

RESERVED
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In Chamber

Case :- CRIMINAL MISC. WRIT PETITION No. - 21181 of 2019

Petitioner :- In Re Missing Of An LLM Student At Swami Shukdevanand Law College (SS Law College))

Respondent :- State of U.P.

Counsel for Petitioner :- Suo Moto, Deba Siddiqui, Swetashwa Agarwal

Counsel for Respondent :- G.A., Manish Singh, Rajrshi Gupta

Hon'ble Manoj Misra,J.

Hon'ble Deepak Verma,J.

(Delivered By Hon'ble Manoj Misra, J)

This matter has been placed before us as a duly numbered writ petition on nomination by the Chief Justice pursuant to the order dated 02.09.2019 passed by the Apex Court in Suo Motu Writ (Crl.) No. 2 of 2019 requesting the Chief Justice of this Court to constitute a Bench to monitor the investigation of the two FIRs, namely, FIR No. 0445, dated 27.08.2019, and FIR No. 0442, dated 25.08.2019, both at P.S. Kotwali, District Shahjahanpur, and to pass appropriate orders, if required, with reference to protection to the parents and family members of the victim-girl (herein after referred to as 'Miss A') on assessment of the threat perception.

BACKGROUND FACTS GIVING RISE TO THESE PROCEEDINGS:

A brief narration of the facts giving rise to these proceedings would be apposite.

The Apex Court, on the basis of newspaper reports and online news portal stating that an LLM student (Miss "A") of an institution, namely, Swami Shukdevanand Law College (S.S. Law College), Shahjahanpur, Uttar Pradesh, has been missing from 24.08.2019 and that she had leveled certain allegations

against persons running the institution, took cognizance of the matter, called for reports and directed the authorities to produce the girl. Upon production / appearance of the girl (Miss A) and her parents, after in-camera interaction, the Apex Court passed an order, dated 02.09.2019, thereby directing the Chief Secretary, State of U.P., to constitute a Special Team of police officers, headed and assisted by police officers of the rank specified, to enquire into the grievances expressed by the parents of Miss "A". At the stage of passing the aforesaid order, the Apex Court was apprised about registration of two FIRs, namely, FIR Nos.442 and 445. Consequently, the apex court directed that the investigation team would take note of both the FIRs and proceed with the investigation in accordance with law and file status report before the High Court of Judicature at Allahabad . By the same order the Apex Court also requested the Chief Justice of this Court to constitute a Bench to monitor the investigation. Pursuant to the above order, the Chief Justice nominated a Bench presided over by one of us (Manoj Misra, J) to monitor the investigation.

It may be noticed that the Apex Court, after noticing the apprehension expressed by the father of Miss "A" with regard to the safety of the family of Miss"A, had also directed the Chief Secretary, State of U. P. to direct the Superintendent of Police of the concerned district, namely, Shahjahanpur, to afford protection to the parents and family members of Miss"A" on assessing the threat perception and the High Court was requested to review the protection so accorded and pass appropriate orders, if required.

After the order dated 02.09.2020 was passed, the matter was again put up before the Apex Court on 04.09.2020 for orders in respect of Miss A's further studies. Orders in that

regard were also passed by the Apex Court and the proceedings were accordingly disposed off.

Pursuant to the order dated 02.09.2019, the Bench nominated to monitor the investigation and pass appropriate orders in respect of protection of Miss "A" and her family members was apprised, from time to time, through affidavits as well as reports about the ongoing investigation in the two FIRs.

Finally, Sri Atul Kumar Srivastava, Additional Superintendent of Police (City), Bulandshahar /Additional Superintendent of Police (S.I.T.), Shahjahanpur, through his affidavit, reported that in both the cases investigation has been completed and police report under section 173(2) CrPC has been submitted in the appropriate court.

No dispute has been raised, either on behalf of Miss "A" or for that matter any body else, with regard to filing of police reports, under section 173 (2) CrPC, in the above-mentioned two FIRs. There are, however, two applications filed on behalf of Miss "A" and her family which we have to address.

APPLICATIONS THAT ARISE FOR ADJUDICATION:

Application No. 1 of 2019, dated 14.10.2019, and Application No.3 of 2019, dated 4.11.2019, arise for our consideration.

In **Application No. 1 of 2019** prayer is as under:-

(a) Pass appropriate order directing the Special Investigation Team (SIT) to register with immediate effect FIR under appropriate sections of IPC on the police complaint made by the applicant on 05.09.2019 at Lodhi Road Police Station, New Delhi, and/or;

(b) Pass appropriate order directing the SIT to investigate

the complaint of the applicant in free, fair and effective manner, and/or;

(c) Pass any other order/direction which this Hon'ble Court may deem fit and proper in the facts of the present case.

In Application No. 3 of 2019 prayer is as under:-

(a) Pass an appropriate order directing for constitution of fresh Investigation Team of S.I.T. to investigate the case as per the directions of the Hon'ble Supreme Court vide order dated 02.09.2019 in Suo-Motu Writ (Crl.) No. 02 of 2019.

(b) Pass an appropriate order or direction taking stern action against the S.I.T. Officials who have harassed, assaulted, beaten and threatened the family of the victim-Miss-A of dire consequences and to implicate them in criminal cases, as disclosed in the accompanying affidavit.

(c) Pass any other order/direction which this Hon'ble Court may deem fit and proper in the facts of the present case.

For a better understanding of the issues raised in the two applications, we shall be noticing in brief the contents of the two applications as also their supporting affidavit including the response submitted on behalf of the State to those applications.

As some of the averments made in the affidavits filed in relation to the two applications are overlapping, for convenience, the contents of Application No.3 of 2019 and the reply thereto is being noticed first.

In Re: Application No. 3 of 2019

Application No.3 of 2019 has been supported by an affidavit of the brother of Miss "A". The salient features of the affidavit filed in support of the application are being noticed below.

In paragraph 5 of the affidavit, it is stated that an armed gunner and a lady constable has been provided to the victim; two armed gunners have been provided to the mother, father and family members of the victim; and three armed gunners have been provided for the security of the residence of the victim and her family.

In paragraph 9 of the affidavit, it is alleged that the investigation team has been biased because the prime accused Chinmayanand was offered special treatment not only by the S.I.T. but by the Jail Authorities. The biased approach of the S.I.T. was visible as it had been holding press conferences to demonstrate that the victim (Miss "A") was involved in extortion of which it had scientific evidence. It is alleged in the affidavit that such an approach of the investigating agency not only infringes upon the right to privacy of the victim (Miss "A") but also maligns her image in public so as to break her spirit.

In paragraph 10 of the affidavit, it is stated that the S.I.T. ought to have registered a first information report on the complaint made by Miss "A" dated 05.09.2019.

In paragraphs 11 and 12 of the affidavit, it is stated that filing of application no.1 of 2019 by the victim on 14.10.2019 had annoyed the members of the S.I.T. Not only that, the S.I.T. was also annoyed with the family of the victim for opposing the bail application of Chinmayanand.

In paragraphs 13 and 14 of the affidavit, it is stated that the family members of the victim (Miss "A") were called for interrogation and were made to sit for one and a half hour before they were interrogated.

In paragraph 15 of the affidavit, it is stated that during the course of interrogation, the I.G. (S.I.T.) Naveen Arora called the

mother of the victim as dramatist. Further, the police officer Bharti Singh was asked to beat her with belts, which she refused. Thereafter, another police officer, Sharmila Sharma, banged her head on the table, slapped her and beat her with fists and toes. She also exhorted the entire family to confess that they were involved in extortion. It is also stated in paragraph 15 that Miss A's father, who is a heart patient, was slapped and mercilessly beaten by the SIT during interrogation on 01.11.2019. It is stated in paragraphs 16 and 17 that Miss A's family was threatened of false implication. In paragraph 18 it is stated that S.I.T. officials had called upon the members of the family of Miss A to explain as to how they could afford to engage so many counsels in the High Court and the Supreme Court.

In paragraph 19 of the affidavit, it is stated that death threats were also extended to the family of the victim. In paragraph 20, it is stated that the family of the victim could not muster courage to get their medical examination conducted anywhere as they were under constant vigil of the S.I.T. In paragraph 21, it is stated that photographs of victim's mother was taken through mobile phone camera to demonstrate that she suffered injuries on her face. Print-out of her photographs, showing her face, have been filed as Annexure 6 to the affidavit.

In paragraph 23 of the affidavit, it is stated that in the garb of providing protection to the family of the victim, the S.I.T. officials are harassing, assaulting, beating and threatening them and making situation from bad to worse.

In paragraph 24 it is stated that the entire investigation by the S.I.T. team has been conducted under the influence of prime accused Chinmayanand who enjoys political clout in the

ruling party.

In paragraph 27, it has been stated that the S.I.T. is hell bent to falsely implicate the entire family of the victim so as to lend credence to the story set up by them.

By narrating all that has been mentioned above, prayer made is for constitution of fresh Investigation Team to investigate the case.

In reply to the said application and the affidavit, Sri Atul Kumar Srivastava, a member of the S.I.T., has filed his affidavit, dated 3rd December 2019, refuting the allegations. The relevant averments made in the response affidavit are being noticed below. In paragraph 9 of the reply affidavit it has been stated that the accused Chinmayanand was arrested by the S.I.T. on 20.09.2019 and was incarcerated in District Jail under the orders of the Chief Judicial Magistrate, Shahjahanpur. It is stated that the S.I.T. strongly opposed the bail application of the said accused, as a result, the bail application was dismissed by the Sessions Judge, Shahjahanpur. It has been specifically denied that the S.I.T. gave preferential treatment to the above named accused. The reason to hold the press conference was to place the correct facts before the public and to prevent spreading of false rumours. In paragraph 10 it is stated that the complicity of Miss "A", as an accused in case crime no. 442 of 2019, was established on the basis of CDR examination, location chart, CCTV footage, toll tax, barrier records, mirror image of mobile phones and pen-drives, voice-sampling test, physical verification of material evidence and the reports of the cyber experts and FSL/CFSL. It is stated that miscellaneous verbal statements, documents and digital evidence was carefully examined before arriving at the conclusion that Miss "A" was involved in the crime in question. It is stated that

consequently she was arrested on 25.09.2019 and produced before the Chief Judicial Magistrate, Shahjahanpur and from there she was sent to Jail.

In respect of application given by Miss "A" at Lodhi Road Police Station, it is stated in paragraph 10 of the affidavit that it was duly incorporated in the investigation of FIR No. 445 of 2019 on the direction of the State Government.

The allegations of custodial torture and extension of threats have been specifically denied. It has been stated that there was no physical torture and no medical examination was undergone to support such an allegation. It has also been stated that no hindrance was put on the family of Miss "A". They were even free to give statement to the media. It is stated that the photographs of the face of the mother of Miss A, allegedly taken by the mobile phone, are not indicative of any injury and if they do, it may be self inflicted and of some other time. It is also stated that since the S.I.T. had found a prima facie case against Miss "A" with regard to extortion, Miss "A" and her family were trying to malign the reputation of the S.I.T.

In Re: Application No. 1 of 2019

Application No.1 of 2019 has been supported by an affidavit of the father of Miss "A". It is stated in the affidavit that in August, 2018, Miss "A" after finishing her 5 years LLB course in SS Law College, Shahjahanpur, desired to take admission in LLM and in that connection she met the Principal of SS Law College, Shahjahanpur. The Principal took Miss "A" to the accused Chinmayanand who was the President of the Managing Committee of the College. It is stated that the accused is the *Karta - Dharta* of the entire ashram campus and all the five institutions are in the same campus. It is alleged that

in the first meeting itself, the accused took Miss A's mobile from her and saved his number in that mobile. It is alleged that the accused gave admission to Miss A in LLM course and persuaded her to take job in the computer lab. It is stated that the father of Miss A had serious reservation in acceptance of job offer but Miss "A" had to say 'yes' because of constant pressure from the accused. It is stated that as she was burdened with administrative job, she used to get late. Consequently, she had to take a hostel room though she did not shift there immediately. It is stated that in the month of October, 2018, she got late due to work and as no Auto was available, the victim had to stay back in the hostel room. Next morning, when she was taking her bath, the accused got it video recorded and thereafter her sexual exploitation began. She was not only raped but sexually exploited for over a year till she managed to escape. It is also stated that the victim was forced to massage the accused in a nude condition on a daily basis. It is stated that she was sexually exploited under threat that her family would have to face dire consequences as also that her bathing and rape videos would be made viral. It is stated that after several months, the victim mustered courage to expose the highly positioned accused and for that end she bought a device to prepare videos of incidents when she was forced to massage the accused. It is stated that the victim took help of one college mate, who was her family friend, and with his help she could manage to escape from the clutches of the accused with an idea of making a police complaint.

Along with the affidavit, Miss A's complaint, dated 05.09.2019, made at P.S. Lodhi Colony, South District, Delhi has been brought on record as Annexure 7 in which what has been summarized above is mentioned in detail. It is also stated

therein that while the victim was on the run, her video complaining about a highly placed person of *Sant Samaj* destroying her life and life of several girls was posted in her facebook account. It is alleged that upon seeing the video, the family of the victim got worried about her safety and the police control room was contacted by her father by dialing 100 on 25.08.2019 at about 4 pm from Mobile phone No. 6393242373. This complaint was registered vide Invoice No. P25081907392 but nothing was done by the police. It is alleged that on 25.08.2019, the father of the victim had gone to the police station Kotwali, Shahjahanpur to lodge complaint wherein he specifically named Chinmayanand but his complaint was not taken. It is stated that the District Magistrate had also warned him that he should be mindful of making complaint against a person of the stature of Chinmayanand. It is stated that, thereafter, when the news became viral, the Hon'ble Apex Court took suo-motu cognizance of the matter. It is stated that when the facebook video of the victim went viral, the complaint made by her father on 25.08.2019 was registered as FIR No. 445 of 2019, with a delay of two days, on 27.08.2019 for offences of abduction and sexual harassment. It has been stated that after the order of the apex court, when the victim was discharged from Bapnu Ghar (women shelter home) on 04.09.2019, on 05.09.2019 she made a written complaint against the accused at P.S. Lodhi Colony, South District Delhi giving vivid description of her ordeal.

In the affidavit supporting the application, the approach of the S.I.T. has been criticized by alleging that S.I.T. was interested more in highlighting the manner in which the victim and others had indulged in extortion rather than demonstrating as to how the victim was exploited by the accused

Chinamayanand.

In paragraph 9 of the affidavit it has been stated that hostel room of the victim was de-sealed in the presence of S.I.T. members on 10.09.2019 and was searched. The victim was shocked to see that the room was tampered and was not in the same shape as she left. It is alleged that her equipment, which she purchased from Flipkart, to make the video was missing and several other items were also missing from the room and some incriminating things was planted.

In paragraph 11 of the affidavit, it is stated that her statement under Section 164 Cr.P.C. was recorded on 16.09.2019 wherein she narrated in detail what all Chinmayanand had done to her and the hell she had been through. In paragraph 12 it has been submitted that S.I.T. had hardly questioned the accused Chinmayanand and that none of his Ashrams was searched.

In paragraph 13 of the affidavit, it is stated that Chinmayanand has been accorded a celebrity treatment in the jail as if he was a State Guest. It has been alleged that it is quite surprising that despite the statement of the victim, Chinmayanand was not charged with rape simplicitor. In paragraph 19 it has been stated that she was literally prevented from seeking anticipatory bail and was arrested on 25.09.2019 before the date fixed for consideration of her anticipatory bail application just to render the same infructuous. It has been alleged that she was brutally dragged on the floor up to the SIT vehicle to send her to jail. It has also been alleged that the offence with which she has been charged is not so serious that may warrant her arrest which is fortified from the fact that no remand for her custodial interrogation was sought by the SIT.

In paragraph 25 onwards of the affidavit, it has been stated that SIT was there to look into the grievances expressed by Miss "A" in her complaint dated 05.09.2019 but the said complaint was not registered as a separate FIR even though as per decision of the Apex Court in ***Lalita Kumari Vs. Govt. of Uttar Pradesh : 2014 (2) SCC 1*** registration of FIR is mandatory under Section 154 of the Code if the information discloses commission of cognizable offence. Thus, the applicant (Miss "A") has prayed for registration of her complaint, dated 05.09.2019, as a separate FIR.

In response to the above application/affidavit, a counter-affidavit, dated 3rd December 2019, has been filed by Sri Atul Kumar Srivastava, member of the SIT. The salient features of the reply affidavit are noticed below.

In paragraph 4 it has been stated that the complaint /application, dated 05.09.2019, made by Miss A at Lodhi Road Police Station, Delhi was entered in the General Diary and was sent to Shahjahanpur where the SIT was already investigating FIR 445 of 2019 lodged by Miss A's father. It is stated that since SIT could not by itself register a fresh first information report, direction was sought from the State Government, which directed that the said application be incorporated in the investigation of the case (FIR No.445 of 2019) already under investigation. Consequently, the same was clubbed with FIR No.445 of 2019.

In paragraph 6 of the affidavit, it is stated that investigation revealed that there was sexual relationship between the applicant (Miss "A") and the accused and the accused used to get massage from Miss "A".

It is stated in paragraph 7 of the affidavit that few recordings of nude massages were made available by Miss "A"

but the device allegedly used to make video could not be recovered.

It is stated in paragraph 20 of the affidavit that the statement of the victim was taken on 09.09.2019 in respect of FIR No. 445 of 2019. It was a lengthy statement covering events spread over a year. It has been stated in paragraph 23 that the room of the victim was unsealed in the presence of victim, with her own key, and in the presence of her family members and a Magistrate. Investigation revealed that she had already removed many of her articles and belongings from the said room in the second week of August and had kept them in the house of a relative of her friend. In paragraph 25 of the affidavit, it is stated that the entire scene of crime was secured on 13.09.2019 by a team of Forensic Science Laboratory (FSL) Lucknow and physical evidence was collected and sent for examination and analysis. It is stated that the accused Chinmayanand was summoned by the SIT and questioned for eight hours and on the basis of evidence collected, he was arrested on 20.09.2019. In the affidavit, it has been stated that investigation was conducted in a fair manner and thereafter charge-sheet was submitted in both the cases.

On 04.12.2019, we had required the learned A.G.A., representing the Special Investigation Team, to file supplementary affidavit stating specifically whether the allegations that Miss "A" made in her complaint/ application dated 05th September 2019 were investigated or not and, if so, in what manner.

Pursuant to the said order, a supplementary-affidavit of the Additional Superintendent of Police, S.I.T., dated 10.12.2019, was filed. In paragraph 4 of the affidavit, it has been stated that the complaint, dated 05.09.2019, given by

Miss "A" at the Lodhi Road Police Station was duly incorporated in the investigation of FIR No. 445 of 2019 on the direction of the State Government and the same is entered in CD Parcha No. 12 of the Case Diary. In paragraph 5 of the affidavit, it is stated that the accused Chinmayanand was called to the office of the S.I.T. on 12.09.2019 in connection with investigation related to the allegations leveled by Miss "A" in the complaint. Two mobile phones of Chinmayanand were sent for forensic examination to the Forensic Science Laboratory. It is stated that in the investigation, on 13.09.2019, the site located at Divya Dham, Mumuksho Ashram was secured in the presence of Miss "A". The S.I.T. and field unit made a detailed inspection of the site and collected relevant material, which was sent to Forensic Science Laboratory. It is stated that on 08.09.2019, in the light of application of Miss "A", the supplementary statement of Miss "A" was recorded under Section 161 Cr.P.C. and the same is entered in Parcha No. 13 of the Case Diary dated 13.09.2019. It is stated that on 14.09.2019, the original of the application was received from the State Government and on the basis of the evidence collected during the course of investigation, sections 376-C, 354-D and 342 I.P.C. were added in FIR No. 445 of 2019. It is stated that on 16.09.2019, the statement of Miss "A" was recorded by the Judicial Magistrate under Section 164 Cr.P.C.

In paragraph 9 of the aforesaid affidavit it is stated that to verify the authenticity of the allegations in the application regarding her admission in L.L.M., her appointment in E-library and allotment of room in the hostel, the S.I.T. continued with the investigation by recording the statement of Sanjay Barnwal (Principal), S.S. Law College; Avnish Chandra Mishra (Secretary), S.S. Law College; and Smt. Jharna Rastogi

(Warden, O.B.C. Hostel). Relevant records were also received and duly incorporated in the case diary.

In paragraph 10 of the affidavit, it is stated that on examination of the evidence, comprising statements and documents collected, it was revealed that Miss "A" had got a rank of 490 in the L.L.M Entrance Examination whereas the last admitted candidate was ranked 249. But, because of the influence and position of accused Chinmayanand though she did not have the requisite qualification, Miss A got appointment in the E-library of S.S. Law College on a salary of Rs. 5,000/-

In paragraph 11 of the affidavit, it is stated that in spite of the fact that the residence of Miss "A" was only 2.5 km from the hostel she was allotted a room in the hostel by wrongly showing the distance as 15 km. This allotment was due to the position of accused Chinmayanand.

In paragraph 12 of the affidavit it is stated that regarding the allegations that post October 2018 Miss "A" was subjected to blackmail and threats by the accused Chinmayanand and his accomplices and was repeatedly sexually assaulted up to July 2019, detailed investigation was conducted. It is stated that statements of Miss "A", her mother, brother, constable Monu Yadav, constable Gaurav Arya, student of OBC hostel, her friends including doctors, who conducted her medical examination, were recorded. It is stated that friend of Miss "A" gave a pen-drive to S.I.T. on 09.09.2019 and Miss "A" gave a pen-drive to the S.I.T. on 13.09.2019 with a claim that they contain objectionable content of Chinmayanand with Miss "A". Those pen drives were sent for forensic examination to the Forensic Science Laboratory. It is stated that mirror images of the contents were provided by the Forensic Science Laboratory to the S.I.T.

In paragraph 13 it is stated that examination of the mirror images of videos showed exchange of vulgar conversations between Miss "A" and Chinmayanand. These videos were sent for forensic examination along with voice sample to the Forensic Science Laboratory for matching.

In paragraph 14 it is stated that in the presence of Miss "A" her room in the O.B.C. Hostel was unsealed and the field unit of the Forensic Science Laboratory carefully examined the room and the bathroom and collected physical evidence. But, in spite of diligent efforts by the S.I.T., the hidden camera allegedly concealed in her spectacles, and used to record the objectionable videos, could not be found.

It is stated that the CDR of Miss "A", accused Chinmayanand, the relatives of Miss "A" and co-accused in FIR No. 442 of 2019 and the messages exchanged between them were collected and examined along with their respective locations.

In paragraph 15, it is stated that in spite of repeated queries put to Miss "A" about the names, surname and physical description of the armed persons, who, initially, brought her to Chinmayanand and were used for threatening her, no information was provided. Further, inquiries from people in the locality, near the O.B.C. Hostel and Divya Dham, yielded no result in respect of identity of those armed persons.

In paragraph 16 it is stated that in respect of the allegations of rape of Miss "A" by the accused Chinmayanand, the statement of her father, mother and brother recorded during the investigation revealed that they had no knowledge of any such exploitation of Miss "A" prior to 01.09.2019, when, for the first time, they became aware of this allegation when they went

to Delhi. They told that Miss "A" had never earlier disclosed anything about the aforesaid allegation to any of them.

In paragraph 17, it is stated that Miss "A" leveled the allegation of sexual assault against Chinmayanand for the first time in her application dated 05.09.2019 though, earlier, she had alleged that her exploitation had started in October 2018 and continued till July 2019. It is also stated that the mirror image of the pen drive given by Miss "A" and her friend to the S.I.T. was examined and it revealed that although there is video evidence of full naked body massage and the voice sample of Miss "A" and Chinmayanand had matched with the video record, but there is no footage of full sexual intercourse between them.

In paragraph 18, in respect of the allegation that Chinmayanand had shown Miss "A" in his mobile phone recording of her taking bath and also of her rape, it is stated that the two mobile phones of accused Chinmayanand were sent for data recovery, first, to Forensic Science Laboratory, Lucknow and, thereafter, to Forensic Science Laboratory, Gandhi Nagar, Gujarat for recovery of deleted data. It is stated that reports from both these laboratories did not reflect existence of any video of Miss A being raped or taking bath.

In paragraph 19, it is stated that people of the locality near the Mumuksho Ashram gave statement that Miss "A" was a regular visitor to the private room of Chinmayanand and had free access thereto. It is stated that no evidence could be found of her being forced to go there by armed guards.

In paragraph 20, it is stated that in respect of her allegation in her application that Chinmayanand had sent her

for medical treatment, the investigation revealed that Miss “A” had gone to one homeopathic doctor who used to treat the staff of Mumuksho Ashram without charging money. The statement of said doctor revealed that once Chinmayanand had sent a girl with his staff. The girl had skin allergy and he gave her medicine for the same.

In paragraph 21 it is stated that in respect of the allegation of Miss “A” that she had ordered from Flipkart a spy camera, which was concealed in a pair of spectacles, in spite of relentless efforts the same could not be traced out.

In paragraph 22 in respect of the allegation that Miss “A” asked for help from her friends to help her to escape from the clutches of Chinmayanand, it is stated that investigation revealed that in fact the friends of Miss “A” alongwith her had demanded through Whatsapp message an extortion amount of Rs. 5 crores from Chinmayanand. Upon receipt of the Whatsapp message, Chinmayanand got the FIR No. 442 of 2019 registered through his Advocate on 25.08.2019. It is stated that the investigation of the case was done meticulously and impartially and, after collecting digital, oral, documentary and scientific data, charge-sheet was submitted under Sections 385, 506, 507, 201, 34 I.P.C. and section 67-A of I.T. Act in the concerned court against Miss “A” and her friends, three in number, for demanding Rs. 5 crores, by way of extortion, by sending Whatsapp messages to Chinmayanand containing his obscene pictures. It is stated that two other persons were charge sheeted under Sections 385, 506 and 201 I.P.C.

In paragraph 23 and 24, a brief summary of the conclusions arrived at by the investigation team has been provided. The relevant portion of paragraph 23 and the entire

paragraph 24 of the affidavit is reproduced below:

“(i) Electronic evidence established that between September 2018 till August 2019 Miss “A” and Chinmayanand exchanged calls and messages to one another on the telephone 209 times.

(ii) Miss A made a total of 1633 calls and exchanged SMS with her parents and brother. It is significant that on an average Miss “A” was in contact by calling and SMS on an average 4-5 times everyday with her family members, but never mentioned about her exploitation, victimization or rape to any of them.

*(iii) Miss “A” exchanged calls and messages a total of 4619 times between September 2018 and August 2019 with co-accused ***** of Case Crime No. 442 of 2019. This establishes the close relationship between Miss “A” and ***** (read it as co-accused).*

(iv) The CDR examination regarding location revealed that between September 2018 and August 2019, Miss “A” was at her home for 103 days and out of Shahjahanpur for 19 days. This clearly establishes that Miss “A” had ample freedom of movement and opportunity to complain about her exploitation and plight to her parents, friends or the police, but she chose not to do so.

*(v) Between 1st October 2018 and 18th August 2019, the location of Miss “A” revealed that on 136 days she was at Mumuksho Ashram as was the presence of Chinmayanand at the same place. This lends credibility veracity of the allegation of sexual exploitation of Miss “A” by Chinmayanand since there was ample opportunity for him to do so. The pen-drives given to the S.I.T. by Miss A and ***** (read it as co-accused) also establish the fact of full naked body massage of Chinmayanand by Miss A.*

24. That the investigation has also revealed the following relevant facts:

i. A scooty was purchased for Miss A by Chinmayanand through a person named *****. Chinmayanand used to pay the EMI of the payment of the Scooty through a person, named *****. The CDR analysis of Miss A, her father, brother and ***** (read it as person who paid EMI) verified this fact.

ii. On the request of ***** (read it as name of the mother of Miss A), the mother of Miss A, Chinmayanand got Miss A's mother appointed as a teacher in S.S.M.V. College run under him on a monthly salary of Rs. 10,000/-. This appointment was made on 01.05.2019.

iii. Since according to the application, it has been alleged by Miss A that she was victimized and exploited by the accused Chinmayanand since October 2018 and this continued till July 2019. It is clear that the aforesaid appointment was arranged for Chinmayanand to retain his hold over Miss A. The statements of Principal and Secretary of S.S.M.V. College also confirm the aforesaid facts.

iv. In case crime no. 445 of 2019, the case was registered under Section 364 and 506 I.P.C. By ***** ((read it as the name of father of Miss A) (father of Miss A). However, no evidence of her abduction was forthcoming; hence section 364 of I.P.C. was deleted. It was only on 05.09.2019 that by means of the application given at the Lodhi Road Police Station, New Delhi that Miss A made allegations about her sexual exploitation.

(Note: *** has been used to mask the name of the person concerned. But for convenience the context has been provided in parentheses)”**

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PARTIES:

Sri Swetashwa Agarwal, learned counsel appearing for Miss "A", urged that the complaint dated 05.09.2019 ought to have been registered as a separate first information report and could not have been clubbed with FIR No. 445 of 2019. He submitted that the FIR No. 445 of 2019 was lodged by her father expressing apprehension that his daughter has been abducted and had been sexually abused. The said FIR did not contain the gory details of the ordeal the victim had to undergo therefore, when the victim made a complaint at P.S. Lodhi Road, pursuant to the liberty given to her by the Apex Court to ventilate her grievances, the said complaint ought to have been registered as a separate first information report and investigated as a separate case. More so, when the same disclosed commission of cognizable offence. It was urged that as this was not done, the investigation stood vitiated and therefore fresh investigation be directed.

Sri Swetashwa Agarwal next submitted that from the affidavits filed by the investigating agency it appears that the entire effort of the investigating agency was to reduce the gravity of the allegation made against the accused Chinmayanand and to demonstrate that the victim herself had been guilty. It has been submitted that such an approach on the part of the investigating agency has vitiated the entire investigation and therefore fresh investigation team should be constituted and investigation should be carried out afresh. He submitted that the police made no effort to recover the mobile phones of Chinmayanand through which video recording of the victim, while she was taking her bath, was made. It has been submitted that only those mobile phones were taken from

Chinmayanand which he tendered for examination. Thus, it is clear that the investigating agency did not pursue the investigation with due diligence.

It has further been contended by him that the investigating agency had literally tortured the victim and her family members for extracting a confession that Miss A had done all that for extortion.

Per contra, Sri Neeraj Kant Verma, learned A.G.A., who had appeared for the S.I.T., submitted that there was no legal requirement to register the complaint/ application dated 05.09.2019 as a separate case because what all had been stated in that application was incorporated in the case diary and all points raised therein have been investigated and after dealing with all aspects report under section 173(2) CrPC was submitted. He further added that there was no specific direction of the Apex Court that any further complaint of Miss "A" be separately registered and investigated as a first information report. Rather, the Apex Court had only directed that the grievances of the victim shall be considered and investigated and, specifically, the direction was to constitute SIT in respect of investigation of the two first information reports, namely, FIR Nos.442 and 445 of 2019. He also submitted that since the FIR No.445 of 2019 lodged by the father of the victim had alleged about her possible abduction and sexual exploitation by the accused Chinamayanand and his men as alleged by her in her facebook post, the broad canvass of the offences calling for investigation was already put in place on which the investigation had to fill in the details. He next submitted that a first information report need not be an encyclopedia containing all the facts and details. What is required is that it must disclose commission of cognizable offence and once the offence is

disclosed, the investigating agency is to investigate the matter and collect material as to find out, firstly, what offences have been committed and, secondly, who committed those offences. He submitted that as the investigating agency has investigated all aspects raised and have submitted a report before the court concerned, no further investigation is required.

He further submitted that although the victim has made a statement that mobile phones provided by Chinmayanand alone were sent for forensic examination and no effort was made to recover any other mobile phone but the victim has not provided description of any other mobile phone or mobile number on the basis of which such effort could be made. Otherwise, the CDR of the relevant mobile numbers used by the accused and others to interact with each other was obtained during the course of investigation and was examined to form an opinion.

Sri Verma further submitted that although it is alleged that S.I.T. had tortured the victim and her family but there is no medical examination report reflecting any such torture. Moreover, Miss A's family had been free to make disclosure to news reporters had there been any such torture. Otherwise also, such torture was not possible as security was provided to Miss A and her family. He submitted that false allegations have been leveled with an oblique intention just to damage the credibility of the investigation more so because Miss "A" herself had been an accused.

ISSUES THAT ARISE FOR CONSIDERATION

On consideration of the rival contentions and the affidavits exchanged between the applicant and the state-respondents, noticed above, we are of the view that following issues arise for

our consideration:-

(a) Whether the complaint dated 05.09.2019 ought to have been registered as a separate FIR and investigated as such. If so, its effect.

(b) Whether by clubbing the complaint dated 05.09.2019 made by Miss "A" with FIR No. 445 of 2019, any prejudice was caused to Miss "A"/victim. If so, its effect.

(c) Whether there has been any lapse in the investigation carried out by the Special Investigation Team warranting further investigation or fresh investigation in the matter by a fresh investigation team.

ANALYSIS AND CONCLUSIONS

Before we proceed to address the aforesaid issues, we would like to notice, in brief, the allegations made in the FIR No. 445 of 2019 lodged by father of Miss "A" and the complaint dated 05.09.2019.

The allegations in FIR No.445 of 2019, dated 27.08.2019, which was registered at P.S. Kotwali, District Shahjahanpur, are to the effect that informant's daughter (referred to as Miss "A"-victim) is an L.L.M. Student in S.S. Law College, Shahjahanpur and is boarding in the hostel of that College; that since 23.08.2019, her mobile is switched off; that when her facebook video was seen, it was found that she has leveled allegations against Manager of that College, Chinmayanand and few other persons in respect of her sexual exploitation; and that threats have been extended not only to her but to all her family members. By alleging as above, apprehension has been expressed that some untoward harm might be caused to informant's daughter and that she might have been

kidnapped/abducted. In addition to above, it has been alleged that when Chinmayanand was contacted, he did not give any straight reply and, later, he switched off his mobile. It is also alleged that informant's daughter has some proof but the accused are persons with political influence and are of criminal nature and they could tamper with the evidence and therefore her hostel room be sealed in the presence of Media, after video recording, and action be taken against the accused and security be provided to her family members.

In the complaint dated 05.09.2019 of Miss "A" which has been brought on record as Annexure 7 to the affidavit filed in support of Application No. 1 of 2019, the allegations, in brief, are as under:-

"Miss "A" passed B.A. L.L.B. from S.S. Law College, Shahjahanpur by undertaking course from 2013-2018 as a day scholar. In June, 2018, she contacted the Principal of the College for taking admission in L.L.M. The Principal told her that she may contact Chinmayanand at Divya Dham. She met Chinmayanand who requested the Principal of the College to reserve a seat for her. On that very day, Chinmayanand saved her mobile number and told her that if she has any work relating to the College, she could directly contact him. It is stated that in June, 2018, Chinmayanand called her on phone and asked her to come over to Divya Dham. When she visited Divya Dham, she was requested by Chinmayanand to take up job at E-Library at S.S. Law College. When she told him that she held no qualification relating to computers, she was informed that the job is supervisory in nature for which no special qualification is required. However, she did not immediately accept the offer and on return informed her parents about the job offer, who told her that it is time for her to study and not to work. It is alleged that few days

later, in the first week of July, 2018, several phone calls from Chinmayanad came but they were not received by her. But, thereafter, he made a call from a new number. When that call was received, Chinmaynand called her over to Divya Dham in connection with some college work. She responded by saying that she was out of station and can not come, upon which, he told her to come on the next day. Next day, when she went to meet him, he told her that she can join her job from 19th July as it is a matter of prestige for the College. As a result, she took the job in the E-library of the College. The month of August passed off peacefully. In September, the Principal of the College gave her extra administrative work than what the job required. As a result, she had to stay overtime. When she asked the Principal for her salary, the Principal advised her to meet Chinmayanand. When she spoke to Chinmayanand, he told her that she should not bother about the salary as the same would get credited to her bank account. Few days later, his accountant took her bank documents and from 10th September onwards, salary of Rs. 5,000/- used to get credited in her Allahabad Bank account. It is alleged that on account of excess work, she used to return home late therefore she complained to the Principal about it, who requested her to contact Chinmayanand. When she apprised Chinmayanad about it, he told her that she may take a room in the hostel where she can easily stay and do her studies as well as her job. Initially, she refused to take the hostel room but upon pressure exerted by Chinmayanad, after Dussehra, on or about 19-20th October, she took a room in the OBC hostel. The bathroom however was separate. It is stated that when she asked as to how hostel meant for OBC was allotted to her, Chinmayanad told her that she should not worry as the hostel belongs to him. It is stated by her that one day in the morning she went to the bathroom to take her bath. On return, she received a phone from

Chinmayanand asking her to come over. Soon, thereafter, he sent 4-5 men to take her to Divya Dham. Out of them, 2 had guns. They took her to the room of Chinmayanand. Chinmayanand locked the room. When she asked as to why the room has been locked, he informed her that he has a video of her taking bath. He showed the video to her on his mobile. She was shocked and started crying. Chinmayanad thereafter requested her to remove her clothes and massage his body. It is stated by her that when she refused, he forcibly got her to massage his body and thereafter his men dropped her back to the hostel. Thereafter, again, men of Chinmayanand came and told her that Chinmayanand is calling her over. When she refused by saying that she is not well, she was forcibly taken to the room of Chinmayanand where she found him naked. He thereafter forcibly got her clothes removed and raped her. It is alleged that she had also bled for which she was referred to a doctor. It is alleged that after that incident, she had not attended classes for next few days. Men of Chinamayanad, however, again came to take her for his massage. It is stated that she feigned illness but his men returned back and forcibly took her to Chinmayanand. There Chinmayanand showed her the video of her rape and threatened her of dire consequences if she resisted or made complaint. He also told her to shift to the hostel completely and since thereafter her sexual exploitation became regular. It is alleged that her exploitation continued from October 2018 to July 2019. After suffering for so long, she, to create her own defense, made video clips. It is alleged that in the starting of August 2019, Chinmayanand called her over to Divya Dham and told her that what she had been doing for him should also be done for others. It is stated that as she had already prepared a video clip for defense, she mustered courage to get out of the clutches of Chinamayanand. Where after she took help

from college friends by telling them she has some proof regarding his misdeeds. However, Chimayanand came to know about the same and became thirsty for her blood, as a result, she took help of her friends to run away and escape to Delhi -- Shimla and kept changing places. In furtherance of all that a facebook post was also posted for help.”

When we take notice of the allegations made in the written complaint, dated 05.09.2019, made by Miss “A”, we find that what her father had suspected while lodging the first information report, which was registered as FIR No. 445 of 2019, the complaint of Miss “A” describes in detail.

It is well settled that a first information report need not necessarily be lodged by the victim of a sexual offence. Any person having information of the offence can report. It is equally well settled that an FIR need not be an encyclopedia of all the facts and allegations describing an offence. The object of lodging a first information report is to report an offence, cognizable in nature, so that the matter is investigated and a police report is submitted in court to enable it to take cognizance and proceed against the accused.

The report which was registered as FIR No. 445 of 2019 discloses sexual exploitation of Miss “A” and refers to her facebook video post. The name of the accused is also provided in the FIR and suspicion has been expressed that the accused might have had a hand in her disappearance. The statement of Miss “A” given by way of a written complaint, dated 05.09.2019, at P.S. Lodhi Road, is nothing but an elaborate statement of allegations with regard to her sexual exploitation by the accused Chinmayanand wherein she has given in detail the mode and the manner in which she was sexually exploited.

Interestingly, the complaint, dated 05.09.2019, apart from Chinmayanand does not specifically name any other accused. If the FIR lodged by her father is the skeleton, Miss A's complaint is the flesh and blood to it.

At this stage, we would like to deal with the authorities cited by Sri Swetashwa Agrawal in support of his contention that the complaint dated 05.09.2019 at P.S. Lodhi Road was no second FIR therefore it ought to have been registered as a separate case. To appreciate the same, we shall also examine and deal with authorities wherein it has been laid down that a second FIR of the same offence cannot be lodged.

Sri Agrawal has placed reliance on two decisions of the Apex Court, namely, ***Chirag M. Pathak and others v. Dollyben Kantilal Patel and another, (2018) 1 SCC 330, and Awadesh Kumar Jha @ Akhilesh Kumar Jha and another v. State of Bihar, (2016) 3 SCC 8.***

In ***Chirag M. Pathak (supra)*** the High Court had quashed multiple FIRs in respect of fraudulent functioning of cooperative societies on the principle that there cannot be more than one FIR for the same offence inasmuch as some of the accused and the allegations were common in the FIRs under challenge. The Apex Court allowed the appeal upon finding that the fraud alleged was in respect of functioning and operations of different cooperative societies with different set of victims and not entirely same set of accused persons. The apex court in paragraph 21 of its judgment had observed that though there may be some overlapping allegations in the FIRs but that is due to myriad reasons and one reason could be that all the cooperative societies were engaged in the same business of sale/ purchase of houses, and the plots of land sold to different persons, in different areas, were by same accused persons

as a consequence of their involvement in the affairs of the cooperative societies. The Apex Court held that those facts were by themselves not sufficient to quash the five FIRs at the stage of investigation itself.

In ***Awadesh Kumar Jha (supra)*** the Apex Court had observed that where the offences alleged to have been committed by the accused in the second FIR are distinct offences and the same have no connection with the offences for which the first FIR was registered, the investigation on the second FIR was legal and sustainable.

In ***T.T. Antony v. State of Kerala, (2001) 6 SCC 181***, the Apex Court while dealing with the issue of maintainability of a second FIR in paragraphs 19, 20 and 27 of the judgment, as reported, held as under:

“19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C.

27. *A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang's case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173 (2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution.”*

Following the decision in ***T.T. Antony's case (supra)***, in ***Amitbhai Anilchandra Shah v. CBI, (2013) 6 SCC 348***, the Apex Court in paragraph 37 of the judgment held that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. Further, in paragraphs 58.2 to 58.5 of the judgment as reported, the law has been summarized as under:

“58.2. *The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173(2) of the Code.*

58.3. *Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.*

58.4. *Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report (s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.*

58.5. *The First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence / event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.*

In ***Upkar Singh v. Ved Prakash, (2004) 13 SCC 292***, a three judges Bench of the Apex Court took the view that registration of a counter version or cross version of the incident could not be restrained on the principle of it being a second FIR. Therefore, a cross version or a counter version of the same incident can always be registered as a separate FIR.

In ***C. Muniappan v. State of T.N., (2010) 9 SCC 567 (para 37)***, the Apex Court took the view that if an offence forming part of the second FIR arises as a consequence or fall out of the offence alleged in the first FIR then the second FIR can be clubbed with the first and investigated together.

In ***Surendra Kaushik v. State of U.P., (2013) 5 SCC 148***, the Apex Court had explained the earlier decisions and held in paragraph 24 of the judgment as below:

“24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.”

In ***P. Sreekumar v. State of Kerala and others, (2018) 4 SCC 579***, the Apex Court after noticing a number of decisions

including the decision in ***Surender Kaushik's case (supra)*** approved the lodging of the second FIR lodged by a different person with a counter set of allegations not against same set of accused persons.

On due consideration of the decisions noticed above, the legal principle deducible is that where different set of allegations are made against different set of accused, by a different informant, may be in respect of the same incident, a second FIR would be maintainable. But where the second FIR is only an elaboration of the first with same set of accused and the victim, and the second FIR arises as a consequence of the offence alleged in the first, or where the offence narrated in the second FIR is committed in the course of the same transaction, the second FIR can legally be clubbed with the first.

In the instant case, we find that in the complaint dated 5.9.2019 and the FIR No.445 of 2019 the victim is the same i.e. Miss "A"; and the issue raised, that is with regard to sexual exploitation of the victim, is common, except that the second report i.e. complaint dated 5.9.2019, which is by the victim, is more elaborate. Even the accused, that is Chinmayanand, is common. Though in the complaint assistance rendered by his men in the crime is also disclosed but their names have not been provided and it is not Miss "A's" case that they also had sexually assaulted or exploited her. Under the circumstances, if the investigating agency had taken a decision to club the subsequent complaint dated 05.09.2019 with FIR No. 445 of 2019 it cannot be said that the investigating agency violated any provision of law. In fact, such clubbing was legally justified.

In respect of any prejudice being caused to Miss "A" by clubbing of her complaint dated 5.9.2019 with FIR No.445 of 2019, it may be observed that the counsel appearing for Miss

“A” could not pin point any specific prejudice caused to Miss “A” by non registration of her complaint dated 05.09.2019 as a separate case. Though he argued that in the complaint there was a specific case of rape set up which was not so in the FIR No.445 of 2019. But that cannot be taken as a ground to annul the investigation and direct for fresh investigation because it is not the requirement of law that the investigating agency must accept the allegation made while forming its opinion on the basis of material collected during the course of investigation. What is required by law is that the investigating agency must investigate all aspects of the case and make an effort to find out material in support of the aspects raised in the allegations.

In the instant case, in the response affidavit filed by the investigating agency it has been stated that all aspects raised in the complaint of Miss “A” dated 05.09.2019 were investigated and her statement under Section 164 Cr.P.C. was also recorded and after taking all aspects into account the report under Section 173 (2) Cr.P.C. was submitted.

As regards the opinion formed by the investigating agency with regard to the offence found committed, it is well settled that the opinion formed by the investigating agency on the basis of the material collected by it during the course of investigation is not binding on the court. The trial court is free to frame the charges as it may deem appropriate on the material produced before it and those charges can also be altered at any stage of the proceeding on the basis of the evidence adduced during the course of trial. Hence, we are of the considered view that by clubbing of the complaint dated 5.09.2019 with the FIR No.445 of 2019 neither any illegality was committed nor any prejudice caused to the victim (Miss “A”). The issues (a) and (b) are decided accordingly.

With regard to the grievance of Miss "A" that the investigating agency diluted the charges against the main accused by charging him for an offence punishable under Section 376-C IPC and not Section 376 IPC, suffice it to reiterate that the investigating agency is free to form its own opinion as regards the offence found committed but that opinion is not binding on the court. The court can form its own opinion as regards the offence found committed and can accordingly charge the accused on the basis of material collected during the course of investigation. Moreover, charge can be altered even after commencement of trial on the basis of evidence received during the course of trial. Hence, it would not be appropriate on our part to comment at this stage upon the opinion formed by the investigating agency with regard to the nature of the offence committed by the accused.

In respect of issue (c), as to whether there was any lapse in the investigation, warranting further or fresh investigation, the submission of Sri Swetashwa Agrawal had been that the mobile phone of Chinmayanand in which he had shown the clip of Miss "A" taking bath as also with regard to her rape was not recovered and no effort was made to recover the same.

In this regard we may observe that we had put a specific question to Sri Swetashwa Agarwal whether description of that mobile instrument or its number was provided by Miss "A" to the investigating agency to enable it to trace it out.

In response to our query, Sri Swetashwa Agarwal could not point out from any material on record that any specific description of that mobile instrument /phone was provided by Miss "A" to the investigating agency.

Under the circumstances, merely because a mobile

instrument was not recovered would not lead us to draw an inference that the investigation was not conducted properly or that the investigation was tainted. Moreover, we may put on record that it has come in the response affidavits filed on behalf of the SIT that mobile instruments were taken from the accused and sent for forensic examination to find out whether any such clip was present or was deleted. It is stated in the affidavit that no such clip or its deletion was found.

Another aspect highlighted was that the investigating agency proceeded with a view to find out faults in the case set up by Miss "A" against Chinmayanad and therefore the investigation stood vitiated. This submission is outright rejected because an FIR was also there against Miss "A" in respect of extortion therefore the investigating agency was under an obligation to investigate the matter keeping both sets of allegations in mind.

Much emphasis was laid on custodial torture of Miss "A" and her family and with respect to preferential treatment to Chinmayanad. This allegation was specifically refuted in the response affidavit and it was stated that Chinmayanand was arrested and his bail prayer was opposed tooth and nail, which resulted in its rejection by the court of sessions. Moreover, no medical evidence has been filed to support the allegations. Further, the photographs of the face of the mother of Miss A are not such from which any definite conclusion with regard to her custodial torture could be drawn. We are therefore, in these proceedings, not in a position to form a definite opinion as regards custodial torture of Miss A and her family.

At this stage, we may observe that on behalf of the applicant (Miss A) exception has been taken to the holding of press conferences by the investigation team. In this regard we

would like to observe that in sensitive matters it may become inevitable to apprise the media about developments. But an effort should be there to exercise restraint and restrict the conference just to disclose the status of the investigation because a detailed conference disclosing material and opinion may result in prejudging the issue and may also have serious repercussions on the safety of the victim, accused and the witnesses. However, merely because press conferences were held it would not mean that the investigation is tainted or was biased.

In view of the discussion made above, and after perusal of the affidavits and the reports filed in these proceedings by the SIT, we are satisfied that the investigating agency has duly investigated all aspects and after thorough investigation has submitted police report under section 173(2) CrPC in both the cases. Hence, no further action is required in these proceedings. The issue (c) is decided accordingly. The Application Nos.1 and 3 are rejected.

It is made clear that closure of these proceedings and any observations made in this order would not preclude the concerned court, which is seized of the matter after taking cognizance on the police report, from passing any such order which it may deem fit and proper in accordance with law.

The record of these proceedings shall be consigned.

Order date : 30.04.2020

Sunil Kr Tiwari