

**IN THE COURT OF SHRI AJAY GULATI
SPECIAL JUDGE (PC ACT), CBI-12, ROUSE AVENUE COURT
COMPLEX, NEW DELHI.**

CC No. 421/2019

CBI Vs. VirenderDeo Dikshit & Ors

26.06.2020

Present:- Sh. Deep Kumar Shrivastava, Ld. Sr. PP for CBI.
A1 Virender Deo Dikshit is already PO.
Sh. Amol Konane, Ld. Counsel for A2.
A-2 not present.

Present proceedings have been taken up through Video Conference hosted by court reader Sh. Virender Yadav.

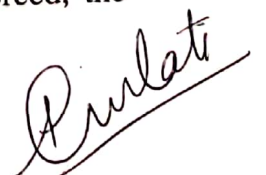
Matter has been listed today for pronouncing the order on Charge.

The accused No. 2 could not join the video conference since she does not have the necessary equipment, as informed by Id. Counsel for A2. Ld. Counsel further informs that A-2 has due notice of today's proceedings.

Vide separate order announced through Video Conference, Charge U/s 109 read with section 275 (2) (k) IPC is directed to be framed against A-2 Ms. Gyaneshwari Mali.

During the course of dictating the order on Charge, statement of the complainant recorded U/s 161 Cr. P. C and statement U/s 164 were taken out from two separate sealed covers. After going through the same, both have been resealed with the seal of the Court. The sealed cover containing the statement of the complainant recorded U/s 161 Cr. P. C was sealed with the seal of NKK when it was opened whereas the sealed cover containing the statement of the complainant U/s 164 Cr. P. C was bearing the seal of CBI STF New Delhi, when it was opened.

Since the normal functioning of the court is restricted at the moment, in case by the next date of hearing, the restricted functioning continues and the physical presence of the accused cannot be enforced, the



proceeding shall be again taken up through Video Conference.

Matter be again listed on 15.7.2020 for framing the Charge
against A2.


(AJAY GULATI)

**Spl. Judge (PC Act),CBI-12
RADCC/New Delhi/26.06.2020**

**IN THE COURT OF Dr. AJAY GULATI,
SPECIAL JUDGE (PC ACT), CBI-12,
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

CC No. 421/2019

RC No. DST/2018/S0001/STB/CBI/New Delhi

Central Bureau of Investigation

Versus

Virender Dev Dikshit and Another

ORDER

1. The facts emerging from the charge-sheet and as alleged by the complainant/prosecutrix in her complaint are as follows. Complainant is a mother of four daughters and a son. She was introduced to *Ishwariya Adhyatmik Vidyalya* by her brother Lal Ji Jaiswal in 2007 from where she then did 'Bhatti' course at the Farukhabad/Lucknow branch. Thereafter, she along with her two elder daughters attended classes at Gorakhpur branch of *Ishwariya Adhyatmik Vidyalya* in 2010 where she met accused Virender Dev Dikshit (since declared a PO) on whose advise she, without the knowledge of her husband, sent her two daughters permanently to *Ishwariya Adhyatmik Vidyalya*, Gorakhpur in September 2010.

After sometime, the complainant also reached Farukhabad branch of *Ishwariya Adhyatmik Vidyalaya*. Further, in February 2011, the complainant along with her son as also all her jewellery and money, went to Lucknow branch of *Ishwariya Adhyatmik Vidyalaya* from where she was shifted to Farukhabad and then again to Lucknow branch where she met accused Virender Dev Dikshit who instigated the complainant to file a case against her husband. Thereafter, on the advice of accused Virender Dev Dikshit, the complainant sent her son back to their house in March 2011 and on further directions of accused Virender Dev Dikshit, the complainant along with her brother went to Gorakhpur and brought her two younger daughters also to *Ishwariya Adhyatmik Vidyalaya* in December 2011.

2. The investigation has revealed that accused Virender Dev Dikshit forcefully established physical relations with the complainant in the end of 2011 at some secret location situated at Shivpura Matiyari Road, Lucknow where she was allegedly brought by accused no. 2 Gyaneshwari Mali (A-2). After having been given some intoxicating substance mixed in the milk, the complainant was sent by **A-2** to the room of accused Virender Dev Dikshit where she was (allegedly) raped by him. As per the investigation, the complainant was again raped by accused no. 1 (A-1) in January/February 2012 in Mansa branch of *Ishwariya Adhyatmik Vidyalaya*, Punjab. The accused no. 1 insisted on making relations with her stating that he was 'Lord Krishna' and that she was his 'Gopi'. The investigation further revealed that the complainant was raped for the third time in the end of 2013 at *Ishwariya Adhyatmik Vidyalaya*, Nawada Mor, Dwarka, Delhi whereafter she was

again raped by the accused no. 1 in 2014 at *Ishwariya Adhyatmik Vidyalaya*, Kanpur. The investigation also revealed that the complainant was lastly raped by the accused no. 1 in May 2015 at *Ishwariya Adhyatmik Vidyalaya*, Vijay Vihar, Delhi. The complainant stated that PBK Rohini was the In-charge of *Ishwariya Adhyatmik Vidyalaya*, Vijay Vihar, Delhi at that time and who used to sleep with her. It was alleged by the complainant that accused no. 1 Virender Dev Dikshit came to the room where she was sleeping with Rohini and asked her to leave that place whereafter the complainant was raped by the said accused.

3. The investigation further revealed that *though* she was being repeatedly raped by accused Virender Dev Dikshit, the complainant had not informed about the said incidents to anyone as her four daughters had forcibly been confined in *Ishwariya Adhyatmik Vidyalaya* and having left her house, she had no other place to reside in. It was also stated by the complainant that she was pressurized by accused Virender Dev Dikshit to sell all her properties and to give all her money to *Ishwariya Adhyatmik Vidyalaya*.

4. The investigation also revealed that the complainant and her two daughters gave statements in March 2015 before the **Hon'ble Supreme Court of India** in favour of *accused* Virender Dev Dixit during the course of hearing of a petition which was filed for seeking quashing of an FIR which the husband of the complainant/prosecutrix had filed against accused V.D. Dixit alleging abduction of

his daughters. However, as per the complainant/prosecutrix, those statements were given under the pressure of accused Virender Dev Dikshit and his fellow inmates. Thereafter, the complainant decided to leave *Ishwariya Adhyatmik Vidyalya* for her home. When the complainant sought return of her jewellery which she had deposited at the time of joining the *Ishwariya Adhyatmik Vidyalya*, the complainant was asked to deposit a sum of Rs. 80,000/- whereafter she arranged for the said amount and handed over the same to PBK Harini in April/May 2015. Subsequently, the jewelery was returned to the complainant in June 2015 at *Ishwariya Adhyatmik Vidyalya*, Vijay Vihar pursuant to which the complainant finally left *Ishwariya Adhyatmik Vidyalya* in June 2015 and started residing again with her husband.

5. Thereafter, complainant and her husband made efforts to bring back their daughters but she was not allowed to meet her daughters. The complainant in the hope of bringing her daughters back, continued to visit *Ishwariya Adhyatmik Vidyalya* and also wrote letters to accused Virender Dev Dikshit but in vain. Consequently, the complainant preferred a Writ of Habeas Corpus on 16.12.2016 before **Hon'ble Supreme Court of India** for seeking custody of her daughters but which was dismissed where-after she submitted complaint dated 29.12.2016 against accused Virender Dev Dikshit at PS Vijay Vihar, Rohini, Delhi upon which an FIR bearing No. 88/2017 was registered on 19.1.2017 arraying Virender Dev Dikshit as an accused. After recording her statement u/s 161 Cr.PC on 24.1.2017, her statement under Section 164 of the Cr. PC was recorded before a learned

Magistrate on 25.1.2017 in which the complainant reiterated the allegations of rape having been repeatedly committed upon her by accused no. 1. Subsequently, the investigation was transferred to the CBI under the order of **Hon'ble High Court of Delhi**. In her statement dated 7.2.2018 which was recorded by the CBI STF (Special Task Force), the complainant/prosecutrix named accused Gyaneshwari Mali as the person who had given her milk mixed with intoxicating substance and then sent to the room of accused VD Dixit in a secret location in Lucknow where she was then raped by accused VD Dixit. This alleged incident occurred towards the end of year 2011.

6. The investigation was also conducted in regard to allegation of wrongful confinement of four daughters of the complainant by accused Virender Dev Dikshit. However, the said allegation could not be substantiated as the four daughters of the complainant gave statements to the effect that they were voluntarily residing in *Ishwariya Adhyatmik Vidyalaya*.

7. It was also alleged by the complainant in the FIR that accused Virender Dev Dikshit used to have physical relations with all the inmates of *Ishwariya Adhyatmik Vidyalaya*. Complainant further alleged that accused V.D. Dixit established physical relations with all her four daughters. In order to investigate this allegation, statements of several inmates of *Ishwariya Adhyatmik*

Vidyalya as also of the four daughters of the complainant were recorded in which **they all denied** the said allegation.

8. During investigation, Delhi Police recovered one of the minor daughters of the complainant namely “N” who was medically examined on 14.3.2017. No fresh injury was observed upon her and her hymen was also found intact. The Ossification test of said minor daughter of the complainant was conducted on the directions of Child Welfare Committee as per which she was found to be between 22 to 25 years of age. Her statement under Section 164 of the Cr. PC was recorded on 30.3.2017 in which she stated that she wanted to go back to *Ishwariya Adhyatmik Vidyalya* as she was residing there of her own will. Thereafter, vide order dated 7.4.2017 issued by Child Welfare Committee for her release, she is residing at *Ishwariya Adhyatmik Vidyalya*, Vijay Vihar, Rohini along with her three sisters. The consent of other three daughters of the complainant was also sought for getting their medical examination conducted but which was refused by all of them.

9. Since accused Virender Dev Dikshit did not appear before the CBI during investigation, he could not be arrested despite all possible efforts made to trace him out. The Court issued open NBWs against the accused which also could not be executed. Reward of Rs. 5 lacs was also announced by CBI upon the accused and wide publicity for the same was given through print and electronic

media. Look Out Notice and Blue Corner Notice were also got issued by CBI against the accused but no fruitful result could be obtained.

10. It needs a highlight that pursuant to the directions issued by Hon'ble High Court of Judicature at Delhi vide order dated 20.12.2017 in case titled as *Foundation for Social Empowerment Vs. Union of India and Others* (WP © 11382/2017), Special Investigation Team (Special Task Force) of the CBI was constituted which then investigated the FIR registered against accused Virender Dev Dikshit bearing No. 88/2017. The case was taken up by the CBI for investigation after re-registering the FIR as No. RC/DST/2018/0001/S/0001/CBI/STF/ New Delhi.

11. In the circumstances listed above, it was argued by the Id. Sr. PP appearing for the CBI that Charge for the offence punishable under Section 376(2) (n) of the IPC is made out against accused Virender Dev Dikshit (since PO) whereas accused Gyaneshwari Mali be charged for the offence punishable under Section 109 of the IPC read with Section 376(2)(n) of the IPC.

12. The record reflects that Accused no. 1 has since been declared a proclaimed person/offender vide order dated 18.9.2019 passed by learned CMM, Rouse Avenue Court. Accused no. 2 is alone facing the current proceedings of court inquiry.

13. **Opposing** the submissions of Id. Sr. PP, it has been contended by Id. Counsel appearing on behalf of accused Gyaneshwari Mali (**A-2**) that though the FIR under Section 376/506/344 of the IPC was registered on 19.1.2017 at PS Vijay Vihar, neither accused No. 2 was named by the complainant nor any allegation of abetment was made against her therein. Accused No. 2 has also **not been named** by the complainant in her statement recorded before the learned Magistrate on 25.1.2017 under Section 164 of the Cr. PC. The matter was thereafter investigated by the CBI pursuant to the directions given to it by the Hon'ble High Court of Delhi vide order dated 20.12.2017 passed in a Public Interest Litigation. It has also been submitted that though in the FIR, there are allegations of illegal confinement of four daughters of the complainant as also of physical and mental harassment of the complainant and her four daughters at the hands of accused no. 1 but no allegations of such nature have been found to be true during the course of investigation. Even the alleged minor daughter of the complainant was found to be of the age between 22 to 25 years as per the Ossification Test. Her hymen was also found intact during medical examination got conducted by the officials of PS Vijay Vihar and that none of her daughters in their respective statements had levelled allegations of their sexual exploitation or illegal confinement at the hands of accused Virender Dev Dikshit. Rather, they had given a clean chit to the said accused.

14. It has also been averred by the Id. Counsel appearing for accused no. 2 that no allegations were levelled by the complainant against accused No. 2 in her first statement recorded by the CBI STF on 31.1.2018 and that it is in her subsequent statement recorded on 7.2.2018 that the complainant named accused No. 2 for the first time in regard to the incident which had taken place in the year 2011 in Lucknow where some intoxicating substance was given to her by the accused No. 2 in the milk and thereafter accused No. 1 had committed rape upon her/sexually exploited her.

15 It has also been submitted that in regard to the complaint against accused V.D. Dixit submitted by the husband of the complainant with the police of PS Kolhui, District Maharajganj, UP, which culminated into FIR bearing **No. 881/2011** dated 5.6.2011 under Section 419/420/365/504/506/342/120-B of the IPC, the complainant and her two elder daughters preferred CrI. Misc. Writ Petition No. 12326/2011 under Section 482 of the Cr. PC for quashing of the above-said FIR, which petition was dismissed by the Hon'ble Allahabad High Court vide order dated 11.7.2011. Thereafter, the complainant and her two elder daughters gave statements in favour of accused Virender Dev Dikshit before Hon'ble Supreme Court of India on 12.3.2015 in the SLP bearing No. 6211/2011 filed by the complainant, her two elder daughters and accused Virender Dev Dikshit (which later was converted into criminal appeal bearing Nos. 1329 of 2012 and 1330 of 2012) about them not having been harassed by anyone as also of their voluntary residence in *Ishwariya Adhyatmik Vidyalaya*. The complainant also gave an affidavit in favour of accused Virender Dev Dikshit claiming his false

implication at the asking of her husband. The complainant also stated before the Hon'ble Supreme Court of India that she had left the house of her husband because of maltreatment and torture meted out to her by her husband. Based upon the above-said statements of complainant and her two elder daughters, **Hon'ble Supreme Court of India** vide order dated 12.3.2015, quashed FIR bearing **No. 881/2011** and the criminal proceedings arising therefrom.

16. It has been argued by Id. Counsel appearing on behalf of A-2 that charge under Section 109 of the IPC cannot be framed along with the offence under Section 376(2)(n) of the IPC as the offence under Section 376(2)(n) of the IPC pertains to repeated rape committed by a person **whereas** the allegations against A-2 are only with regard to the incident of the year 2011. It has also been submitted that "N", allegedly minor daughter of the prosecutrix had filed a complaint against her own mother in August 2016. All the attempts made by complainant and her husband to take back their daughters from *Ishwariya Adhyatmik Vidyalaya* having gone in vain including dismissal of Writ Petition (Crl.) No. 170/2016 by Hon'ble Supreme Court of India vide order dated 16.12.2016, the prosecutrix then filed a false complaint to the police stn. Vijay Vihar. It has also been highlighted by the Id. Counsel that even in the Writ petition filed by prosecutrix before the Hon'ble Supreme Court wherein she had sought custody of her daughters, the complainant had **not** levelled any allegation of her being sexually exploited in *Ishwariya Adhyatmik Vidyalaya* at Lucknow in the year 2011. It has been further highlighted that even in their respective statements recorded by the CBI, all the four daughters of the prosecutrix have alleged false implication of

accused VD Dixit by their mother/prosecutrix. Further, the CBI had not examined Neelam, Pankaj and Mahendra all of whom were allegedly present in the 'secret' location at Lucknow in 2011 when the prosecutrix was allegedly raped. **Lastly**, ld. defense counsel has relied upon the judgment delivered in case titled as **P. Vijayan Versus State of Kerala and Others**, *Criminal Appeal No. 192 of 2010* (arising out of SLP (Crl.) No. 4708 of 2007) by submitting that the **Hon'ble Supreme Court** in the above-said case has held that a Charge cannot be framed unless there is any grave suspicion against an accused that the material collected by the IO discloses commission of the alleged offence.

17. **On the other hand**, ld. Sr. PP appearing for the CBI has taken me through the judgment delivered by Hon'ble Supreme Court of India in case *titled Sajjan Kumar Versus CBI* on the argument advanced by ld. defense counsel on the point of grave suspicion. Ld. Sr. PP submitted that the prosecutrix had specifically named A-2 in her statement dt. 7.2.2018 which was recorded by the CBI under Section 161 Cr. PC and wherein she had alleged that A-2 gave some intoxicating substance to her. Ld. Sr. PP further highlighted that in her statements dt. 25.1.2017 (U/s 164 Cr.PC) and 31.01.2018 (first statement recorded by STF CBI u/s 161 Cr.PC), complainant/prosecutrix has mentioned about the alleged incident of 2011 when she was raped by accused VD Dixit in a secret location in Lucknow. Ld. Sr. PP thus contended that the allegations levelled by the complainant in regard to the 2011 Lucknow incident have been consistent. So far

as the defense argument in regard to earlier litigations is concerned, it has been submitted by the Id. Sr. PP that at the relevant time, concern of the complainant/prosecutrix was to safeguard her daughters since she was operating under the impression that not only were her daughters being forcibly kept in the *Ishwariya Vidyalaya* but were also being physically exploited by accused VD Dixit.

18. The sole question which requires judicial determination is whether the complaint made by the prosecutrix to PS Vijay Vihar, Rohini and her subsequent statement recorded before Id. MM under Section 164 of the Cr. PC and the statements recorded by the CBI STF point towards a grave suspicion that A-2 had abetted the rape of the prosecutrix at the hands of **A-1** (since been declared a proclaimed offender), keeping in view the fact that prior to the registration of the present FIR, the prosecutrix had numerous opportunities to approach law enforcement agencies with the allegations levelled herein but at no stage did the prosecutrix allege her sexual exploitation/rape at the hands of A-1 even though the prosecutrix had also approached the Hon'ble Supreme Court seeking release of her daughters from their (alleged) illegal confinement by **A-1**.

19. In order to buttress the submission of discharge of **A-2** in the light of arguments raised, Id. Counsel appearing for **A-2** has placed reliance on the judgment delivered by **Hon'ble Supreme Court**, titled as *P. Vijayan Versus State of Kerala and Others*, Criminal Appeal No. 192 of 2010 (arising out of SLP (Crl.) No. 4708 of 2007).

20. Learned Sr. PP appearing for the CBI, in addition to other judgments, has **also** placed reliance on the above judgment to contend that the test for framing of Charge is whether the unrebutted evidence placed before the Court by the Investigating Officer along with the Charge-sheet, prima-facie discloses commission of the alleged offence. It was further contended by Id. Senior PP that at the stage of framing of Charge, the Court has to presume the truthfulness of the evidence collected.

21. **In rebuttal**, Id. Counsel for A-2 reiterated that the present Charge-sheet is a case of 'no evidence'. Compared to the allegations levelled in the present FIR, the previous conduct of the prosecutrix wherein she has herself approached Hon'ble High Court of Allahabad and subsequently, Hon'ble Supreme Court of India seeking quashing of an FIR registered in the year 2011 against **A-1** (which contained allegations of abduction, cheating and criminal intimidation) patently exhibits a conduct which is grossly contradicting leaving no scope for placing any trust in the truthfulness of the prosecutrix's present allegations.

Rival submissions have been carefully considered.

22. There is no denying of the fact that much prior to the present FIR, prosecutrix herself had approached Hon'ble High Court at Allahabad in the year 2011 seeking quashing of FIR No. 881/2011 dated 5.6.2011 which contained allegation of abduction against **A-1** here-in. On refusal by the Hon'ble High Court

of Allahabad to quash the said FIR, petitioners approached the Hon'ble Supreme Court of India whereupon the FIR was quashed.

23. Subsequently, in December 2016, complainant/prosecutrix again approached the **Hon'ble Supreme Court of India** seeking release of her 4 daughters from (alleged) illegal confinement of **A-1**. However, the said petition was dismissed by the **Hon'ble Supreme Court**. Subsequently, the complaint forming the basis for registration of present FIR was submitted to police station Vijay Vihar where not only allegations of rape of the prosecutrix have been levelled against **A-1** but allegations of rape and illegal confinement of the 4 daughters of the prosecutrix by **A-1**, have also been levelled. However, during investigation, none of the 4 daughters of the prosecutrix were found to have been illegally confined nor could the allegations of their rape by **A-1** be confirmed. Nevertheless, prosecutrix supported the version of her initial complaint reiterating those allegations in her statement which was recorded under Section 164 of the Cr. PC and also in her subsequent statements recorded by the CBI STF. What is relevant to highlight is that name of **A-2** appears for the first time when the 2nd statement of complainant was recorded by the CBI STF, after her statement had been recorded under Section 164 of the Cr. PC. Therefore, as on today, the incriminating evidence against **A-2** is in the form of the statement of prosecutrix recorded u/s 161 Cr.PC by the Investigating Officer of police stn. Vijay Vihar, her statement recorded u/s 164 Cr.PC and the statements recorded by the CBI under

Section 161 of the Cr. PC (CBI recorded 3 statements of the prosecutrix and accused no. 2 was named by the complainant in her 2nd statement recorded by the CBI STF).

24. As already highlighted, the question which needs to be answered is whether these statements can form the basis of grave suspicion that **A-2** abetted the rape of complainant by A-1?

25. Applying the test of unrebutted evidence as highlighted by Id. Senior PP for the CBI, especially in the light of statement of complainant recorded under Section 164 of the Cr. PC and the subsequent statements recorded by the CBI STF on 31.1.2018 and 7.2.2018, it *prima facie* appears that Complainant was raped by **A-1** on a number of occasion, at different places and over a range of period i.e. 2011 to 2015. There is sufficient description of (alleged) events in the statements of the Complainant/prosecutrix recorded u/s 161 Cr PC and Section 164 Cr PC. This description was then reiterated by the Complainant when her statement was recorded by the CBI. The notable addition in the 2rd statement of the prosecutrix recorded by the CBI STF was regarding the role of **A-2** in the (alleged) incident of Lucknow in 2011 when she was (allegedly) raped by A-1 after she was given a drink by **A-2** which was laced with a sedative/intoxicating substance and then sent into the room of A-1. During the course of arguments, Id. Counsel appearing for **A-2** tried hard to convince the Court that the present FIR is a result of the frustration of the prosecutrix to get custody of her daughters for which reason, in addition to

alleging rape and wrongful confinement of her daughters, prosecutrix has also alleged her own rape. However, ld. Counsel did not advance any argument as to **why** would the prosecutrix name **A-2** as the abettor in relation to a specific instance **i.e.** of 2011, in Lucknow. There is sufficient consistency in the statements of the prosecutrix in regard to the period of (alleged) repeated rapes and the places where the alleged offence were committed, including the 2011 Lucknow incident. So far as cropping up of A-2's name in the 2rd statement is concerned, it needs to be kept in mind that investigation in the present FIR actually made headway when it was entrusted to the CBI. Thus, only because prosecutrix named A-2 in her 2nd statement recorded by the CBI STF on 7.2.2018, is no ground to disbelieve the prosecutrix, at least at this stage. It needs a highlight that prior to the statement dt. 7.2.2018, complainant's statement had been recorded u/s 161 by IO of Vijay Vihar PS on 24.1.2017, followed by her statement u/s 164 Cr.PC on 25.1.2017 and statements recorded by the CBI STF on 30.1.2018, 7.2.2018 and 27.7.2018. The complainant mentioned about the specific incident of Lucknow in 2011 in 3 of her statements **i.e.** statement dt. 25.1.2017 u/s 164 CrPC, statement dt. 31.1.2018 u/s 161 Cr.PC recorded by the CBI STF and the statement dt. 7.2.2018 also recorded by the CBI STF u/s 161 CrPC.

26. In so far as the previous instances are concerned when the prosecutrix approached the **Hon'ble Supreme Court of India**, on one occasion seeking quashing of FIR against **A-1** and on another, to seek custody of her daughters

alleged to have been illegally confined by **A-1**, Id. Senior PP appearing for the CBI highlighted that the previous conduct of the prosecutrix, at this stage, has to be viewed keeping in view her state of mind since was under the fear that her daughters are being subjected to sexual exploitation at the hands of **A-1**. It was probably only to pre-empt any possible harm to her daughters at the hands of **A-1** did the prosecutrix refrain from making any allegations of her own sexual exploitation or those of her daughters *i.e.* prior to the present FIR. I find reasonable merit in the submissions of Id. Senior PP for the CBI. It also needs a highlight that in her statement dt. 07.02.2018 (recorded u/s 161 Cr.PC), the prosecutrix stated that on 1.9.2016 she was permitted by *Ishwariya Vidyalya* to meet her 3 daughters but not the 4th one. In December 2016, she approached the Hon'ble Supreme Court with a prayer for release of her daughters. This prima-facie corroborates the submission of Id. Sr. PP that when the complainant approached the Hon'ble Supreme Court, she was laboring under the impression that her daughters were in the illegal confinement of **A-1**. Thinking logically, prosecutrix would **not** have taken the trouble of approaching the **Hon'ble Supreme Court** if in the meeting with her 3 daughters on 1.9.2016, they had informed the complainant/prosecutrix that they were not facing any physical or mental harassment in the spiritual school of **A-1**. There is thus reason to believe that the complainant strongly felt that there was something wrong in the way her daughters were being treated in the *Ishwariya Vidyalya* which prompted the prosecutrix/complainant to approach the Hon'ble Supreme Court though subsequent investigation (in the present case) did not reveal/establish such a fact.

27. So far as the submission relating to lack of sufficient investigation by the CBI is concerned which as per ld. defense counsel is reflected from non-recording of statements of material witnesses and non-production of material documentation, the same cannot be appropriately commented upon by the Court at this stage. However, it would be opportune to observe that there has been no allegation of biased or unfair investigation. Infact, the allegations of rape and illegal confinement of the daughters of the prosecutrix levelled against **A-1** having been found to be untrue by the Investigating Officer is in itself a clear pointer towards the fairness with which the investigation has been conducted. Further, furnishing of unimpeachable evidence at the conclusion of investigation has never been the benchmark for framing of Charge. At this stage, Court only has to see whether there is prima-facie case made out against the accused on the basis of the un-rebutted evidence collected at the stage of investigation.

28. In view of the above discussion, this Court is of the understanding that there is sufficient ground to proceed with for framing Charge against **A-2**. However, **A-2** has been charge-sheeted u/s 109 IPC r.w. S. 375 (2) (n) IPC despite the fact that allegation against A-2 is regarding abetment of one specific instance of (alleged) rape. Therefore, the correct Charge against A-2 would be u/s 109 IPC r.w. S. 375 (2) (k) IPC considering the relationship between complainant *and* A-1 **i.e.** rape by a person in a position of dominance. The Court is also alive to the fact that though **A-2** is being charged as an Abettor, the main accused himself will not be facing trial at the moment. In this regard, Explanation 2 of section 109 would be relevant which lays down that for constituting the offence of Abetment, it is not

necessary that the abetted offence should have been committed. Thus, even if in the present trial, prosecution is unable to lead evidence against A-1 owing to the absence of A-1, accused no. 2 can still be proceeded against by framing Charge u/s 109 IPC r.w. S. 375 (2) (k) IPC. **Charge be framed accordingly.**

Announced in open Court

Dated: 26.6.2020

(AJAY GULATI)

Spl. Judge (PC Act), CBI-12

RADCC / New Delhi