Tehsildar Singh v. State of U.P.* . it is

intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence". This Court, in Tahsildar Singh's case approved the following observations of Braund, J. in *Emperor v. Aftab Mohd Khan* :

As it seems to us it is to protect accused persons from being prejudice by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths.

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe v. Emperor* AIR 1945 Nag 1 that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution, and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in *Malakalaya Surya Rao v. Janakamma* . The present proceeding before us is a

writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their fundamental rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be in worked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and Sub rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use...."

5. The object of Section 172 in providing for maintenance of a diary of his proceedings by the police officer making an investigation under Chap XII has been admirably stated by Edge, C.J in *Queen-Empress v. Mannu* (1897) ILR 19 All 390 in the following words.

The early stages of the investigation which follows on the commission of a crime must necessarily in the vast majority of cases be left to the police, and until the honesty, the capacity, the discretion and the judgment of the police can be thoroughly trusted, it is necessary, for the protection of the public against criminals, for the vindication of the law and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for investigation or for trial should have the means of ascertaining what was the information, true, false, or misleading which was obtained from day to day by the police officer who was investigating the case and what were the lines of investigation upon which such police officer acted.

The Criminal Court holding an inquiry of trial of a case is therefore empowered by Sub-section (2) of Section 172 to send for the police diary of the case and the Criminal Court can use such diary, not as evidence in the

case, but to aid it in such inquiry or trial. But, by reason of Sub-section (3) of Section 172, merely because the case diary is referred to by the Criminal Court, neither the accused nor his agents are entitled to call for such diary nor are they entitled to see it. If however the case diary is used by the police officer who has made it to refresh his memory or if the Criminal Court uses it for the purpose of contradicting such police officer in the inquiry or trial, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act would apply; and the accused would be entitled to see the particular entry in the case diary which has been referred to for either of these purposes and so much of the diary as in the opinion of the Court is necessary to a full understanding of the particular entry so used. It will thus be seen that the bar against production and use of case diary enacted in Section 172 is intended to operate only in an inquiry or trial for an offence and even this bar is a limited bar, because in an inquiry or trial, the bar does not operate if the case diary is used by the police officer for refreshing his memory or the Criminal Court uses it for the purpose of contradicting such police officer. This bar can obviously have no application where a case diary is sought to be produced and used in evidence in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and particularly when the party calling for the case diary is neither an accused nor his agent in respect of the offence to which the case diary relates. Now plainly and unquestionably the present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an 'inquiry nor a 'trial' for an offence nor is this Court hearing the writ petition a Criminal Court nor are the petitioners, accused or their agents so far as the offences arising out of their blinding are concerned. Therefore, even if the report submitted by Shri L.V. Singh as a result of his investigation could be said to form part of 'case diary', it is difficult to see how their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under Section 172.

24. Similar is the case with use of statements recorded by police during investigation. In that behalf a few reported cases may be noticed. In "Rahunandan v. State" reported as the Hon'ble court observed,

We are inclined to accept the argument of the appellant that the language of Section 162 Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. We think that a narrow and restrictive construction put upon the prohibition in Section 162 Criminal Procedure Code, so as to confine the ambit of it to the use of statements by witnesses by parties only to a proceeding before the Court, would reconcile or harmonize the two provisions considered by us and also serve the ends of justice. Therefore, we hold that Section 162, Criminal Procedure Code does not impair the special powers of the Court under Section 165, Indian Evidence Act. Consequently, we think that the Trial Court could and should have itself made use of the statement made by Jailal during the course of the investigation. If that had been done, it is possible that it may have affected appraisal of evidence of other prosecution witnesses.

Connotation of the view taken thus appears to be that use of statements made before police in a proceeding of this type is not barred. Accordingly, we may proceed to assess each of the cases in view of materials available as aforesaid.

I. Sh. Ashkoor Wani SSP: The first statement implicating him is that of 'Gulshan' @ Pepsi, recorded on 3.6.2006, and repeated on 10.06.2006, during her further statement in presence of Sh. Ab. Wahid, District & Sessions Judge as follows:

After 10-15 days, when I did not hear anything about release of my husband, I contacted Sabina and asked about release of my husband from the jail. She told me that there is one SSP who can help in this matter. She took me to Police Control Room, Batmaloo. I was, thereafter taken to the room of Sh. Ashkoor Wani, SSP, on the first floor. Sabeena talked to him in my presence about the release of my husband and Ashkoor Wani assured that he will help my husband in getting him released. Sabeena told me that I should please/satisfy Ashkoor if I want to get my husband released. Ashkoor also told me the same thing. Under the enforced circumstances I agreed for the same. Thereafter, Ashkoor Wani took Sabeena outside and talked something

with her. Thereafter, he asked his staff who was in civil dress, not to allow any person to enter to his room. He, then bolted the room from the inside and had sexual intercourse with me on the sofa of his office room. Thereafter, Sabeena spoke to him over telephone. From the talks, I could judge that Sabeena was asking him to pay some money to me, but Ashkoor Wani, was telling her that he has already given Rs. 7,000/- to her (Sabeena) and that he was not having more money. He asked Sabeena to come to PCR and took me back. Thereafter, Ashkoor Wani asked me to go out. I can identify the room where Ashkoor Wani had sexually exploited me. That was the first and the last day, I had visited Police Control Room. I can also identify Ashkoor Wani, though I had seen Ashkoor Wani for the first time, on that day.

This statement is followed by the statement of 'Shagufta' recorded on the same day i.e 10.06.2006, in presence of District Judge Sh. Ab. Wahid, who in her statement page 2, stated,-

One day, Sabeena took me to the house of one SSP named Ashkoor Wani at Police Housing Colony, Bemina, Srinagar. Sabeena left me there in his house and told me to satisfy/please him. It was day time around 4 p.m. Ashkoor was alone in the house and he had intercourse with me. He did not pay anything to me and told that I shall be getting money from Sabeena. Later Sabeena paid me Rs. 1000/- only. I do not know whether Ashkoor Wani had paid any money to Sabeena for this or not. I had met Ashkoor first and the last time on that day. Earlier I had seen him once at some Minister's house but did not know his name at that time. I was taken to Minister's house by Sabeena but I do not know the name of the Minister. Since I was not liked by the Minister, I was brought back by Sabeena. I can identify Ashkoor Wani as well as the flat where he had intercourse with me.

Both these statements read together do clearly mention the officer besides corroborating each other. Further corroboration, if any, could be had from 'Sabeena' which was not done at all. Any how with this being the position on 10.06.06, it would be appropriate to recall that under interim order of 20.06.2006, as quoted above, we had very clearly directed CBI to proceed ahead with investigation in light of the statement on record and complete the same expeditiously with liberty to conduct lawful custodial interrogation of any person substantially accused by any victim of being involved in this occurrence, and a further direction to report progress by next date of hearing. We don't know how CBI understood the direction, but with aforesaid statement regarding the officer under reference, and similar ones regarding others which would follow in due course, we only meant action in terms of the evidence on record, which even according to the perception of concerned I.O was not such as could be ignored. As per "further line of action" submitted by him to his higher ups on 21.07.06, he observed that the places where this officer had sex with Gulshan @ Pepsi and Shagufta was to be identified, and the call data of his mobile verified, where after in case of corroboration the officer would be subjected to identification parade preferably after arrest. In response his authorities asked him to get his mobile details from BSNL to ascertain whether he was in touch with Sabeena or Gulshan @ Pepsi during that period and to ascertain the places where he had sex with Gulshan @ Pepsi and Shagufta and confirm from authorities whether the officer was in possession of these places at that time. Even though coming a month after the order of 20.06.06, what could be the relevance of these instructions in face of the clear statements of the girls as aforesaid has nowhere been stated, so we are not in a position to opine upon the same, but the question of their relevance still remains. However, no further concrete action appears to have been taken except recording the statement of concerned officer on 02.09.06, wherein after preliminaries he stated at pages 1 and 2 of his statement as under.

On being asked I further state that my official mobile number is 94190-03248. I am using this mobile for the last about 2-3 years. Regarding mobile number 00065306551 state that this mobile number is registered in the name of Mohd. Shafiq Sheikh who is a sweeper. In fact this number was taken especially for CIK work and within the knowledge of senior officers. I state that I visited Srinagar in the first week of July 2006 and stayed in the Army mess with General B.K Singh who is now posted at Ambala. I do not know personally any lady named Sabeena of Srinagar but I have come across her name through media as kingpin of Srinagar Sex scandal. Regarding allegations of sexual exploitation of the girls provided by Sabeena, I state that I never asked for any girl from Sabeena. I do not know any girl named Shagufta or Gulshan Pepsi of Srinagar. As

stated earlier I did not know Sabeena prior to this case and Sabeena had never brought any girl including any Shaufufta or Gulshan @ Pepsi to me. I have never spoken to any girl named Gulshan @ Pepsi over her mobile phone number. I know her mobile phone number. On being asked about the three calls which have been made from mobile No. 9906530655 to mobile No. 9906868224 in July 2006, I am to state that I have not made any call to said Gulshan @ Pepsi. However, I add that this mobile No. 9906530655 is also at times used by others. Since I have worked actively against militants, due to that I might have annoyed various persons who have links with militants. Such persons might be trying to defame me. I have received gallantry award and various medals for outstanding performance especially in the field of curbing militancy in the Kashmir Valley. I do not know any person named Gulzar Ahmad who is stated to be the husband of Gulshan @ Pepsi. I do not recollect whether any such person was detained under PSA in the year 2004. I further state that I have never detained any person unauthorisedly either at Hari Niwas or at any other place. Regarding lady constable Kaiser, I state that she was a constable in J & K Police and initially I liked her and as a result we got married as per Muslim law. After around 6 months I came to know about her character and hence I divorced her. Thereafter I have no contact with her. On being asked about sexual exploitation of any girl during my posting at Srinagar, I state that I never indulged in any such activity. All such allegation are part of efforts to malign my character with intention of vengeance and nothing more

with reference to the part of statement pertaining to claim of having married lady constable Kaiser, the relevant part of said lady's statement recorded on 11.09.2006, may also be quoted.

I know Shri Ashkoo Ward, SSP as he was there in the recruitment board when I was selected as constable. I have never married him. I have never indulged in any sexual activity. I am a simple homely lady.

At the same time, the statement of Sh. Farooq Reshi Dy. SP, then allottee of the flat in Bemina police housing colony, where Shaguf ta was allegedly used by the officer, recorded on 9.8.06, may be reproduced which runs as under:

On being asked, I state that Qr. No Z-5 was allotted to me at Bemina Police housing Colony, Srinagar when I was posted as Dy. SP (Operation) at Srinagar in 2001. Though I took possession of this flat but I never stayed there. In 2002, IG (Kashmir) issued a vacation order for my flat against which I obtained stay order from the Court. Thereafter, IG (Kashmir) verbally instructed me in January, 2003 to hand over the key of the said flat to Sh. Askhoor Wani, the then SSP Kupwara who came on transfer as SSP, CKR, Srinagar. On instructions from IG (Kashmir), I handed over the keys of the said flat to Sh. Ashkoo Wani in January, 2003. The said flat was remained in unauthorized possession with Sh. Ashkoo Wani for the next about 2 years. During his stay in this house, he got installed a landline BSNL telephone number in the said flat. Thereafter, the said flat was allotted to Sh. Sandeep Mehta, Dy. SP (Operation), Srinagar. Sh. Askhoor Wani had not paid anything to me against this favour. On being asked I state that I also received various complaints of my neighbours at Bemina Police housing Colony against Sh. Ashkoo Wani's activities which caused inconvenience to them. I came to know that one lady constable Kaiser used to visit Qt. No. Z-5 to meet Sh. Ashkoo Wani. It was also learnt that Sh. Ashkoo Wani had provided a house to her at Dal Gate. Constable Kaiser has since been discharged from the services. It was learnt that she was caught with certain boys at Gulmarg following which case was possibly registered against them at Gulmarg Police Station.

To conclude, the line of statements in this behalf, the one given by Sh. Naseer Ahmed of "Zee" news Srinagar on 04.07.06, who had managed an interview of Shazia @ Azra, who's statement would follow in due course, and who while talking about the "Sex racket" had mentioned Sh. Ashkoo Wani also alongwith another police officer Sh. Mansoor, who's case would be discussed later, as being involved therein. Here is what she is reported to have told the above said Sh. Naseer Ahmed after telecast of the interview, as per his statement;

In the afternoon of May 4, 2006, Ms. Shazia came to my office and handed over Rs. 50,000/- and a Pashmina Shawl to me and told me that this was being gifted by Mr. Ashkoo Wani, SSP and Mr. Mansoor, SSP so that the interview would not be telecast and that their names should not be telecast as it would result in irreparable

damage to their reputation. Nevertheless, I spurned this offer, reported this to my office and recommended that we should go ahead with the story. This same interview was telecast by our News Channel Zee News on May 4, 2006 in a Special News Programme. Thereafter, I went to Mr. Gulam Hasan Bhatt, SSP (Vigilance), Jahangir Chowk, Srinagar and handed over the said money and the Paschmina shawl given by Ms. Shazia reportedly on behalf of Mr. Askhoor Wani and Mr. Mansoor aforesaid, and insisted on him taking action in this respect, but he declined. Thereafter, SP (Vigilance), signed the first and last of the currency notes, prepared a note in this regard and then returned the money along with the said Shawl to me, which was video-graphed.

It would however be appropriate to add that in a later statement the said Shazia is reported to have attributed the money and shawl to Dy. SP Mohd Yousuf Mir, who she has stated persuaded her to mention Sh. Wani and Mansoor. However, nothing has been said or stated in the final status report furnished by CBI regarding import and relevance of these statements, but with all these materials in their final report the investigating agency informed that no action had been taken in the matter for reasons already mentioned.

II. Sh. Niyaz Mehmood DIG and Sheikh Mehmood SP: These two officers have been left out by I.O., for the reported reason that in statement of the girl namely Nelofar whom they are alleged to have used sexually contradictions were found, and after check of documents they were absolved. So, in the first place it would be proper to notice the statement of the girl recorded on 12.06.2006, in presence of the District and Sessions Judge Molvi Javid Ahmed. The girl has been a lady police constable and after preliminaries this is what she stated about the DIG;

About six years back, SSP Niyaz Mahmood, the posted as SSP Security at Srinagar, promised me a job (on daily wages) insecurity for my brother...when I approached him for the same. He asked for an application. Accordingly, I went to his office along with an application of my brother near Sher-e-kashmir Park, Srinagar. He then persuaded me for having sexual intercourse with him also assured that if do so he will give me an appointment letter. Under the enforced circumstances, I had to compromise and then he had sexual intercourse with me. 15 days after, he gave me the appointment order for 90 days for my brother who availed of the same. Another occasion, I had with him at his Chhanni residence at Jammu when I was at Jammu alongwith Darbar Move. In fact, I was introduced with Niaz Mahmood, SSP by one lady namely Atika.... Now, she has constructed a house at Janipur, Jammu. She used to go to him, as told by her to me. She had told me to approach Niaz Mehmood, SSP for job for my brother. Presnetly Niaz Mehmood is DIG at Jammu.

About the other officer Sh. Sheikh Mehmood, her statement runs thus,

I also happened to see Sheikh Mohammed, SP, SOG, Srinagar for settlement of dispute with my husband, Abdul Qayoom, who was an ASI at that time working in SOG. He directed me to come to his residence at Shivpora, Srinagar. I went to Shivpora to his residence. It was summer time six years ago. He offered me tea etc. and thereafter did sexual intercourse with me to which I submitted. He later on, created more problems in between my husband and me. I had to visit him twice again to Shivpora when he had again sexual intercourse with me. Then I stopped going there.

This lady has also alleged sexual intercourse with her by Sh. Raman Matto who is already facing trial at Chandigarh, and her allegation must be a part of the case against him : On basis of the statement, the I.O., vide his "further line of action" on 21.07.2006 proposed verification/identification of the places where these two officers had sexual intercourse with the lady and whether in view of her statement any offence was made out against them : Thereafter he proposed to subject them to arrest and interrogation. About the DIG he however found that he had provided a 89 days job to the brother of lady, who was recruited on regular basis thereafter. On his proposal, the 1.0 reportedly received instructions for ascertaining veracity of the lady's statement, and to identify the places where these officers had sex with the lady, and look into the connection of these places with the officers. This appears to have been followed by further statement of above mentioned Neelofar recorded in presence of one Manzoor Ahmed Bhat, driver Statement Bank of India on 2.8.2006, wherein she

stated that the Sh. Niaz Mehmood, had sexual intercourse with her in his office (SSP Security) located near SK Park Srinagar. The office building had since been dismantled, but she could point out the place where the building used to exist. She also offered to point out the Shivpora house where Sh. Mehmood had sex with her, if she was taken to Shivpora. Again at this stage it may be noticed that under interim order of 25.06.2006, as already quoted hereinbefore the investigation agency was under express orders to take effective steps in view of statements on record against all persons involved, but nothing happened. However, the 1.0 recorded statements of these officers, as reflected therein, under Section 161 Cr.P.C. on 1.9.2006. Before going ahead, the provisions of Section 161, Cr.P.C., may be briefly noticed.

161. Examination of witnesses by police.

(1) Any police officer making an investigation under this Chapter or any police officer not below such rank [the Government] may by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Sub person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement, or each such person whose statement he records.

In terms of the section itself thus, a person alleged of involvement in alleged acts under examination is not bound to answer the questions, answers to which could expose him to a Criminal charge. However, assuming that there was some logic in recording the statements, let us notice what the officers have stated. Sh. Niaz while referring to Neeloufer states that,

Regarding lady named Neeloufer, I have to state that, when I was SSP, PCR, Srinagar, a lady whom I called Mauji-Mauji (mother), whose name and address I don't know, came to me alongwith two ladies. One of them had an affair with some militant. That militant later turned to some other girl. Therefore she wanted to teach him a lesson and hence they had come to me to give some information about that militant. Of these ladies two one was named Neeloufer but do not know the same of the other lady. I don't remember whether Neeloufer had the affair with the said militant or the other lady accompanying her was having the affair with him. I passed on this information relating to the Militant to the then DGP, J & K for necessary action. Again second time Neeloufer had come to my house in Jammu, with two unknown ladies. At that time painting work was going on at my house. Neeloufer told me that her husband was in police and now he had left her. She wanted to join Police force. I gave her a recommendation letter addressed to the then SSP, Mr. Raza Ejaj, Srinagar. When I joined as SSP Srinagar in May 1999, 3-4- ladies came to my house to congratulate me and offered sweets. One of those women was the same Neeloufer mentioned above. Thereafter I neither heard of her nor had seen or met her. I further state that I do not have any house at Channi area of Jammu. Regarding sexual exploitation of any girl or woman including Neeloufer, I state that, I never indulged in such type of activity. I am a god fearing person, I have worked against militancy continuously and had been involved in many anti-militancy operations. There are various people who are against me because of this. Such false allegations are made against me to spoil my image/malign my character, and put me in trouble.

And this is what Sh. Sheikh Mehmood has stated in the matter,-

I further state that during my posting in Srinagar as SP operations from December 2001 to January 2003 I was residing in Shivpora, Sova niwas. This was the official building and permanent residence of SP Operations in Srinagar. Regarding Shri Javed Ahmad, MLC, I am to state that when I was Dy. SP in Jammu I was due for promotion. It was subsequently cleared by the DPC but was kept in sealed cover. Due to my excellent record,

Mr. Javed Ahmad who was then sitting MLC, raised questions in the assembly and helped me in the matter. In fact his house was also very near to my official residence, around 1/2 kilometer distance. In due course we developed close acquaintance and he helped me a lot in providing sources and a lot of relevant information which he had access to on account of his good in-depth relations. I have never called Neeloufer to the residence of Shri Javed Ahmad, MLC in Shivpora, nor did I ever take her to that residence. The allegation of sexually exploiting her by me is totally false. I state that I know Neeloufer as the wife of one of my staff members Shri Abdul Qayoom Mirza, ASI in SOG. I remember that around February 2002, Abdul Qayoom Mirza had come to my office with his wife Neeloufer. At that time Neeloufer complained to me against her husband and requested me to make him understand not to create problems and to live peacefully. Accordingly, I advised both of them to live in harmony and peacefully. At that time Mr. Billoria, Inspector and Mr. Gupta, Inspector (who is now in Governor's security) were also present along with some more persons whose names I don't remember. In fact I never called Neeloufer to my residence regarding any matter. About 6 years back I was posted at Jammu as SP operations with dual charge of SP Headquarter, Jammu and during that period I was living in Jammu. Regarding sexual exploitation of any girl or woman including Neeloufer, I state that I never indulged in any such immoral activity. I have worked a lot against militancy and was given the charge of SOG (Special Operations Group) 3 times. Moreover I am a ranker and have become an SP from the rank of Sub-Inspector. I have received several medals and awards and also out of turn promotions twice as mentioned earlier. Because of these reasons there might be some people who want to see me in trouble. Therefore, such false allegations are being made against me.

There is nothing on record however to suggest whether or not the I.O did find any corroborative value in concerned lady's knowledge of the residences of these officers, her meetings with them, and the circumstances like employment of her brother by Sh. Niaz and her reliance on Sh. Mehmood for resolving her matrimonial dispute nor is there anything to indicate, why, if the above quoted lady constable could be believed in her allegations against Sh. Raman Matto, could the part of her statement pertaining to aforesaid officers not be given credence, particularly in absence of anything expressly to the contrary.

III. Dr. Prit pal Singh Goga : This person was accused by one Shagufta of having sex with her, but has been let off on the reported ground that the girl later resiled from her statement, and the later version was corroborated by documents. Accordingly, it would be apt to notice the relevant part of the statement of concerned girl, recorded on 10.06.2006, in presence of Sh. Abdul Wahid District & Sessions Judge;

After having intercourse with Bashir, I as well as Sabeena was sitting in the room of Bashir when one person came there and Bashir introduced him with me as Dr. Prit Pal Singh Goga. Dr. Goga told me that he was running a clinic in the Hotel Peak View and invited me to visit his clinic for treatment etc. I had some weakness and therefore, after some days I went to the clinic of Dr. Prit pal Singh in Hotel Peak View. Dr. Goga took me inside the small room of his clinic where he had intercourse with me. He gave me Rs. 400/- and some medicines. I can identify the room of the clinic as well as Dr. Prit Pal Singh Goga. Dr. Goga gave his address and telephone number of his house at Indira Nagar and asked me to come there. After some days, I visited the residence of Dr. Goga at Indira Nagar. He introduced me with one person disclosing his name as K.C Padhi, DIG, BSF, Srinagar, working at Pantha Chowk. Mr. Padhi took my residential phone number and thereafter, he started talking with me over phone. One day he invited me to Pantha Chowk to visit his house. I hired an auto and went to Pantha Chowk where one white gypsy sent by the DIG was waiting for me outside the main gate

Sh. Padhi, mentioned in the statement stands already charge sheeted. This was followed by her further statement dated 19.08.2006, recorded in presence of one J.D. Sofi, Div. Manager of BSNL, wherein she offered to identify the house boat where one Murwat, an official of DC office Srinagar had sex with her. Before that however, as shown by the I.O's "further line of action" dated 21.07.2006 she had already identified the room of Peak view hotel where Dr. Goga, was alleged to have had illicit sex with her, whereupon the I.O in his above-said document proposed his arrest and test identification parade after obtaining legal opinion regarding his involvement in the offence, and establishing link of the place with said Dr, Goga. Meanwhile,

this Court continued to stress concrete action against all found involved, however without any tangible result, whereupon the order of 11.8.06, as already quoted was passed to impress upon CBI the need of speed in investigation to take it to a logical end. As already said that order was challenged by them before Hon'ble apex Court. However weeks thereafter on 2.8.2006, the concerned girl Shagufta, is stated to have expressed her desire to change her earlier statement regarding Dr. Goga, during which she stated that due to some grudge emanating from personal reasons she had deposed against him; and that is how the CBI exonerated him on the ground that Shagufta, denied the allegations later. There is nothing on record to explain the lack of requisite action from 10.06.2006 when Shagufta, first made the statement till 2.8.2006, for around seven weeks. Without meaning anything adverse to CBI, one feels that the apprehension of petitioner Bar association regarding pressure being brought upon the girls who had come forth to make statements by concerned quarters, does not appear to have been wholly groundless. However, after recoding Shagufta's second statement, the CBI recorded the statement of Dr. Goga, Under Section 161 Cr.P.C., wherein among other things he deposed that;

The clinic by the name of 'Hakeem Balwant Singh & Dr. Prit Pal Singh Goga' is being run in a room of the Neelam Hotel (now Hotel Peak View) since 1967. Now, I have vacated the room of the hotel and running the same in my residence at Indira Nagar Srinagar. I have left the clinic due to Militant's attack twice there. There was a single room and no extra space. Six chairs for visitors, one big table, a chair for myself, one alimirah for keeping medicines, a TV and a small bed for checking the patients were there in the room. Since, 2004, there were two persons for assisting me and before that there was only one compounder, named Mohd Shafi. My assistance used to sit with me as he was translating Kashmiri into Hindi or Urdu for me as well as he was giving medicines.... On being asked about one Sabeena R/o Srinagar, I state that I don't know her. However, I heard her name through newspapers, being kingpin of prostitution racket. My name has never been published in any newspapers. I earlier knew one Bashir who was SHO of PS Mysoma. He was posted there long back, but he was not posted there in the year 2004. He used to come to the hotel as there was militant's attack in the hotel. During his visits, I came in contact with him and used to have formal talks. I am not aware about his present posting. It is incorrect to suggest that I allowed said Bashir to have sexual intercourse in my clinic with a girl named Ms. Shagufta. I know one girl named Shugu whose name may be Shagufta. I further state that it is not possible to do this illegal act in my clinic as my assistant always used to be present there and the clinic room was also kept opened all the time. My clinic used to remain opened from 09.00 am to 06.00 pm daily. In my absence, my brother Mr. Kanwar Pal Singh used to be there look after the clinic. It is also incorrect to allege that I had sexual intercourse with Ms. Shagufta @ Shugu or I had taken her to my residence at Indira Nagar and also provided her my address and telephone number of my house. It is also incorrect to say that I had introduced said Shagufta to Mr. KC Padhi, the DIG of BSF, at my residence at Srinagar.

In this context, I further state that Mr. Shafi aged 55-60 years R/o Srinagar worked with me as my assistant for 3-4 years till 2004. Shafi used to take medicine for his all family members. One day Mr. Shafi told me that his niece Ms Shugu had common cold for a long period and asked for her treatment. He brought said Shugu at my clinic and after her check-up, I gave her medicine. Treatment went on for 2-3 months and Ms. Shugu used to visit my clinic in every 15-20 days. She was suffering from Synus (cold). During one of her visits, Mr. KC Padhi was also sitting with me at my clinic. She asked for monetary help as her husband was admitted in Saurabh Medical Institute and she needed money for his treatment. Since Sh. Padhi was present there, I requested Mr. Padhi to help Ms Shugu from the BSF fund available for poor people. Mr. Padhi assured that he will provide his help to the girl. They also exchanged their phone numbers. Thereafter, I do not know whether they were in contact with each other.

I further state that in the year 2004 itself, I came to know that Mr. Shafi used to steal some medicines from any almirah and used to sell them without my knowledge. Some patients complained to me about Mr. Shaft's activities and then on questioning, he confessed before me that he made a mistake and apologized for the aforesaid act. I had documented the same in the presence of witnesses which I will produce later on before you as the same is available in Srinagar. I further state that I removed him from my office for this act. Thereafter, Shugu came to my clinic and asked me to reinstate Mr. Shafi which I denied. For this Shagufta got

annoyed with me and left my clinic after a hot discussion with me. I think that this was the reason for which Shugu @ Shagufta dragged me in sex scandal.

On being asked I state that I came to know Mr. KC Padhi, DiG BSF, during militant's (fidayeen) attach which took place in Hotel Peak View. Sh. KC Padhi and other BSF staff brought me out safely from the hotel room and since then I knew Mr. KC Padhi. Mr. KC Padhi used to visit my residence also. Most of the BSF people knew me as I am working at Srinagar for many years

I further state that I have received two letters, one by post and one through a newspaper vendor, vide which I have been threatened to leave Kashmir otherwise I would be killed. This is the militant's threat given by Al Mansurian written in Urdu.

I further state that I am a patient of angina, diabetes, lever cerosis, hyper tension and sexual weakness. I will provide the concerned medical papers later on.

His further statement was recorded on 11.09.2006 wherein among other things he sated that,-

Thereafter I removed Md. Shafi from the service. After 4-5 days of this incident the neice of Md. Shafi namely, Shaugufta @ Shugu, came to me and asked me to give one opportunity to her Uncle Md. Shafi and to reinstate him. However, I did not agree for the same. At this, Shugu threatened me for facing dire consequences.

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 Shagufta 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 Yasmeena and her depositions about Sabeena.

IV. Sh. Amit Amla: This person is a partner of Broadway Hotel Srinagar, and has been accused by one Shazia @ Azrah of having illicit sex with her. No action has been taken in his case, for the reason that the girl allegedly failed to identify/point out the house where the occurrence allegedly took place. Here is what she has said regarding him on 11.06.2006, in presence of Sh. Ab. Wahid, District Judge:

...In the evening, Sabeena took me to the Coffee Arabica Shop of Broad Way Hotel and introduced me with one Amit Amla and his friend (name not known to me). Thereafter, Sabeena left the place and Amit Amla and his friend took me to his friend's house at Sanat Nagar, a very big house, in Santro' car driven by his friend. Amit had sexual intercourse three times during the night with me in the said house whereas his friend was in other room. Amit told me that he had already paid Rs. 50,000/- to Sabeena. Next day morning, both of them dropped me near Sabeena's house. Sabeena paid Rs. 15,000/- to me which I didn't accept initially. Then Sabeena told that she was in need of money at that time for the construction of her house and then I did not press for more money. Thereafter, I remained in the house of Sabeena for the next 15 days. I can identify Amit Amla and his friend if shown to me. Later I came to now that Amit Amla is one of the partners of Broad Way Hotel. Amit Amla also told me that he also owns a bar in Delhi.

Till 21.07.2006, however no further action appears to have been taken in the matter despite lapse of more than six weeks, reportedly because Sh. Amla, had gone abroad. However on 21.07.2006, in his proposed line of action the I.O pro posed identifying his friend mentioned in the statement, and the house where alleged occurrence had taken place and subject them both to identification parade and if identified arrest them; which was agreed to by his higher ups. Later however the lady could not reportedly identify the house. It may be re-called that the lady has in opening part of her statement relating to Amit Amla, stated that "in the evening Sabeena took me to Broadway hotel", and then continued the narrative further. It is not known whether the I.O did try to assess the identification part of the house concerned from the angle that the alleged occurrence having taken place in or after evening, failure of the girl to identify the house might have been attributable to

darkness of evening. However on that ground he was let off. Till 1.9.2006, also no substantial headway occurred in this case too despite repeated directions to CBI to act effectively, when they recorded the statement of the concerned person Sh. Amit Amla; wherein among other things he deposed that,-

My close friends in Srinagar are (i) Mr. Salim Bakshi, R/o Sonwar Bagh, Srinagar, (ii) Mr. Sarmad Hafeez, R/o Rajbagh, Srinagar (iii) Mr. Herry Oberio, R/o Rajbagh, Srinagar. Mr. Salim Bakshi is a Dealer of TATA Automobiles in J & K. He mostly drive TATA Vehicles and owns a Toyota Innova. Mr. Sarmad Hafeez is in govt service. He is the Joint Director, Tourism in the J & K Government. Mr. Herry Oberio is a businessman in the business of Carpets and heaters. He owns WagonR, Hyundai Santro and Toyota Innova. I own Tata Indigo, Toyota Quails and Maruti Baleno at Srinagar. I use any of the above mentioned cars there. My father has been provided with two PSOs by the State Government, I always travel with at least one PSO and a driver. I never drive the car at Srinagar. On being asked I further state that during the period Sept. 2004, I traveled from Srinagar to Delhi on the 7th Sep. 2004 by Indian Airlines or Jet Airways. The Ticket number for the aforesaid travel is 4272552153. I remained in Delhi for the entire month after this. On the 15th Sep. 2004 I attended a party in Gurgaon at the MGF Mall for promotion of a restaurant called Filmy Masala owned by a friend Mr. V.N. Dalmia for which there was newspaper coverage by HT City which was published on Sep. 18th 2004. This includes my photograph with my wife at this event. On the 23rd Sep. 2004 me and Mr. V.N. Dalmia jointly hosted a dinner for promotion of Oliva Oil at Rouge in Ashoka Hotel, my Italian restaurant where officials of Italian Embassy including the Italian Ambassador were present. This event was covered by HT City (Hindustan Times) on the 26th Sep. 2004 and by Delhi Times (Times of India) it was covered on 28th Sep. 2004. Both these papers have my photograph attending this event and I have been in Delhi for the entire month. On the other days I have been getting together with family and friends. On being asked I further state that I have never met nor seen any girl by the name Shazia @ Azrah R/o Dal Gate, Srinagar. I also state that I have never visited or accompanied to any Hotel or any other residential premises in Srinagar or Jammu with the aforesaid girl. It is incorrect to suggest that I had sexual intercourse with the aforesaid girl by name Shazia. None of my friend is residing at Sanat Nagar in Srinagar. I further state that I was never contacted over phone or personally by said Shazia or I have ever contacted her. It is also incorrect that Miss Shazia was sent by an lady named Sabeena resident of Srinagar or anybody else. In fact the said Sabeena is not known to me. I have learnt about her through newspapers only when she was arrested by Srinagar Police for her alleged involvement in sex scandal.... On being asked about Extension No. 419 of Broadway Hotel, I state that this is a cordless phone which is mostly kept in the office of Secretary of the Hotel. This phone is generally used by MD/Director/Hotel Staff or even by guests. Phones are available in every room of the Hotel however the cordless phone is used by the guests on their request in the restaurants, garden, etc. Local calls made from the cordless phones even by guests at times can get debited from the account of MD. Certain extensions i.e. 116 and 419 at times automatically are debited to MD's account, as per direction of the front office of my hotel. It is incorrect to suggest that I have made a call to the residence of Sabeena from this cordless phone or I am aware that this call was made by Mr. Anil Sethi.

At this stage, it would be apt to quote from the statement of Smt. Gulshan Ahanger, house keeper of Broadway hotel confirming phone call from extension number of 'MD' to that of Sabeena's (2472176), in following words:-

On being further asked about the calls made through cordless set bearing extension No. 419 during my tenure ship as an Operator, I state that I used to sit in the EPBX room, however, I state that the cordless set was normally kept at the main reception and was being used either by Sh. K.K. Amla or by the two directors namely S/Sh Arjun Amla and Amit Amla and also by the customers who were close to the MD or the Directors.... I further state that the call at SI. No : 60, Extension No : 419 dated 16.09.2004 vide which a call was made to Tel. No : 2472176 at 12.46.52 hrs was made from Hotel Broadway on 16.09.2004 and it could have been made either by the receptionists, MD, Directors or any close regular customers visiting this hotel that day. The cordless phone bearing extension No. 419 was rarely used by any client/customers/visitors as the same was kept at reception for the personal use of MD and Directors.

Three weeks thereafter the CBI recorded statements of various persons in Delhi namely Sh. Sunil Tandon Arjun Amla, Monog Verma, V.N. Dalmya, Narayan Dasgupta, and Miss Prachi Bhasin. Heena Handa, and Archana Gujral who have in certain terms tried to establish presence of Amit Amla in Delhi on various dates in Sept. 2004. Significance of these statements has however not been very clearly projected by the concerned officers, nor the relevance of the mentioned dates of September 2004. If they are deemed to dilute the allegations made by Shazia, against Amit Amla, that should have been shown in clear terms particularly because in her statement the girl starts her story from April 2004, and proceeding ahead by saying "next day" twice with reference to someone else and "after a week", twice with reference to other persons she mentions Amit Amla, suggesting her meeting with him within three weeks after April 2004. So one can really not fix the relevance of Sh. Amla's projected presence at Delhi in September. Before continuing further, it may also be apt to refer to the "further Action Plan" submitted by the I.O on 13.09.06, wherein while mentioning the abovesaid and Amit Amla among those against whom "some kind of investigation was pending (para 5) he proceed to mention about inability of the girl to identify the house (para 6) and opining thereupon together with statements of some other girls stated that,-

Though this is a matter of concern, yet preliminary verification has shown that there was some element of truth in the version given by them and further verification is being carried out in this direction....

Whether or not the I.O considered attaching some circumstantial relevance to those parts of Shazia's statement which pertain to DIG Sh. Padhi, Anil Sethi, Sh. Raman Matto, Dy. SP Mohd. Ashraf Mir, Dy. SP M.Y Mir and Sh. Iqbal Khandey, which were not only believed but also used for arresting them all to be charge sheeted and as to why would the girl wrongly name Amit Amla, who had not even tried to allege some sort of grudge like Dr. Goga has not been mentioned. Nothing was also reported despite statements made at bar by learned ASG, that the third list with names of all persons involved would be submitted, which never came, till CBI informed that the investigation had been closed, nor was anything submitted to clarify as to why it so happened. However, from here we may shift to those to whom Sabeena, has admitted having supplied girls for illicit sex on their asking, but who too have been let off by the investigating agency, for reported lack of evidence.

VI. Sh. Tikoo : This person has reportedly been the State Vigilance Commissioner on relevant date who's full name is not mentioned in I.O's list of involved persons named by Sabeena. He has however been referred to by concerned girls as Raj Tikoo, and let off byn CBI as his involvement was reportedly denied by the concerned girl. We may first notice the relevant part of Sabeena's statement recorded on 31.05.2006, in presence of Sh. Molvi Javed Ahmed, District Judge, which runs thus:

I once received a telephone call from one Vigilance Commissioner Tickoo, whose office was at Old Secretariat. He also wanted to have a girl from me. He was having a residence at Sonawar area near radio Kashmir. I took Shagufta, code name Sanobar D/o Rafiq to his house.... The Vigilance commissioner gave me Rs. 2000/- and he paid Shagufta Rs. 4000/- It was day time and I came back leaving Shagufta there. Who later told me that Vigilance Commissioner was very happy for having intercourse with her.

This girl Shagufta code named Sonobar does not appear to have been examined, nor is anything coming forth from the record whether any effort was made to trace/examine her. However another Shagufta d/o Rafiq Ahmed R/o Ompora Bugam w/o Suhail Ahmed of Lal Bazar who has been examined on 10.06.06, has also mentioned this officer as follows,-

...One day, I was taken by Sabeena to the residence of Raj Lal Tikoo, Vigilance Commissioner near Burnhall School, opposite Sher-e-Kashmir Cricket Stadium. Tikoo wanted an English speaking girl from Sabeena, that is why he did not like me and we both came back. Raj Lal Tikoo gave some money in an envelop to Sabeena in my presence but I do not know how much amount he paid to her....

There is nothing on record to suggest that with difference in place of residence etc, both these names reflect the same girl. While giving further details of the girls and persons involved in the case she has at page 6 of her statement,' stated that Bunty named English speaking girl went to "Raj Tikoo". This officer incidentally has not been examined like others nor does any effort appear to have been made to have him identified by Sabeena, who in her statement had categorically said that she could identify all the person to whom and places where she took or sent the girls for illicit sex, nor does this "Bunty" named girl appear to have been looked for/examined. The investigation in this case therefore appears to have been left half way.

VII. Sh. Hakim Mohd Yaseen: A sitting minister in the State Cabinet, he has figured in the statement of Sabeena, as also one of the girls in her independent statement, but has been let off by CBI for the reason that the girl stated to have been sent to him for illicit sex by Sabeena, could not be traced and the mobile number attributed to him by other girl was not found his. For noticing his case we may start with the relevant part of the statement of concerned girl Gulshan @ Pepsi, pertaining to him;-

Sometime in the end of year 2004, Sabeena told me that she can get a job for me with the help of one powerful Minister whom she knows very well. She asked me to bring my certificates. Accordingly, I along with Sabeena went to Tulsi Bagh. In Tulsi Bagh we went to the house of Hakim Mohd. Yaseen, Minister. It was evening time. We both met Haqim Mohd. Yaseen at his residence and discussed about the job and handed over copies of my certificate to him. He assured me that he will get some job for me in the near future. Sabeena went to the adjacent room and thereafter the Minister had sexual intercourse with me.

Thereafter, he told me that he will let me know later on about the job. The Minister did not give any money to me. I do not know whether Hakim Mohd Yaseen paid any money to Sabeena or not. Sabeena also did not pay me anything. The Minister had given me his residential telephone number to me. Subsequently, I spoke to him about the job, but he did not give me any job and finally started evading me. After 6 days of the aforesaid incident, my husband was released from Kode Billward Jail, Jammu. I can identify the residence as well as the room where Hakim Mohd. Yaseen had sexual intercourse with me...

This statement appears to have been discarded by CBI because some mobile number of which she talked has not tallied. Further as per report of 20.09.06 Sabeena is stated to have admitted having sent one Nuzhat @ Shabnum to him. This is what Sabeena says in this behalf and how she came in contact with Sh. Yaseen;

Dr. Javed of Classical Hospital, Hyderpora crossing, Srinagar introduced me with Hakkim MOhd Yasin, PDP Minister. He wanted to have friendship with me. In fact he wanted to have Sex with me but I did not allow him to do so. Once he wanted that I should provide him a beautiful girl. I took Nuzhat @ Shabnam R/o Dal gate who is presently residing in Shivpora to Circuit house near Radio Kashmir. He had sex with the Nuzhat in one room where I was made to set in adjacent room. He paid Rs. 5000/- to me, out of which I paid Rs. 4000/- to Nuzhat in the presence of Minister. This incident is also of about 2-3 years back,

About the doctor mentioned in the statement Sh. Hakim has stated that;-

On being asked I state that I know Dr. Javed of Classical Hospital Hyderpora, Srinagar since 2002 and even prior to that. He often visits my house to meet me. I have normal relation with him and his purpose of visits to my house used to be either for some work or courtesy call. I categorically state that at no point of time, any girl or lady visited my residence alongwith Dr. Javed,

This is the response of minister. Now the response of said Dr. Javed may also be quoted as registered by him in his statement of 11.07.2006. He says;-

On being questioned, I further state that I know Hakim Mohd. Yaseen, who is presently Minister for Food & Supplies. Possibly, I had introduced Sabeena to the said minister in the New Secretariat where he sits. I cannot say as to what type of relationship, said minister had with said Sabeena. I also state that Sabeena is the same

lady who is figuring as the kingpin of Srinagar Sex scandal case. I can identify both Sabeena and Hakim Mohd Yaseen, Minister, if shown to me.

However regarding the girl Nuzhat mentioned in Sabeena's statement, CBI has stated that she could not be traced. Another girl of the same name denies her involvement in her statement of 4.7.06, as under,

Upon being asked, I state that I am not aware where Classic Hospital is located and I do not know any Dr. Javed. I do not know of any lady by the name of Ms. Sabeena whose name is figuring in the Srinagar sex scandal case. I further state that I do not know any Political leader of any party including PDP and have never met Hakim Mohd Yaseen the minister. I categorically state that, I never indulged in any immoral act with any person.

My observations regarding untraced girls would follow in due course, but meanwhile I don't find any reason from record as to why the minister was not subjected to identification by Gulshan @ Pepsi or Sabeena. The one suggested by CBI is that since the minister was a public figure he was a known face, so identification would not be proper. One really does not find any logic in the plea, particularly while already public figures like Sh. Raman Matto and G.A. Mir both of whom are ex-ministers had been got identified by girls. Before proceeding ahead, it would be apt to notice the proposed action in this case as contained in I.O's "line of action" submitted on 21.07.06, according to which he proposed, first, to seek legal opinion as to whether or not any offence was made out against Sh. Yasin because the girl Gulshan @ Pepsi had not received any money from him, secondly, to check the mobile phone used by the minister in 2004, and then to have the minister identified by victim preferably after arrest. While mentioning non receipt of money by Gulshan nothing has been said to show as to what weight was attached to her allegation that in lieu of having sex with her the minister assured that he would provide her with a job. However, I may notice the statement of Sh. Hakeem Mohd Yasin, also who has been examined by CBI on 27.08.2006, under Section 161 Cr.P.C. Here it is;-

on being asked I state that I was elected from Khan Saheb Constituency for the first time for the term 1977-82 and for the second time for the term 1983-87. During 1983-87, I was appointed as cabinet minister. Thereafter, I was elected for the third time from the same constituency in the year 2002 on the ticket of Peoples' Democratic Front (PDF) and then appointed as Revenue Minister. I remained Revenue Minister for about 3 years and thereafter, I am given the charge of Minister of Consumer Affairs Public Distribution, Govt of J & K which I am still continuing. I further state that I am the chairman of the Peoples' Democratic Front (PDF) party. On being asked further state that I was allotted official residence i.e. House No. 1, Tulsi Bagh, Srinagar in the year 2002, where I am residing with my wife and children. My wife is a house wife. "I further state that no lady by the name of Sabeena r/o Chinkral Mohalla, Srinagar, Nuzhat @ Shubnam, r/o Dal Gate Srinagar and Gulshan @ Pepsi, r/o Rainwari Srinagar ever visited my residence or I had any sexual act with them and if they have stated so, that is totally false and has been stated so to malign my position/status. I may add here that a number of persons such as males and females, of all age groups come to meet me to seek my help to solve their various problems or for help in getting employment. I do meet them and they do approach me through my personal staff/PROs and never meet in my residential premises. I categorically reiterate that such allegation by the said girls is totally false. I would also like to clarify that whosoever want to meet me, they are frisked by the security personnel to ensure safety. At the same time, my family members also reside in the same premises. I also have three servants (one female and two male) to look after my household requirements.

with these statements on record, the minister has been let off for reasons already mentioned.

VIII. Sh. Mansoor Ahmed SP: This person is mentioned in the statement of Sabeena, recorded on 04.06.06, in presence of Sh. Molvi Javed Ahmed, District Judge, wherein she has admitted having sent two girls namely Shazia @ Azrah and Sonia @ Muskan to him for illicit Sex; but he has been left out by CBI on the ground that Shazia denied the same, while the other girl could not be traced. To start with this case, I may notice the

relevant part of Sabeena's statement which goes thus,-

I know one Mansoor...who is SP in J & K Police and who resides in Police Colony, Srinagar. One lady named "Lali" of Shivpora had introduced me with him. He is also fond of the girls. He demanded good looking girls from me and I had first taken Azra @ Shazia R/o Dalgate to his residence at Police Colony in the late evening in the year 2004. I left Azra at his residence for the whole night and I came back. He paid Rs. 6000/- to Azra but he didn't paid anything to me but promised that he will get my money recovered from "Dalaal". who had usurped my money. Thereafter, another girl named Sonia @ Muskan R/o Soura was also taken by me to Dalgate from where Mansur SP took her alongwith him to Hariniwas for having Sex with her; Mansur SP, was posted in Hariniwas at that time, as told to me by him. At Hariniwas Mansur had sex with her during day time and Sonia was paid Rs. 2000/- or 3000/- by him as disclosed to me by Sonia. I was not paid anything by him as he kept an assuring me that he will get my money back. I can also identify his residence at Police Colony, Srinagar. I can also identify Mansur SP, if shown to me

About Sonia @ Muskan, CBI says she could not be traced, while in her main statement recorded on 10.06.2006, Shazia @ Azra also does not say anything regarding this person. At the same time there is nothing to suggest as to what weight did CBI attach to Sabeena's statement relating to this person, and why was it discarded out right. It is also not known as to why this officer was not subjected to identification parade like DIG Padhi and other police officers involved when Sabeena had categorically stated she could identify him and all the places where she met him. Statement of Sh. Naseer of Zee TV regarding this person has already been noticed.

IX. Sh. Mohd Yousuf Khan: This person is the former Chairman of JfcK Bank who has been mentioned by Sabeena, in her statement as having bquen using girls for illicit sex. Let us notice her statement recorded on 04.06.06, as aforesaid pertaining to Sh. Khan;-

I also know one Yousuf Khan who was earlier the Chairman of J & K Bank. He had his office near TRC (Tourist Reception Centre). On oen day, he telephoned me and asked for good looking girl. I took Azra @ Shazia along with me and went near TRC, where from he himself took Shazia along with him to some other place, which I do not know. He told me that he will send my share through Shazia and I came back. Later, Shazia remained with him for the whole night and she told me that Yusuf Khan had paid Rs. 10,000/- to her for the said night. Shazia gave me only Rs. 1,000/-. Subsequent thereto, Shazia @ Azra started going to him directly. I know that Yusuf Khan had given Shazia @ Azra a new Santro Car. Shazia @ Azra also used to supply other girls to Yusuf Khan.

The statement does not appear to have impressed CBI, who found that the concerned girl Shazia @ Azra denied the same and thus let him off. Before proceeding ahead, we may notice the denial of Shazia also recorded on 22.06.2006, in presence of Sh. Ab. Wahid District Judge, as follows,-

In March, 2003 I wanted to start a Boutique for which I needed a loan. One girl whose name I do not remember used to come in the institute where I was doing my computer course. On my asking, she told me that she was working in J & K Bank. I asked her to arrange loan for me from her bank. She asked me to visit their bank i.e. J & K Bank, Head office near TRC Srinagar. I went to the above bank. The girl took me to the Chairman of the bank Sh. Mohd. Yousuf Khan (M.Y. Khan) and introduced me to him that I was known to her and wanted loan. Mr. M.Y. Khan told me to collect a form and referred me to one of his officers for completing the formalities required for taking the loan. I contacted the officer and as per requirement, I filled up the form. The residential proof and a guarantor was also required which I could not produce. On this M.Y. Khan told me that I cannot get the loan without completing these formalities, and after enquiring about the loan amount which I told that I required only 30,000/- he told that they were having some funds for widows etc, and he could arrange the money from that fund for me. On my affirmative reply, he initially gave Rs. 10,000/- and afterwards four installments of Rs. 5000/- on the 1st day of each month. After about 2-3 installments, the bank was closed when I had to get the next installment and I wanted the money immediately,

I telephoned Mr. M.Y. Khan for getting the money on the same day. On this, Mr. M.Y. Khan asked me that the bank was closed and if I want money, I need to visit his house and also intimated his address. I reached to his house in Gupkar Road, Srinagar where he offered me tea etc and gave me Rs. 5000/- as the next installment. On that day he also gave me diary and calendar of J & K Bank. I took the total amount of Rs. 30,000/- from Mr. M.Y. Khan but he never took my signatures on any paper. On being asked I am to state that Mr. M.Y. Khan has never misbehaved with me nor has done any immoral act with me. Rather he was treating me as his daughter. He did not know that I was in the flesh trade. Sabina did not know M.Y. Khan rather she came to know about him through me only when I told her that he is a very good person and has given me Rs. 30,000.

I would abstain from commenting upon the contents and cannnotation of this statement but it however appears to be surprising that CBI ended up the matter with this Statements and did not feel the necessity of acting further to get a clearer picture of the matter for which Shazia's statement itself suggested many lines of approach. Incidentally Sh. Khan also does not appear to have been subjected to identification parade before Sabeena or confronted with whatever materials were available with CBI. This case also appears to have suffered inapt investigation.

X. Sh. Raja Mohi-ud-din Journalist. This person has been mentioned by Sabeena in her statement as having blackmailed her to secure girls for illicit Sex, but CBI did not book him for the reported reason that concerned girl denied having had sex with him. Before coming to details I may quote the relevant portion of Sabeena's statement recorded on 31.05.2006, in presence of Sh. Molvi Javed, District Judge, which goes thus,-

About 2 years ago there was a quarrel between me and Shakila, lady Police constable. The matter came to the knowledge of Press and the police. One journalist/Press reporter Raja Mohi ud din of Newspaper Taimeli Irshad black mailed me, took Rs. 8000/- from me and asked me to supply him a girl. Then I took Afroza @ Kakki r/o Alochi Bagh along with me to Mini coloney at Chhanipora in his govt allotted quarter where he took wine and had sexual intercourse with Afroza. At his instance I took Afroza to his same residence after 2 days, when Raja Mohi dud in had sex with her. I paid total amount of Rs.1 000/- to Afroza from my pocket.

It may be noticed that the girl mentioned in above quoted statement of Sabeena was an accused in FIR No. 80/04 M.R. Gunj also, when she had alongwith other accused persons was arrested in that FIR from Sabeena's house, and had suffered 14 days lodgment in custody. That case stands entrusted to CBI for fresh investigation under orders of this Court, alongwith another case to which reference would come later. However, in order to notice her denial as acted upon by CBI, the relevant portions of her statement recorded by them on 22.06.06 may be quoted,-

I was earlier working as SPO with J & K Police on temporary basis for 3 months before death of my father. Girls were engaged at SPOs with J & K Police. I know Moniba and Pepsi who were also working as SPO.... One day, in the year 2003 when police arrested my brother-in-law I requested Moniba, my old SPO friend, to do something. She took me to Sabeena's house at Chinkral Mohalla Habba Kadal and told that she is an influential lady. She introduced me to Sabeena. I requested Sabeena to help me in releasing my brother-in-law. Sabeena immediately telephoned the police concerned where my brother-in-law was kept. Sabeena did not demand anything in exchange of help made by her. The police released my brother-in-law on the same day.... One day when Rs. 75,000/- was stolen, I made complaint in Shergarh PS in the year 2004. Police did not take any action inspite of my several request. Thereafter, I further approached Sabeena's at her Chinkral Mohalla's house where I ad met her earlier. This was my second visit. When I reached her house, two girls namely Shamima and Hasina, whose names I could know later, were also there. Police personnel were also there, who took me to PS Khaniyar alongwith Shamima, Hasina, Sabeena, Muniba and others. We all were arrested and remained in Ram Bagh ladies PS for 14 days and thereafter, we were released on bail by the Court. On being asked about Raja Mohi ud din, press reporter, I state that I do not know him. I have never heard his name I also do not know Shakeela Constable.... I state that I have never been associated with any person, I do not have any physical relationship with any one till date.

Nothing is forth coming from record to show as to what in given circumstances lead the CBI to act upon the statement of this girl to the point of exonerating Sh. Mohi ud din, even while Sabeena had offered to identify him and the concerned place with additional accusation of black mailing. It may also be apt to mention that during investigation of this case, a Sex racket was unearthed by police station Handwara of Kupwara district and on final investigation as per press reports this person came out to be the king-pin. The CBI has not said anything to suggest as to whether or not his involvement in that racket as the first accused had been examined as being of any relevance to the investigations in this part of the case. In any case Sabeena's allegation of back mail against this persons was clear and cogent.

XI. Sh. Gh. Hassan Khan, MLA: This person has been a minister at the relevant time and is alleged to have been indulging in illicit Sex, but has been left out by CBI because of the reported denial of concerned girl of having had sex with him. This case may be noticed with Sabeena's statement, recorded on 31.05.2006, wherein she states,-

Once I received a telephone call from one Ghulam Hassan Khan r/o Shopian, PDP minister. He also wanted a girl from me. I contacted Shakila a police constable r/o Usmana Coloney, who is presently working in security. I took her along with me to the Circuit house near Radio Kashmir where Gh. Hassan Khan was sitting. It was evening time. He took both of us in a room in the circuit house. I was made to sit in the bath room whereas he had sexual intercourse with Shakila in the room. He paid Rs. 1000/- to Shakila and Rs. 200/- only to me. He told me that he knew Shakila earlier also. We both left Circuit house at 9 PM. This incident is also of 2-3 years back.

This statement has been excluded from consideration in view of the relevant portion of Shakeela's statement recorded on 23.07.2006 in presence of the District Judge, to the effect that,-

on being questioned, I state that it is incorrect that I had sexual intercourse with Ghulam Hassan Khan, PDP Minister in the Circuit House through Sabeena who had allegedly taken me there. It is also incorrect that the said Minister had paid Rs. 1000/- to me and Rs. 200/-to Sabeena.

Before further examination, it may be pointed out that from 31st of May when Sabeena implicated Sh. Khan, till 23rd of July when the statement of Shakeela was recorded, no action whatsoever appears to have been taken by CBI despite lapse of seven weeks, nor has any thing been reported to explain the lack of action till then. I may also add that in most of the cases left out, there are considerable gaps of time between incriminating statements and the denials made later, with no action taken in between for which no plausible clarification is available on record, even while this Court persistently impressed upon CBI to take lawful action in furtherance of investigation in view of statements recorded, by which time the denials were not there. However, regarding Sh. Khan, the matter does not end with denial of Shakeela, whatever its worth. It is attended with statement of one Mohd Yousuf Malik, also, the receptionist of Govt Circuit house where Sabeena, alleges she went alongwith Shakeela, he says that,-

On being asked, I state that Shri Gulam Hassan Khan, MLA was occasionally staying in the circuit house. After going through, the Entry registers for the period December, 2003 to April, 2004 I state that Shri Gulam Hassan Khan has stayed in the circuit house as per details given below....

And after giving details of his stay at the Circuit house during 2003 and 2004, he has proceeded to say that,-

On being asked I further state that the conduct of Shri Gulam Hassan Khan was not satisfactory as so many girls/ladies were visiting his room while he stayed in the circuit house. I am unable to state about identity of any such girl/lady.

In addition to this statement, is the statement of Sh. Naseer Ahmed incharge Govt circuit house recorded on 11.06.06. Relevant portion is as under:

...Shri Gulam Hassan Khan was the then Social Welfare Minister and so many ladies were visiting his room, while he was alone in the room of the Govt. Circuit House.

With this statement read with that of Sabeena, Sh. Khan has been left out. Again in this case also, no steps appear to have been taken to have Sh. Khan, and concerned place identified by Sabeena.

XII. Sh. Yogesh Sani : This person is a MLA, and has been the former sports minister. About him, along with two more persons, CBI has stated that they outraged Sabeena's modesty and molested her on different occasions but she declined to give a written complaint against them. On examination, I however find that all the three do not fig- 're at same level, while other two are mentioned by Sabeena, as having taken her in their cars at different times and caressed her without any physical contact, the allegations against this person are quite serious. In her statement recorded on 04.06.2006, in presence of Sh. Molvi Javed Ahmed, District Judge, she has narrated the following;-

I further state that I know another Mr. Saini of Jammu who was perhaps 'Sports minister' and from PDP party. He had a official residence at Gupkar, Srinagar, near the official residence of Ministers, G.A. Mir and Raman Matto. On one day, he telephoned me and asked me to visit his residence. I questioned him, where he got my telephone number and then he revealed that he got it from his fellow Minister. He also told me that he would also be helpful to me and so asked me to come to his residence. In could not got to him that night, but went to see him at his insistence on the following morning. I also took the particulars of relative of mine to pass on to the Minister for her appointment in 'Anganwadi' worker at Budgam district. I gave the particulars to him. He promised to do the job and told me that he was in a hurry to go to Jammu and that he will return after one week and that I should see him then. He also disclosed that he was having his residence at Gandhi Nagar, Jammu and he gave me telephone numbers of Jammu also. After one week I again received a telephone call from the Minister and he told me that he was coming to Srinagar and will also bring appointment order of my relative. Two three days thereafter, he again talked to me and told that he has come to Srinagar, alongwith his family, and asked me to bring food also for them. Accordingly, I prepared food (meat and fish), packed the same in a hot case and went near 'Jan Bakery' shop at Dalgate where his driver in while Ambassador can was waiting for me as per the instructions of the Minister. I sat in the said vehicle and was carried to his residence at Gupkar, Srinagar. There, I had to wait for the minister to come till 8 pm. In the meantime driver offered me Cold drinks etc. At about 8.40 PM the minister came there and took me to a room on the first floor, where he ahd some wine and then forcibly raped me. He tore my clothes also. He did not give me any appointment order, nor paid me any money but promised to marry me. He also threatened me not to disclose the incident to anybody, he is a strong man and get me punished for disclosure. My Tiffin carrier (hot case) in which I had taken the food is still with him. This incident is one year old. I state that I can identify all the places where the girls and myself had visited for sexual purposes as stated till date. I can also identify the persons whom I have named till date in the matter of sexual exploitation of the girls....

The detailed statement ex-facie contains a rape charge and there is nothing on record to suggest why it was not taken note of by CBI even if the lady did not agree to write it down; particularly while she had signed the recorded statement in presence of a District Judge, nor does any effort appear to have been made for having him and the concerned place identified by Sabeena. Cumulatively, therefore, I feel that this aspect of the case has not even been properly acknowledged. However, after these persons there is another category of those who were working in the Staff of those indulging in illicit sex, and acted as carriers of girls and managers of the sex adventures of their bosses. On top are two people who were working with the former ministers Sh. Raman Matto and Sh. G.A. Mir both facing trial in this case. We may mention them one by one.

XIII. Sh. Nissar Ahmed Sheikh : Instead of quoting anybody else, it would be proper to reproduce his story in his own words as revealed to the 1.0 in his statement recorded on 8.7.06. Here it goes;-

...I adopted painting of sign boards etc. as my profession as basically I am an artist. I was not happy with my profession and started to take activity in the Political spheres and became a member of Peoples' Conference. I

became close to Sajjad-Gani-Lone, a leader of Peoples' Conference who arranged the job for me by approaching Mr. Raman Mattoo. In that way, I started to work as the P.R.O of Mr. Mattoo from 24.07.2003. My job was not a permanent one and was purely of contractual in nature. I worked with Mr. Raman Mattoo as his P.R.O till 28.02.2005 after which I was removed from this post by Mr. Mattoo. In my place, Mr. Imtiyaz Ahmad Bhat was appointed as the P.R.O of Raman Mattoo who was earlier attached with him although he was in the payroll of JK Cement. There was always pressure on Mr. Mattoo from Imtiyaz and some others to employ someone from Srinagar in place of mine. I think, I was removed by Mr. Mattoo because of this reason only. Now a days, I am working for the Peoples' Conference with Sajjad Sahib as his P.R.O. On being further asked, I state that as a P.R.O my basic duty was to issue passes to the visitors who intend to visit the Minister Mr. Raman Mattoo at his office. The passes were used to be released from his residence. In the Office of Mr. Mattoo located in the Secretariat, my nature of duty was basically like a P.A. I used to sit in an adjacent chamber of the room where Mr. Mattoo used to sit. A number of persons used to come to meet Mr. Mattoo in his office every day. As per the practice, the visitors were allowed to meet Mr. Mattoo only after meeting me. I used to ask the visitors about the purpose of visit and only those visitors were allowed to meet the Minister who were having genuine grounds of meeting. The time of my reporting to the Minister was at around 9 in the morning and generally I used to be relieved from my duties around 5-6 in the evening. Sometimes, I had to do some other job as per the instruction of Mr. Mattoo like bringing food from the restaurant and picking up of his guests from a specified point etc....

...I further state that one day one girl, who disclosed her name as Shazia, came to the Office of Mr. Mattoo, She showed some silly reasons for her meeting the minister. Upon questioning, she told that her sister was not able to clear some Exam and in this regard she wanted the help of Mr. Mattoo. When I told that such type of matters were not entertained by us then she again told that she had another reason to meet Mr. Mattoo and that was to get some monetary help for someone. At this point, Mr. Raman Mattoo intervened and instructed me to allow the girl to meet him which I obliged. I noticed that the girl named Shazia had a talk with Mr. Mattoo in the adjacent chamber of the office of the Minister on that day. I do not know about the subject of the meeting but the very next day Mr. Mattoo instructed me to pick up a girl named Shazia who would be standing near the Shrine situated near the Burnhall School. As per the order, I, along with the driver Rafiq went to the Shrine around 5.30/6 PM. There, I found the lady who had met Mr. Mattoo on the previous day and had told her name as Shazia. I picked her up from there. Then I escorted the girl up to the residence of Mr. Mattoo at Gupkar Road and dropped her there. After that, I went to my house. I did not see the girl on the next day upon my reporting for the duty at around 9 PM in the morning. On another occasion, I picked up Shazia from Cafi Abrabia sometimes around July 2003, again, as per the instruction of Mr. Raman Mattoo. Another lady named Dr. Asmat used to visit the residence of Mr. Mattoo. She was a MBBS Doctor. She was the sister of the Director, Rural Development Mr. Asgar Ali. Dr. Asmat was posted at some far off place, probably at Doda and wanted a transfer. She used to meet Mr. Mattoo in connection with her transfer to Srinagar. As per the instructions of Mr. Mattoo, once I picked up this lady from Rajbag in a Scorpio driven by the driver namely Anil at around 6 PM in the evening sometimes in the year 2004. I dropped the lady in the residence of Mr. Mattoo. Then, again being asked by Mr. Mattoo, I went outside to bring some food from the restaurant for them. Then I called off my duty and went to my house. I do not know what happened after that.... I have also met a women named Sabeena. One day, Mr. Mattoo directed me to go to Hotel Hat-rick and bring two of his guests after meeting one Mohd Yousuf Baig. This man Mohd Yousuf Baig was a political activist. He was earlier working for National Conference and now a days perhaps working for PDP. He is a resident of Kupwara. On reaching the said hotel and upon meeting Mr. Yousuf Baig, I noticed two ladies were Sabeena and Mahak. I escorted them to the house of Mr. Mattoo at Gupkar Road. At that time, some meeting with senior officers was going on in the house. When I informed Mr. Mattoo about the news of the arrival of Sabeena and Mahak he became furious and ordered me to disperse the girls from the residence immediately so that no one comes to know about their arrival. I did so accordingly. I can tell about another incidence of the year 2004. A man named Shahzada-noor-ulian who was working as the Technical P.A of Mr. Mattoo arranged a girl named Saiyara and brought her to the Hotel Grand Palace. Mr. Mattoo, upon informed by Shahzada, went to the Hotel Grand Palace along with me. Then, Mr. Mattoo went inside the hotel along with Shahzada and Ms Saiyara. I waited outside the hotel in the car. Mr. Raman Mattoo returned after about forty five

minutes or so. But the girl did not return and she possibly remained in the hotel. After that, we returned to the residence of Mr. Mattoo at Gupkar Road. I can still remember that on that day, Madam (the wife of Mr. Mattoo) was very much present in the residence of Mr. Mattoo. Mr. Shahzada is very intimate to Mr. Raman Mattoo....

whether or not this person Shahzada was subjected to interrogation is not known. Nothing is also on record to suggest whether or not the investigating agency examined this case for whatever action it might attract under Section 5 of "The Immoral Traffic (prevention) Act of 1956", which for the sake of facility may be quoted herein below.-

5. Procuring, inducing or taking person for the same of prostitution.-

(1) Any person who.-

(a) Procures or attempts to procure a [person], whether with or without his consent, for the purpose of prostitution; or

(b) Induces a [person] to go from any place, with the intent that he, may for the purpose of prostitution become the inmate of or frequent, a brothel; or

(c) Takes or attempts to take a [person] or causes a [person] to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution; or

(d) Causes or induces a [person] to carry on prostitution;

Shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this Sub-section.-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years]

xxx

(3) An offence under this section shall be triable.-

(a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made;or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

while proceeding ahead the observation of I.O., made regarding this person in the "line of action" submitted on 21.07.06 may also be reproduced which is this,-

2. Nissar Ahmed Sheikh (He was PRO of Raman Mattoo. He has also been identified by the victim girl. Nissar Ahmad Sheikh stated that he had picked up several ladies from different places and brought to the residence of the Minister at his instance. Sh. Raman Mattoo during his interrogation stated that it was Nisar Ahmed Sheikh who was close to Sabeena and used to arrange girls for him.

As reported this person has been left out.

XIV. Sh. Manzoor Naik: This person has been working on personal staff of Sh. G.A. Mir former minister, and figures in many statements alleging procurement of girls by him for illicit sex. To start with the relevant portion of the statement of Sabeena recorded on 31.05.06, may be quoted thus,-

Manzoor Naik S/o Gulam Ahmed Mir, know me. Manzoor Naik met me in a restaurant and asked me to arrange a good looking girl for the Minister Ghulam Ahmed Mir. Accordingly, I took Gypsy Sabina @ Saima along with Manzoor Naik to the residence of Gh. Ahmed Mir but he did not like the girl. There after I took Gulshan @ Pepsi to the residence of the Minister. Manzoor Naik also accompanied us. The girl was liked by the minister and she was kept there for the night. The Minister told me that he will hold her again for the next night, which she did. In the way Pepsi spent two nights with Ghulam Ahmad Mir. Another girl of name Yasmeena code Nancy was also found there at the residence of Minister. She was his regular visitor who had been promised by the minister for a job. I was paid Rs. 4000/- for a night.

In addition are the statements of Gulshan @ Pepsi, mentioned by Sabeena which reads,

...one lady whose name I came to know later as Sabeena, met me and asked about my problem. It was just a chance meeting with her. I told my story to her. She consoled me and disclosed that she can help me in this matter as she has connections with high officers. She was well dressed and wearing a lot of gold ornaments. She gave me her telephone No. and address and asked me to contact her after four days. After about four days, when I contacted her over telephone, she asked me to come to her residence at Chinkral Mohalla. Accordingly, I went there. Thereafter, she persuaded me and took me in an auto to one person, whose name I later came to know as Manzoor Naik at Sonawar Road near Gupkar Road. Sh. Manzoor Naik was some personal staff of Ghulam Ahmed Mir, Minister. Sabeena talked to him and told him about my problem. Manzoor Naik assured that he will help me in getting my husband released from the jail with the help of Minister Sh. Mir. He, then asked both of us to come again at the same place at 7.00 PM. Accordingly, we both went again to the said place. From there Manzoor Naik took me in his vehicle to the residence of Sh. Ghulam Ahmed Mir, Minister at Gupkar Road, whereas Sabeena went back. At his residence, in addition to Mr. Mir, one non-Kashmiri friend of the Minister (whose name I don't know) was also there. Another Girl whose name I later came to know as Nancy code name Sonam r/o Batmaloo was already present there. When I explained my problem to Manzoor Naik he told me that it is he who arranges girls for the Minister and the Minister helps the girls. He asked me to please/satisfy the Minister and in return the Minister will help me in this matter. Shri G.A. Mir, Minister, was present there at that time and he was drinking liquor along with his friend and Nancy. Mr. Mir told me that he will help me in getting my husband released from jail and that should not worry about anything and desired that I should satisfy/please him. He told me to stay with him for the night and thereafter, he took me to a bed room on the ground floor situated on the right side, adjacent to drawing room. Thereafter, I remained there whole night in the bed room and Mr. Mir had sexual intercourse with me, twice. The friend of Mr. Mir was in another room with other girl Nancy during the night for having sex with her. That room was having access/door from the bedroom in which I was sleeping with Mir. On the next morning, Manzoor Naik told me that he had paid Rs. 15,000/- to Sabeena. However, Nancy had disclosed to me that Rs. 20,000/- has been paid to Sabeena for me. She also told that she was paid Rs. 20,000 / - by Manzoor Naik. Thereafter, Manzoor Naik dropped me at the same point i.e. Sonawar Road near Gupkar Road from where I hired an auto and went to the house of Sabeena. She paid me Rs. 4000/- only. I did not press for more money as I wanted to get my husband released. I can identify the residence of Ghulam Ahmed Mir as well as the relevant room where I was sexually exploited. I can also identify Manzoor Naik, Ghulam Ahmed Mir as well as the friend of the Minister who were present on that night. The family members of the Minister

were not there. Only one cook whom I can identify and Manzoor Naik were present in the house besides the Minsiter, his friend and Nancy.

In view of these statements, this is, what the I.O observed about this person in the "line of action" furnished on 21.07.06,

Manzoor Naik He was a close associate of Sh. G.A. Mir, Minister. According to the victim girls, it was he who used to arrange girls for the minister. He could not be traced so far. He is stated to be an active worker of National Conference and working with Forest department.

He continued to be untraced till 13.09.06, when the 1.0 in action report of that date informed that,

All attempts must be made to secure presence of absconding Manzoor Naik in order to examine him and get his statement recorded.

Nothing happened till the final report was filed by investigating agency and this person too was left out.

XV. Zahoor Ahmed Malik : Without quoting from statement of this person it would be enough to quote the I.O's observations regarding him as contained in the final status report of 03.10.06, which go thus,-

Zahoor Ahmad Malik (He is brother-in-law of Mohd. Iqbal Khanday. He has been identified by the victim as a culprit who had picked her from Ansari Motors and taken to the residence of Mohd Ibqal Khanday. Zahoor Ahmad Malik admitted this fact and also stated that even on other occasions he used to pick up the lady guests of Mohd Iqbal Khanday at his request from other places, including Airport.

Previous to this report, this is what the proposed action in this case as per "Further action plan" dated 13.09.06, was;

In respect of Zahoor Ahmed Malik only one single instance has come to notice and so it would be appropriate to examine him and ascertain whether the incident in picture is an isolated incident or he has done it earlier also.

At end this person too was left out. In para 7, of final status reports, following was said to exonerate all these three persons;

That as submitted earlier, name of no other person has surfaced during investigation who allegedly had sex with the victim girls. However, names of Manzoor Ahmed Naik, Zahoor Ahmed Malik, NisarAhmad Sheikh and Ms. Kesar Jahan also came to notice but sufficient evidence was not available against them....

Records however do not reveal anything to suggest as to how this conclusion can be reconciled with what has been said in preceding lines. However in all aforesaid cases, from first to last, we may notice, that they suffered lack of proper action at proper time despite repeated court direction to the contrary till the deposing girls reportedly gave the secondary statements. Before proceeding further, it may be noticed that almost all the police officers examined by CBI after receiving allegations of their involvement, have pleaded that they were being involved at the behest of those whom they annoyed due to their anti militancy activities. There is no doubt that any officer dedicating himself to curb militancy deserves to be appreciated, encouraged and even suitably rewarded. But performance of anti militancy duties can't be acknowledged as a factor immunizing the concerned person from lawful action if warranted. It hardly needs be said that in a constitutional system governed by rules of law, there are no sacred cows; only lawful behavior and legal defenses are relevant.

25. There is yet another category of persons who have been alleged by Sabeena to have had illicit sex with girls procured by or known to her, but the concerned girls though much after the allegations leveled by Sabina

have denied the alleged occurrences, with no other circumstance to support Sabina's statement being on record which renders further investigation in their cases imperative so naming them at this stage may not be desirable. At the same time I feel that had timely action in terms of court orders passed from time to time been taken perhaps the situation and contours of this case might have been different. However since cases of this category of persons are required to be investigated further, I would as already said abstain from naming them, but I am totally taken aghast to find names of some highly placed people in this list particularly from police department and political field; High ranking police officers and political functionaries including some former and sitting ministers of the Cabinet. I wish they figure wrongly in this shame list but even a mere incriminating mention of their names in a case of this type, not to say of any involvement like others, already mentioned, is simply stunning. If those, holding positions and potential to control and determine the destiny of millions, this way fall into the abyss of a misconduct of this magnitude, then all the concepts of democracy, Constitutional governance and public administration get torn to shreds and the whole socio political and administrative fabric comes at peril. Disorder tends to become order of the day, misrule the rule of game, and misconduct the standard of efficiency reducing the whole scenario to total anarchy, and annihilating all that is good and pleasant in life. Thankfully, the number of such people from public life and administration/police is only a small fraction of the total due to which one can genuinely nurse the pious hope that perhaps all men and manners those matter are not lost beyond redemption.

26. After grasping the situational scenario, depth of its potential to destroy the moral fabric, and the magnitude of its future implications, I feel duty bound to warn the state apparatus of extremely hazardous repercussions for the system, if the questions posing themselves through this case are not effectively answered and answered now. When ministers misbehave legislators break law, civil servants become uncivil and police officers plunder the scenario becomes quite frightening. In their safe dwellings and offices guarded at the cost of public exchequer they include in sin and swagery at the strength of state power vesting in them and with promises of providing jobs and help to needy they ravage all norms of public, political and official life. By doing so they simply subvert the system, from within by breeding discontent, and destroying public faith in institutions of governance and willfully create and promote unlawful, unethical and immoral channels of approach for characterless and cunning prompting the vast majority to hate the system. Visibly they are more dangerous than those challenging the system from outside who can be identified and taken to task. But the "worthies", deliver sermons in serene gatherings, decorate the dices; shake hands with excellencies; fly and hoist the national flag, and rub shoulders with honorable people, and then?- indulge in disgraceful activity to bring disgrace to all these institutions occasions and personalities and escape action under cover of their authority. No doubt they are only few, but they tarnish all those belonging to their creed; and thus owe answers to them too.

27. It would perhaps be in fitness of things that Govt seriously examines setting up of a separate wing in police for dealing with anti-social offences like immoral trafficking and drug abuse etc. which generally support each others. If the data disclosed by certain statements recorded in this case by Kashmir Police before its assignment to CBI, is any indication around fifty places in Srinagar city are managed by different women organizing immoral sex trafficking by exploiting hundreds of needy girls, with suspected patronage from unsuspected quarters. Given the smallness of this place and vastness of its plight, increasing individual needs and decreasing resources deteriorating family support and diminishing social checks, spurious officialdom and suspected reformers and the disrupted social/economic/administrative fabric which constitutes the current scenario, one can reasonably apprehend that if this immoral activity continues unchained, within a short span of time the valley of Kashmir, the garden of 'rishis' and 'saints' would be converted into paradise of sinners. The situation thus carries out for intervention. An exclusive police wing could perhaps tackle the problem more effectively. Together with this, the department of Social Welfare could be saddled with responsibility for dignified rehabilitation of exploited girls pushed into immoral life through a mix of lure and greed. To top these arrangement, stringent administrative measures are required to be prescribed against any person from officialdom whether in uniform or civics found to be involved in these anti social crimes either by commission or omission. By assuring all these measures, the Govt, would only be discharging its constitutional duties that a responsible Govt. is always charged with.

28. Integral to what has been said above is the fact that society at large has to wake up to the situation. If I guess right, this case only reflects a tip of the iceberg and forecasts a social catastrophe. All those who claim to hold the reins of society have a heavy obligation cast on them to ponder over the situation, feel its agony and act. The common citizenry, if they wish to live a dignified and respectable life shall have to do a lot of self accounting and soul searching and question themselves as to how, why and for what their daughters have become vulnerable to being lured, enticed or coerced into sale of their flesh. A society, that does not subject itself to account; does not put interrogatories to itself; does not take itself to task, is doomed to die die morally, mentally, and spiritually and get reduced to a herd of shameless creatures, shorn of all dignity, crawling in dirt and crumbling in filth, till mother earth gets rid of their worthless weight. The choice is simple and straight, but certainly not difficult to make. Made however, it has to be, before it ceases to be there.

29. Coming back to the subject under reference. In view of the conclusions arrived at in the case the action taken by CBI leave much to be desired. As already noticed, this Court in such a situation is not powerless to act, but in a way obliged in discharge of its constitutional obligations to pass necessary directions to bring the derailed process of law back on the rails. As seen in Vineet Narayan's case quoted above, this Court in monitoring proceedings acts to assess performance of their statutory duties by law enforcing institutions to assure any violation of the mandate of law. It therefore, follows that essentially in these proceedings this Court exercises it's power of issuing writs of mandamus to concerned in exercise of its power under Article 226 of the constitution of India read with Section 103 of State constitution. An order of mandamus, as is well settled is a command requiring the concerned official/agency to do the particular thing that pertains to his office or official position in the nature of a public duty, and in cases where performance of a duty by the concerned public authority is not a matter of discretion, its nonperformance will certainly attract jurisdiction of this Court to issue directions in nature of mandamus for ordering doing of a thing that law wants to be done. The CBI like regular police is under a direct statutory obligation to act for detecting and investigating crimes commit the culprits to competent Courts to stand trial. Where this duty appears to have been diluted judicial intervention becomes necessary for maintaining the rule of law. In cases of suspected faulty criminal investigations therefore, exercise of writ power becomes almost imperative. For support the view expressed by Hon'ble apex court may be quoted in E.S. Mills Shri Virender Kuamr v. Rajiv Poddar reported as . The court while discussing indulgence even during investigation of a criminal case was pleased to observe that even at investigation stage, where non indulgence may result in failure of justice the court has the power to intervene. This is what the court observed,-

Para 4...we consider it absolutely unnecessary to make reference to the decision of this Court and they are legion which have laid down that save in exceptional case where non-interference would result in miscarriage of justice, the court and the judicial process should not interfere at the sate of investigation of offences....

In an earlier judgment in S.N. Sharma v. Bipen Kumar reported as , while providing for assuring bonafide investigation the court laid down as under,

Para 1...It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal power to a Magistrate to stop investigation by the police can not be a ground for holding that such a power must be read in Section 159 of the Code.

30. At this stage it would also be worth while to quote from the apex court judgment in "Best bakery" case captioned Zahira Habibullah Sheikh v. State of Gujrat and Ors. reported as 2204 4 SCC 158 wherein the Hon'ble Court while spelling out the role of Courts on Criminal side was pleased to observe that;-

Para: 35; this Court has often emphasized that in a Criminal case the fate of the proceedings can't always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties which effect the whole community as a community and are harmful to the society in general.... Courts have always been considered to have an over riding duty to maintain public confidence in the administration of justice often referred to as the duty to indicate and uphold the "majesty of law". Due administration of justice has always been viewed as a continuous process not confined to determination of a particular case, protecting its ability to function as a court of law in the future as in the case before it.

Para: 54; Though justice is depicted to be blind folded as popularly said it is only a veil not to see who the party before it is whole pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause or the lis before it in disregard of its duty to prevent miscarriage of justice when an ordinary citizen makes a grievance against the mighty administration any indifference in action or lethargy shown in protecting his right guaranteed in law will tend to paralyze by such inaction or lethargic action of Courts and erode in stages the faith inbuilt in judicial system ultimately destroying the very justice delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red hearings.

Para: 56; As pithily stated in *Jennison v. Baker*, The law should not be seen to sit by limply while those who seek its protection loose hope, Courts have to ensure that accused persons are punished and that the might or authority of the state are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the frame work of law....

Para 63: As was observed in "*Ram Bihari Yadav Section State of Bihar*" if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omission, the faith and confidence of the people would be shaken not only in the law enforcing agency but also administration of justice in the courts. The view was again reiterated in *Amar Singh v. Bakvinder Singh*.

Thus this Court is obliged in law to act in the matter, in discharge of its constitutional duty, for which it enjoys enormous power, perhaps vested in it only to meet situation like the present one. View expressed by Hon'ble apex court in *M.V. Elisabeth v. Harwani investment* reported as SCC 1993 (2) 433 may be quoted:-

66. The High Courts in India are superior courts or record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate of discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (See *Naresh Shridhar Mirajkar v. State of Maharashtra*. As stated in Halsbury's Lawas of England 4th Edn., Vol 10, para 713:

Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while noting is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court.

31. Before passing the requisite directions however, we would like to advert to some other aspects of the matter. First comes the one pertaining to girls who's involvement in the case has been mentioned during statements on record, but who have been declared untraced by the CBI. Given the fact that they could have been potential sources of information for fuller investigation of the case these "not traced" girls could not and shouldn't have been discarded casually. In given circumstances of the case it becomes very important to know what happened to them. If they are living they should be available and need to be traced. Otherwise the matter may assume serious dimensions. Secondly, while going through the materials on record we had a feeling that

certain persons visibly involved have not been put to desirable interrogation with the result that their statements appear to be incomplete. Topping their list is the main accused Sabeena who's statement has continued in around five sessions, and then came to an abrupt end. Incidentally and without any explanation the CBI has not taken her first statement recorded by state police before they took over the case into consideration, nor does any attempt appear to have been made for deriving any support there from, even while the contours of the case as indicated in that statement appear to be wider than the one disclosed in later statements. Her earlier statement suggests that strings of this case spread out to Delhi, Mumbai, Singapore and Dubai. Similarly the accused/charge sheeted Dy. S.P Mohd Yousuf Mir who from his interrogation report appears to be quite knowledgeable about many shrouded corners of this case also does not appear to have been thoroughly interrogated on those aspects of the case which pertained not to him but many others apparently connected with the case. Same is the case with Shazia/Azra who from her statement and those of others examined, with her given involvement, appears to have kept much of what she apparently knows up her sleeve. Had she been thoroughly examined/interrogated perhaps some of the hidden corners of this shameful tale might have come to light. The other two people, who in view of what has come on record through many statements should necessarily have been subjected to interrogation are one Muzaffar Handoo, of Rajbagh, Srinagar and one Naza @ Manju, reportedly a councilor in Municipal Corporation who are both allegedly involved in sex racketing at high official and political level. Why they have been left untouched except for a brief interaction by the I.O with Manju, has not been spoken about. Thirdly, that as per the interrogation report of Dy S.P Mohd Yousuf Mir, most of girls involved in this case are drug addicts whatever the reason; which suggested some sort of nexus between sex racketing and drug trafficking, making the whole thing a mix of humiliation, torture and treachery. But this angle appears to have escaped the attention of investigators with the result that an essential component of the occurrence has remained unattended. Nothing has also been reported regarding the progress if any in the investigation of two cases FIR No. 80/04 P/S MR.Gunj, and FIR 5/04, KP/S Magam, which were entrusted to CBI for investigation alongwith this case, as being essentially connected herewith. No effort appears to have been made to locate and get hold of the retired SP, Jitender Misri, Anil Sethi's conduit, and one Vijay to whom Gulshan @ Gypsy has attributed an attempt of rape at Sh. Matto's official residence; nor one Chain Singh, mentioned in connection with councilor Manju. No effort does also appear to have been made to identify the "Gora-Chitta commissioner" who allegedly had sex with minor Yasmeen in an official hut at Chesma Shahi even though all these aspects are integral to the logical conclusion of this case.

32. 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 Ashkooor 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.

33. Nothing herein shall preclude the investigating agency to conduct fresh investigation or to have the test identification parades repeated in cases of persons who have been released for want of proper identification, if circumstances obtaining so warrant.

34. The matter be again listed on 26.11.2007. All connected CMP's stand disposed of in terms of this order, except Robkar 4/06, wherein separate orders are passed herewith. Copies of this order be furnished to Advocate General, the counsel for CBI, Chief Secretary and DGP of the State for requisite follow up action in accordance with foregoing directions.

35. The Registrar Judicial shall keep all the papers furnished by CBI from time to time status report, and photocopies of statements in a sealed cover with the file, with an index of the contents pasted on it. The sealed envelop shall not be opened otherwise than under express orders of the bench. Moreover during proceeding on this case I have received some letters containing allegations against certain person, which be placed on file for being handed over to CBI for action.

List as directed.

H. Imtiyaz Hussain, J.

36. The facts of the case have been stated in detail in the judgment proposed to be delivered by Brother Kirmani J. I need not repeat them. Circumstances, under which this Court treated the present writ petition, as PIL and directed monitoring of the investigation, have also been given. I, concur with my learned brother that the CBI shall file a report before the Chief Judicial Magistrate but in my view the report shall not be in respect of a particular person or persons only but whole the material collected by the CBI shall be submitted to the Court and it shall be left to that court to decide whether any offence is made out against all or any of the persons on the basis of investigation done or the case needs any further investigation. Keeping in view the scope of monitoring of investigation this Court cannot analyse and appreciate the evidence collected by the CBI to find out accusation or otherwise of the persons involved. To examine the legal position a brief mention of the developments which took place may be made.

37. On 14-3-2006 a delegation of Samaj Sudhar Committee, Purshyaar, Habbakadal, Srinagar lodged a written report in the Sub Divisional Police Office, Shaheed Ganj, Srinagar stating therein that a minor boy of the area

had sent them, through one Bashir Ahmad Paffoo, a fruit vendor a CD containing pornographic clips of a local girl. On receiving the report case FIR 20 of 2006 was registered under Section 67 of IA Act and investigation started by the S.D.P.O. During investigation statements of Inspector Zahoor Ahmad, Mohammad Maqbool Gujri, Bashir Ahmad Paffoo, Habibullah Shalla, Altaf Ahmad Gujri, Abdul Rashid Hamal, Abdul Rashid Gujri were recorded. Statement of a minor girl was also recorded, from these statements it appeared that one Sabeena w/o Abdul Hameed Bulla r/o Habba Kadal was indulging in flesh trade and for this purpose various girls and persons used to visit her house. Names of about 57 persons including politicians, government and police officers and businessmen and about nine girls were given by the girl whose statement was recorded in the case. In view of this evidence offences under Section 3,4,5,6 and 7 Immoral Traffic (Prevention) Act, 1956 were added and six persons were arrested.

38. Investigation of the case was taken over by the CBI in pursuance of Notification No: 228/19/2006/AVD-II dated May 9,2006 under Section 5 of the Delhi Special Police Establishment Act, 1946 issued by the Department of Personnel and Training of Government of India, with the consent of Government of Jammu and Kashmir vide Notification No. Home/ISA/234/2006 on May 8,2006 under Section 6 of the Delhi Special Police Establishment Act, 1946. The CBI re-registered the case as RC 1(s)/2006/SCR-III/CBI/ND under Section 67 of the Information Technology Act, 2000 on May 10,2006.

39. As a result of initial investigation CBI arrested five persons apart from those arrested by local police. Charge sheet was, therefore, filed in the Court of Chief Judicial Magistrate, Srinagar on 24-6-2006 against the following persons-Sabeena, Mehraj-ud-din Malik, Abdul Hamid Bulla, Shabir Ahmad Laway @ Shabir Kala, Shabbir Ahmad Laimoo @ Lone and Masood Ahmed @ Maqsood Mohd. Ashraf Mir, K.C. Padhi, DIG BSF and Anil Sethi, ex-Additional Advocate General under Section 376 RPC and Section 3,4,5 of Immoral Traffic (Prevention) Act, 1956 and 67 IT Act, 2000.

40. This Court vide its order dated 10-5-2006 directed that detailed statement be recorded of accused Sabeena, who was allegedly supplying girls to bureaucrats, politicians, businessmen etc. for the purpose of prostitution. Sabeena's statement was recorded by the CBI on 18.5.2006, 10.6.2006, 11.6.2006, 12.6.2006, 15.6.2006, 18.6.2006, 22.6.2006, 23.6.2006, 16.7.2006 and 20.9.2006. In her statement she named about 18 victim girls who were allegedly exploited by 24 persons named in her statement. Out of these girls who could be traced out have been examined. Identification of some of the persons named by them was also conducted. Statements of Sabeena and the girls have been recorded and TIPs of alleged culprits has been conducted by the CBI in presence of senior judicial officers. Persons who have been named by these girls and whose identity got confirmed in TIP have already been arrested and charge sheeted namely Ghulam Ahmad Mir, MLA, Mohd. Iqbal Khanday IAS, Raman Matoo MLA., Reyaz Ahmad Kawa c/o Hotel Naaz, Mohd. Yusuf Mir, Abrar Ahmed, Hilal Ahmad Shah, Aijaz Ahmad Bhat, Altaf Hussain, under Sections 3, 5 of Immoral Traffic (Prevention) Act, 1956 and 67 IT Act, 2000.

41. In respect of four persons the concerned girls could not be found by the CBI hence no action has been taken against them for want of evidence. In respect of six persons TIP was conducted but the girls could not identify them hence no action has been taken against them by the I.O. Similarly no action has been taken in respect of three persons for the reason that contradictions were found in the statements of the girls. One of the person namely Javid Shah has died while as, according to CBI, another person namely Amir, SI does not exist at all. So the CBI has not arrested these persons or came to a definite conclusion about their guilt on the ground of insufficient evidence against them.

42. Heard. I have considered the submissions made by the learned Counsels and have perused the record submitted by the CBI.

43. Mr. M.A. Qayoom, appearing for the petitioner Association submits that the present litigation is not of adversary character but one of performance of the constitutional duty by the State. In view of the sensitivity of the issues involved the present case has been treated as Public Interest Litigation by the Court. According to

the learned Counsel certain important issues arise in the case but the State or the CBI has not filed reply to the present petition. Honest and bonafide investigation was expected from the premier investigating agency of the country but the CBI has tried to hush up the matter and a legal and proper investigation as was required, has not been done. The CBI has neither arrested the accused nor has taken any action against the hotels and guest houses allegedly involved in the flesh trade. Learned Counsel pleads that the Court should now order arrest of all these persons and direct action against the accused. He has relied on Joginder Kumar v. State of U.P. , Vineet Narain v. Union of India , Vineet Narain v. Union of India

and Zahira Habibulla II. Sheikh v. State of Gujarat .

44. Per contra, Id. Advocate General and Mr. Shabir Naik would submit that the CBI has completed the investigation and has filed a charge sheet against the accused who have been arrested. Persons whose name appeared in the statements of the girls but against whom no corroboratory evidence could be found have not been arrested and that the CBI will on completion of the formalities file a report in this behalf before the competent Court. They have relied on Emperor v. Nazir Ahmad and M.C. Abraham v. State of Maharashtra

45 Section 2(h) of the Code of Criminal Procedure defines "investigation" and it includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Investigation concludes with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173.

46. Section 169 authorises a police officer to release a person from custody on his executing a bond, to appear, if and when so required, before a Magistrate in case upon an investigation under Chapter XII it appears to the officer-in-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer-in-charge of a police station to forward the accused under custody to a competent Magistrate or to take security from the accused for his appearance before the Magistrate in case where the offence is bailable, if after investigation it appears that there is sufficient evidence or reasonable ground for doing so.

47. The extent of the powers of the officer-in-charge of the police station to conduct the investigation and supervision by the Courts in this behalf was considered by the Privy Council in Emperor v. Nazir Ahmad . This decision has been approved and has been referred to in several decisions of the Supreme Court. The Privy Council has in dealing with the issue observed:

In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal Procedure Code, to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then.

48. In H.N. Rishbud v. State of Delhi 1955 SCR 1150 the Apex Court while examining the scheme of Chapter XIV of the Code of Criminal Procedure, 1908 held that the investigation primarily consists in the ascertainment of the facts and circumstances of the case and by definition it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer." It was further observed that the final step in the investigation viz., the formation of the opinion as to whether or not there is a case to place the

accused on trial is to be that of the officer-in-charge of the police station.

49. The principle enunciated in Khwaja Nazir Ahamad case was applied by the Supreme Court in State of West Bengal v. S.N. Basak . It was observed that:

The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with, investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the Court under Section 561-A of the Criminal Procedure Code.

50. This question was again considered in Abhinandan Jha and Anr. v. Dincsh Mishra . The Court while considering the

provisions of Sections 156(3), 169, 178 and 190 of the Code held that there is no power, expressly or implied conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the Magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the Police. The power to take cognizance notwithstanding formation of the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(e). After examining the scheme of the Act and the decision of the Privy Council in Nazir Ahmad (supra) and H.N. Rishbud and S.N. Basak (supra) it was held as under:

The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority

51. The same view was endorsed by the Supreme Court in State of Bihar v. JAC Saldanha where it was reiterated that

investigation of criminal offences, was a field exclusively reserved for the Executive, through the police department, the superintendence over which, vested in the State Government. The Court further held that the Court and judicial process should not interfere at the stage of investigation. It was stated that:

There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the Superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the Investigating Officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty conies to an end. On a cognizance of the offence being taken by the Court the police function of investigation conies to an end subject to the provision contained in Section 173(SJ,) there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so. whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated

function in the field of crime detection and its subsequent adjudication between the police and the Magistrate

52. In Janata Dal v. H.S. Chowdhary the Supreme Court observed that most of the decisions of the English cases laid down the dictum that only in cases where there is substantial amount of delay or potential abuse of process or vexatious prosecution or the proceedings are tainted with malice etc. alone the Court can step in by exercise of the inherent power. The Court in this behalf cited the following observations of Lord Denning in R. v. Matropolitan Police Commissioner:

Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police or the chief constable, as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter.

53. These cases indicate that the consistent view of the Supreme Court was that the job to investigate a case primarily vested with the Investigating agency. The Court was not prepared to intervene in such matters nor allow a third party to claim any right in this behalf in the name of Public Interest Litigation. The Court in the case of Janata Dal observed:

Even if there are a million questions of law, to be deeply gone into and examined in a criminal case of this nature, registered against specified accused person, it is for them and them alone, to raise all such questions, and not for third parties, under the garb of public interest litigants....

54. This view was endorsed by the Supreme Court in Simranjit Singh Mann v. Union of India and Krishna Sivami v. Union of India .

55. In later years, however, the Supreme Court intervened in appropriate cases like allegations of fake encounters, custodial deaths, and police torture. While initially the Courts were content to direct inquiries by the local District and Sessions Judges, subsequently in several cases, the Court directed investigation by the CBI directly as in cases Shiv Sagar Tiwari v. Union of India , Punjab & Haryana High Court Bar Association v. State of Punjab . Ranted Kaur v. State of Punjab 1995 (2) SCALE 373, PUCL v. U.O.I. 1995 (2) SCALE 102.

56. In Paramjit Kaur v. State of Punjab the Court observed:

Mr. M.I. Sarin, learned Advocate General, Punjab has very fairly stated that keeping in view the serious allegations levelled by the petitioner against the officers/officials of the Punjab Police, it would be in the interest of justice that the investigation in this matter be handed over to an independent authority. Even otherwise, in order to instill confidence in the public mind and to do justice to the petitioner and his family it would be proper to withdraw the investigation from Punjab Police in this case. We, therefore, direct the Director Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all Punjab Police officers concerned, Home Secretary and Chief Secretary Punjab to render all assistance and help to the CBI in the investigation

57. In the year 1996 in the case of Vineet Narain 1996 (2) SCC 199 the Court, perhaps for the first time directed monitoring of investigation by the CBI. The Court observed as follows:

It was advantageous not to hear the matter through, and issue a Writ of mandamus, leaving it to the authorities, to comply with it to keep the matter pending, while investigations were being carried on, ensuring that this was done, by monitoring them from time to time, and issuing orders in this behalf.

58. When despite monitoring by the Supreme Court, of several cases, a number of accused were discharged by the High Court, the court, in the final Judgment in Vineet Narayan said that "either the investigation or the prosecution or both, were lacking." In another order, the Supreme Court recorded "a scheme, giving the needed insulation to the CBI or the Executive, is imperative." The justification for this procedure was disinclination of the agencies to proceed with the investigations, whenever someone powerful was suspected to be involved in the offence. The Court in the circumstances of the case considered it proper to keep the matter pending and the investigation was monitored and in that connection several orders were passed from time to time. The Court came to the conclusion that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed and the investigation was monitored till the point of time when charge-sheet was filed and thereafter ordinary process of law was to be followed.

59. Since in the present case politicians, high officials, officials from security forces were involved this Court, following, the course adopted by the Supreme Court in Vineet Narayan's case thought it proper to monitor the investigation.

60. After Vineet Narayan's case monitoring of investigation conducted either by the CBI or other agencies was ordered by the Courts in a number of cases. But the role of the Courts remained confined only to ensure proper investigation by the agencies and the decision whether any offence was made out against persons involved was left to be determined at the trial on the filing of the charge sheet in the competent Court.

61. In Union of India v. Sushil Kumar Modi it was observed by the Supreme Court that the Court, while monitoring the investigation is concerned with ensuring proper and honest performance of its duty by the CBI and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the charge sheet in the competent Court, according to the ordinary procedure prescribed by law. The Court held:

It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the C.B.I. and not the merits of the accusations being investigated which are to be determined at the trial on the filing of the charge sheet in the Competent Court, according to the ordinary procedure proscribed by law. Care must, therefore, be taken by the High Court to avoid making any observation which may be construed as the expression of its opinion on merits relating to the accusation against any, individual. Any such observation made on the merits of the accusation so far by the High Court, including those in Para 8 of the impugned order are not to be treated as final, or having the approval of this Court. Such observations should not in any manner influence the decision on merits at the trial on the filing of the charge sheet. The directions given by this Court in its aforesaid order dated March 19, 1996 have to be understood in this manner by all concerned, including the High Court.

62. Section 173 and Sub-section (2) thereof is important and it lays down that as soon as investigation is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating:

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of case;
- (d) whether any offence appears to have been committed and, if so, by whom;

- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under Section 170.

63. The object of the police report with these details is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material, a case for taking cognizance is made out or not. If the Magistrate is satisfied that cognizance of the offence is required to be taken, he can proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1)(b) Cr.P.C., provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. It is the Magistrate alone who has to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient, to take cognizance or not.

64. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either:

- (1) accept the report and take cognizance of the offence and issue process, or
- (2) may disagree with the report and drop the proceedings, or
- (3) may direct further investigation under Section 156(3) and require the police to make a further report.

The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e.

- (1) he may accept the report and drop the proceeding; or
- (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or
- (3) he may direct further, investigation to be made by the police under Section 156(3).

65. The question which requires consideration is whether the Court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes.

66. In Tula Ram v. Kishore Singh , the Magistrate on receiving a complaint, ordered an investigation under Section 156(3). The police submitted a report indicating that no case had been made out against the accused. The Court, however, recorded the statements of the complainant and the witnesses and issued process against the accused. It was contended that the Magistrate acted without jurisdiction in taking cognizance of the case as if upon a complaint when the police had submitted a report that no case had been made out against the accused. The Supreme Court held that the Magistrate acted within his powers and observed that the complaint did not get exhausted as soon as the Magistrate ordered an investigation under Section 156(3).

67. In the case of H.S. Bains v. State one Gurnam Singh submitted a complaint to the Judicial Magistrate 1st Class, Chandigarh alleging that H.S. Bains trespassed into his house along with two others on 11-8-1979 at about 8 a.m. and threatened to kill him and his son. The Magistrate directed the police under Section 156(3) of the Code to make an investigation. After completing the investigation, the police submitted a report to the Magistrate under Section 173(2) of the Code stating that the case against the accused was not true and that the case may be dropped. The learned Magistrate disagreed with the conclusion of the police and took cognizance

of the case under Sections 448 and 506 of the Indian Penal Code and directed the issue of process to the accused. Thereupon, the accused moved the High Court for quashing the proceedings before the Magistrate. As the High Court declined to interfere, the accused approached the Supreme Court by way of appeal by special leave. Various contentions were advanced on behalf of the accused and one of them was that the Magistrate was not competent to take cognizance of the case upon the police report since the report was to the effect that no offence had been committed by the accused. It was further urged that if the Magistrate was not satisfied with the police report, there were only two courses open to him, viz. either to order a further investigation of the case by the police or to take cognizance of the case himself as if upon a complaint and record the statements of the complainant and his witnesses under Section 200 of the Code and then issue process if he was satisfied that the case should be proceeded with. Repelling those contentions the Court held as follows;

The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Section 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under Section 324 Indian Penal Code only and he may take cognizance of an offence under Section 124 instead of Section 507. Similarly if a police report mentions that half a dozen persons examined by them claim to be eyewitnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police.

68. If Bhagwant Singh v. Commissioner of Police a three Judge Bench of the Supreme Court has observed that three options are open to the Court, on receipt of a report under Section 173(2) of the Code, when such report states that no offence has been committed by the persons accused in the complaint. They are:

- (1) The Court may accept and drop the proceedings; or
- (2) The Court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further, or
- (3) The Court may direct further investigation to be made by the police.

69. Another three Judge Bench of the Apex Court in India Carat Pvt. Ltd. v. State of Karnataka held:

The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.

70. In Union Public Service Commissions v. Section Pappiah a two Judge Bench considered the scope of Section

173(8) of the Code. Hon'ble Dr. Justice A. Section Anand (as his lordship then was), after extracting Section 173(8) of the Code has observed:

The Magistrate could, thus 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 objection raised by the appellant to the investigation and the 'new' report to be submitted by the Investigating Officer would be governed by Sub-sections (2) to (6) of Section 173 Cr.P.C.

71. In State v. Raj Kumar Jain a two-Judge Bench of the Supreme Court considered the legality of an order passed by a Special Judge before whom the CBI filed final report in respect of a Junior Engineer who was pitted against offences under the Prevention of Corruption Act. The CBI in the report held that the allegations made against him were unsubstantiated. But the Special Judge declined to accept the said report as in his opinion the CBI should have taken the view of the Sanctioning Authority. So the Special Judge directed the CBI to conduct further investigation after approaching the Sanctioning Authority. Though the High Court of Delhi did not interfere with the said direction, the Supreme Court interfered with it for which their Lordships followed the decision in Abhinandan Jha AIR 1968 SC 117. The Bench then observed thus:

Viewed in that context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6(1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173(2) Cr.P.C. for discharge of the respondent.

In Hemant Dhas mana v. Central Bureau of Investigation it was held:

When the report is filed under the Sub-section the Magistrate (in this case the Special Judge) has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the Court, has to decide whether cognizance of the offences should be taken or not on the strength of that report. We do not think that it is necessary for us to vex our mind, in this case, regarding that aspect when the report points to the offences committed by some persons. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person it is open to the Court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the Court feels, on a perusal of such a report that the alleged offences have in fact been committed by some persons the Court has the power to ignore the contrary conclusions made by the Investigating Officer in the final report. Then it is open to the Court to independently apply its mind to the facts emerging there from and can even take cognizance of the offences which appear to him to have been committed, in exercise of his power under Section 190(1)(b) of the Code. The third option is the one adumbrated in Section 173(8) of the Code. The Sub-section reads thus:

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

16. Although the said Sub-section does not in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a Court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating Officer would not be able to collect any further material at all. That is an area which should have been left to the Investigating Officer to survey and recheck

72. The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also.

73. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. Therefore, the Supreme Court indicated in Bhagwant Singh's case (supra) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory.

74. In view of this well settled legal position I am of the view that it is not within the powers of this Court to examine and analyse the evidence collected by the CBI, at this stage as it falls within the jurisdiction of the concerned court, it is for that court alone to decide whether the conclusions arrived at by the CBI are correct or there is sufficient evidence to take cognizance against any person. It is also for the court to decide whether further investigation in respect of any or all the persons named by Sabeena or other victims and against whom no action has been taken is required in the circumstances of the case. The CBI may therefore, in accordance with the provisions of the Code of Criminal Procedure place a report before the concerned court and the court may thereafter examine the matter. While doing so any observation made on the merits of the accusation are not to be treated as final, or having the approval of this Court. Such observations should not, in any manner, influence the decision on merits at the trial on the filing of the charge sheet.

75. The present case covers three broad areas; firstly to deal with the culprits whose names have been revealed by the victims; secondly protection and rehabilitation of the victims and thirdly remedial measures to prevent such immoral acts in future.

76. So far the first issue is concerned in view of the above discussion it is for the concerned court to deal with the issue.

77. During the course of these proceedings issues of security and protection of the victims and their rehabilitation were raised. In this behalf the Court has already issued directions to the State to provide necessary security to these victims. It is reiterated that 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.

78. Petitioner, J & K High Court Bar Association, Srinagar state that the Jammu and Kashmir Prostitution Rules, 1921 are still in force as the same have not been repealed by the State Government despite the International convention for the suppression of the Traffic in persons and of the exploitation of the Prostitution of others. It is alleged that the Rules of 1921 virtually permit prostitution if the prostitute has got her name registered in the office of Deputy Commissioner or any other public servant. The petitioner Association contends that the Rules of 1921 being contrary to morality, ethos, culture and religion of the people of Kashmir as also to the public policy, deserve to be struck down.

79. On going through the provisions of the Jammu and Kashmir Prostitution Rules, 1921 in view of the same stands repealed by Section 25 of the Immoral Traffic (Prevention) Act, 1956.

80. The immoral Traffic (Prevention) Act, 1956 was enacted to provide, in pursuance of the International Convention signed at New York on 9th May, 1950, for the prevention of immoral traffic. Government of India in the year 1950 ratified an International Convention for suppression of traffic in persons and of the exploitation of the prostitution of others. The principal object of the Act is to prevent commercialization of the vice and trafficking among women and girls. As Krishna Iyer J. has observed in *Chita J. Vaswani v. State of W.B.* no nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free free to live without sale of their young flesh to lascivious wealth or commercializing their luscious figures. India, to redeem this 'gender justice' and to proscribe prostitution whereby rich men buy poor women through houses of vice, has salved its social conscience by enacting the Act.

81. The scope of the Immoral Traffic (Prevention) Act, 1956 is very vast. Section (3) of the Act provides for punishment for keeping a brothel or allowing a premises to be used as a brothel. Section 3(1) provides for the conviction and punishment of a person who keeps or manages or acts or assists in the keeping or management of a brothel. Sub-section (2) of that section provides for the conviction and punishment of a person who being (a) a tenant, lessee or occupier or person in charge of any premises, uses or knowingly allows any other person to use, such premises or any part thereof as a brothel, (b) the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the premises or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel or is willfully a party to the use of such premises or any part thereof, as a brothel. "Brothel" is defined in Section 2(a) as including a house, room, or place or any portion of any house, room or place, which is used for the purpose of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. "Prostitute" is defined in Section 2(e) as meaning a female who offers her body, for promiscuous sexual intercourse for hire whether in money or in kind.

Section 7 provides for the punishment of prostitution in or in the vicinity of public places. Public place is defined in Section 2(h) as meaning any place intended for use by or accessible to the public and includes any public conveyance. Section 18 is very important and gives powers to the Magistrates to attach any house, room, place which is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade.

Sections 3 and 7 provide for the punishment of persons guilty of the offences mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable, offence in view of Section 14, whereas a proceeding under Section 18 is in no sense a prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run or prostitution being carried on in premises near about public places.

82. It is clear from the various provisions that the Act is a complete code with respect to what is to be done under it. It deals with the suppression of immoral traffic in women and girls, a matter which has to be tackled with effectively.

83. The Act creates new offences and provides for the forum before which they would be tried. Necessary provisions of the Code of Criminal procedure have been adopted fully or with modifications. Thus due provisions have been made not only to punish the accused but' also to prevent immoral trafficking and exploitation of woman

84. Though the Act applies to the State also but the State Government has not taken the Act seriously and has not paid due attention to implement various provisions of the Act. Even the rules have not been framed under the Act.

85. If the provisions of the Act are strictly enforced and the functionaries under the Act are made responsible for implementation of the Act, it is likely to check menace of immoral trafficking in the State.

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

a. The CB1 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 CB1 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.

e. If from the material the Court finds that the report of the CB1 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 CB1 to 'further investigate' the case and collect further evidence keeping in view the nature of accusation and the allegations appearing from the evidence.

h. 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.

i. 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.

87. Before concluding I may place on record appreciation for the able assistance rendered to the Court by Mr. Qayoom and his associates for the petitioner and Id. Advocate General Mr. Altaf Naik and Mr. Shabir Naik Ld. ASG during the proceedings of this case. Order accordingly.